

УДК 342.7

DOI <https://doi.org/10.24144/2788-6018.2023.05.15>

## THE SUPREME COUNCIL OF JUSTICE AND THE INSTITUTIONAL MECHANISM FOR ENSURING HUMAN RIGHTS

**Bysaha Yu.,**

*Doctor of Juridical Science, Full professor,  
Head of the Department of Constitutional Law  
and comparative jurisprudence  
State Higher Educational Institution  
«Uzhhorod National University»,  
ORCID ID: <https://orcid.org/0000-0002-8797-5665>*

**Pyroha I.,**

*Doctor of Juridical Science, Full professor,  
Professor of the Department of Constitutional Law  
and comparative jurisprudence  
State Higher Educational Institution  
«Uzhhorod National University»,  
ORCID ID: <https://orcid.org/0000-0002-2798-7795>*

### **Бисага Ю.М., Пирога І.С. Вища рада правосуддя та інституційний механізм забезпечення прав людини.**

В статті підкреслюється, що надання Україні статусу кандидата в Європейський Союз покладе на державу серед іншого і зобов'язання, що стосуються судової реформи. Звертається увага на висновок Європейської комісії з семи вимог, виконання яких має бути свідченням того, що Україна готова продовжувати свій шлях в Європейський Союз. Акцентується увага на Вищій раді правосуддя, розкривається питання її правового статусу.

Зазначається, що права і свободи людини і громадянина є складним явищем. Помилковим є зведення їх забезпечення виключно до правового впливу в сфері прав людини, або правового регулювання чи захисту прав людини. Структурними елементами механізму забезпечення прав людини є механізм правового впливу в сфері прав людини, механізм правового регулювання у сфері прав людини, нормативно-правова основа прав людини, система гарантій прав людини, система захисту прав людини.

Звертається увага на особливості інституційного механізму забезпечення прав людини в Україні. Розглядаються його структурні елементи.

Зазначається, що Вища рада правосуддя є колегіальним, незалежним конституційним органом державної влади та суддівського врядування. Звертається увага на повноваження Вищої ради правосуддя, які закріплено ст. 3 Закону України «Про Вищу раду правосуддя». Аргументується, що Вища рада правосуддя є структурним елементом інституційного механізму забезпечення прав людини в Україні. Визначається місце Ви-

щої ради правосуддя в цьому механізмі, а також її вплив на ефективність судочинства в Україні.

**Ключові слова:** Вища рада правосуддя, права людини, органи державної влади, суддівське врядування, забезпечення прав людини, механізм, правовий статус, відповідальність, конституційно-правове регулювання.

### **Bysaha Yu., Pyroha I. The Supreme Council of Justice and the institutional mechanism for ensuring human rights.**

The article emphasizes that granting Ukraine the status of a candidate for the European Union imposes on the state, among other things, obligations related to judicial reform. Attention is drawn to the conclusion of the European Commission on 7 requirements, the fulfillment of which should be evidence that Ukraine is ready to continue its path in the EU. Attention is focused on the Supreme Council of Justice, the question of its legal status is revealed.

It is noted that the rights and freedoms of a person and a citizen are a complex phenomenon. It is a mistake to reduce their provision exclusively to legal influence in the field of human rights, or legal regulation or protection of human rights. The structural elements of the human rights enforcement mechanism are the mechanism of legal influence in the field of human rights, the mechanism of legal regulation in the field of human rights, the regulatory and legal basis of human rights, the system of guarantees of human rights, and the system of protection of human rights.

Attention is drawn to the peculiarities of the institutional mechanism for ensuring human rights in Ukraine. Its structural elements are considered.

It is noted that the Supreme Council of Justice is a collegial, independent constitutional body of state power and judicial governance. Attention is drawn to the powers of the High Council of Justice, which are enshrined in Art. 3 of the Law of Ukraine "On the High Council of Justice". It is argued that the Supreme Council of Justice is a structural element of the institutional mechanism for ensuring human rights in Ukraine. The place of the High Council of Justice in this mechanism is determined, as well as its influence on the effectiveness of the judiciary in Ukraine.

**Key words:** Supreme Council of Justice, human rights, state authorities, judicial governance, ensuring human rights, mechanism, legal status, responsibility, constitutional and legal regulation.

**Formulation of the problem.** Granting Ukraine the status of a candidate for the European Union imposes on the state, among other things, obligations related to judicial reform. In the conclusion of the European Commission of 7 requirements, the fulfillment of which should be evidence that Ukraine is ready to continue its path in the EU, there is also an obligation to ensure the effectiveness of the right to judicial protection, which is directly dependent on the effectiveness of the judicial system.

The Supreme Council of Justice works in Ukraine. The Supreme Council of Justice is a collegial, independent constitutional body of state power and judicial governance that operates 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 an honest and highly professional body 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 [1]. But its place in the institutional mechanism of ensuring human rights has not been investigated.

In the science of constitutional law, the work of Professor Oksana Vasylchenko, Olga Lotyuk, Lyudmyla Deshko, Olga Sovgyri and other scientists is devoted to the issue of human rights and the mechanism of their protection [2-12].

The powers of the High Council of Justice are established by Art. 3 of the Law of Ukraine «On the High Council of Justice». The Supreme Council of Justice: 1) makes a submission on the appointment of a judge to a position; 2) makes a decision regarding a violation by a judge or a prosecutor of requirements regarding incompatibility; 3) ensures that the disciplinary body conducts disciplinary proceedings against the judge; 4) forms bodies for consideration of cases regarding the disciplinary responsibility of judges; 5) considers complaints against the decisions of the relevant bodies to bring

a judge or prosecutor to disciplinary responsibility; 6) makes a decision to dismiss a judge from office; 7) gives consent to the detention of a judge or his detention or arrest; 8) makes a decision on the temporary suspension of a judge from the administration of justice; 9) takes measures to ensure the authority of justice and the independence of judges; 10) adopts a decision on the transfer of a judge from one court to another, a decision on the secondment of a judge to another court of the same level and specialization; 11) makes a decision to terminate the resignation of a judge; 12) determines the number of judges in the court; 13) approves the Regulations on the Unified Judicial Information and Telecommunication System and/or regulations determining the order of functioning of its individual subsystems (modules), Regulations on the State Judicial Administration of Ukraine and the standard regulations on its territorial administrations, Regulations on the Court Security Service, Regulations on conducting contests for the appointment of civil servants in courts, bodies and institutions of the justice system, Regulations on the Commission on Higher Civil Service Corps in the Justice System, Procedure for Keeping the Unified State Register of Court Decisions; 14) approves the Standard Regulation on the court apparatus, the Regulation on the procedure for the creation and operation of the court bailiff service; 15) provides mandatory advisory opinions on draft laws on the creation, reorganization or liquidation of courts, the judicial system and the status of judges, summarizes the proposals of courts, bodies and institutions of the justice system regarding legislation on their status and functioning, the judicial system and the status of judges; 16) performs the functions of the main administrator of the State Budget of Ukraine funds in relation to the financial support of its activities; participates in the determination of expenditures of the State Budget of Ukraine for the maintenance of courts, bodies and institutions of the justice system in accordance with the Budget Code of Ukraine; 17) approves, upon submission of the State Judicial Administration of Ukraine, standards for personnel, financial, material and technical and other provision of courts; 18) approves the redistribution of budget expenditures between courts, except for the Supreme Court, in accordance with the established procedure; 19) appoints and dismisses the Head of the State Judicial Administration of Ukraine and his deputies; 20) determines the maximum number of employees of the State Judicial Administration of Ukraine, including its territorial offices, upon submission of the Chairman of the State Judicial Administration of Ukraine; 20<sup>-1</sup>) appoints and dismisses members of the High Qualification Commission of Judges of Ukraine; 21) exercises other powers defined by legislation.

In connection with the implementation of the powers defined by law, the Supreme Council of Justice participates in international cooperation, including interaction with foreign institutions, institutions and organizations on matters of justice, may be a member of relevant international associations.

The mechanism for ensuring human rights and freedoms is complex. According to M. Orzikh, the structure of the human rights protection mechanism includes normative (first of all, material and legal), procedural and institutional forms and means of human rights protection. T. Pashuk found such a criterion for distinguishing between the concepts of "legal protection" and "legal protection" – the fact of applying any type of state legal coercion (restoration of an already violated right, legal responsibility, warning, reprimand) in the process of jurisdictional activity (in the process of resolving a legal dispute). Such a criterion does not depend on the fact of violation of a subjective legal right. State-legal coercion is applied both on the condition that the subjective legal right has already been violated, and on the condition that the subjective legal right has not yet been violated, but there is a threat of its violation. Signs of legal protection are: 1) types of coercion used: warning, reprimand; 2) the activity, in the process of which it is applied, is an extrajudicial activity; 3) conditions of application: the subjective legal right has already been violated, or it has not yet been violated, but there is a threat of its violation; 4) the circle of competent bodies authorized to apply coercion in the process of extrajudicial activity: state bodies, local self-government bodies, non-state organizations [13].

The analysis of the concept of legal protection of human rights conducted by Professor Ludmila Deshko allowed this science to clarify its concept. According to Professor Lyudmila Deshko, legal protection is the law-enforcement jurisdictional activity of state bodies, local self-government bodies, non-governmental organizations authorized by the state, aimed at the application of such types of state coercion as the restoration of a violated right, legal responsibility, prevention or termination of a violation of law [13].

Human and citizen rights and freedoms are a complex phenomenon. It seems wrong to reduce their provision exclusively to legal influence in the field of human rights, or legal regulation or protection of human rights. The structural elements of the human rights enforcement mechanism are the mechanism of legal influence in the field of human rights, the mechanism of legal regulation in the field of human rights, the regulatory and legal basis of human rights, the system of guarantees of human rights, and the system of protection of human rights. Undoubtedly, the Supreme Council

of Justice belongs to the mechanism of legal influence, and therefore is one of the elements of the institutional mechanism for ensuring human rights.

The activities of the High Council of Justice affect the judicial system, its effectiveness and how effective judicial protection will be.

The right to protection enshrined in the Constitution acts not only as an important material guarantee of ensuring the rights and freedoms of a person and a citizen, but also serves as a starting point for establishing other types of legal guarantees related to the realization of this right, in particular procedural and institutional-organizational ones. Legal protection, which must be equal and equally effective for everyone, is the most effective means of restoring the violated rights and freedoms of a person and a citizen. Therefore, legal protection is related to jurisdictional activity to restore a person's subjective legal right or freedom. As part of this activity, the dispute is resolved on its merits. T. Pashuk rightly emphasizes that foreign scientists, in particular D. Shelton, point out that legal remedies include, among others, the means of avoiding a violation of the law. Among the types of legal remedies, the scientist singles out declaratory judgments. D. Shelton emphasizes that "...with the help of these legal means of protection, a certain behavior or state is declared illegal and accepted decision to correct the situation. Such protection is aimed at obtaining a certain decision even before damage occurs, if it is imminent." The scientist cites an apt example of legal protection in the form of a declaratory decision: it was used to protect freedom of expression against a person who was threatened with arrest. In addition, the scientist emphasizes that in most countries, declaratory judgments are not considered as an adequate legal means of protection, if the damage has already been caused [14, p. 36–40]. Therefore, legal remedies are applied both if a subjective right or freedom has been violated, and if the subjective legal right has not been violated, but there is a threat of its violation.

#### **Conclusions.**

Human and citizen rights and freedoms are a complex phenomenon. It seems wrong to reduce their provision exclusively to legal influence in the field of human rights, or legal regulation or protection of human rights. The structural elements of the human rights enforcement mechanism are the mechanism of legal influence in the field of human rights, the mechanism of legal regulation in the field of human rights, the regulatory and legal basis of human rights, the system of guarantees of human rights, and the system of protection of human rights. Undoubtedly, the Supreme Council of Justice belongs to the mechanism of legal influence, and therefore is one of the elements of the institutional mechanism for ensuring human rights.

## REFERENCES:

1. Про Вищу раду правосуддя: Закон України від 21 грудня 2016 р. URL: <https://zakon.rada.gov.ua/laws/show/1798-19#Text>.
2. Dешко Л.М., Vasylychenko O.P. Crimean tatar national-territorial autonomy: regulatory and legal guarantees of the rights and freedoms for the indigenous peoples of Ukraine. *Visegrad Journal on Human Rights*. 2022. № 3. URL: <https://journal-vjhr.sk/en/2022-year>.
3. Dешко L. National institutions established in accordance with the Paris principles, engaged into the promotion and protection of human rights in the system of internal means of security. *Конституційно-правові академічні студії*. 2020. Вип. 2. С. 25–32. [http://konstlegalstudies.com.ua/wp-content/uploads/2020/10/KPAS-2020\\_2.pdf](http://konstlegalstudies.com.ua/wp-content/uploads/2020/10/KPAS-2020_2.pdf).
4. Dешко Л.М., Hospodarets D.M. The interaction of the President of Ukraine with the Parliament and bodies of the executive power: problems of theory and practice. *Visegrad Journal on Human Rights*. 2023. № 1. P. 76–81. URL: [https://journal-vjhr.sk/wp-content/uploads/2023/06/Visegrad\\_01\\_2023\\_FINAL.pdf](https://journal-vjhr.sk/wp-content/uploads/2023/06/Visegrad_01_2023_FINAL.pdf).
5. Dешко L. Restitutio in integrum: підходи Європейського суду з прав людини. *Порівняльно-аналітичне право*. 2018. № 5. <http://www.pap.in.ua/index.php/archiv-vidannja>.
6. Dешко L. Qualification features of the circumstances introducing activity for protection of the paragraph " b " clause 3 article 35 of the convention for the protection of human rights and fundamental freedoms. *ScienceRise: Juridical Science*, 2019. С. 10–14. [http://journals.uran.ua/sr\\_law/article/view/162457](http://journals.uran.ua/sr_law/article/view/162457).
7. Бисага Ю., Дешко Л., Нечипорук Г. Міжнародна безпека, національна безпека, конституційна безпека: теоретико-правові підходи. *Порівняльно-аналітичне право*. 2020. №4. С. 43-49. [http://pap-journal.in.ua/wp-content/uploads/2020/08/PAP-4\\_2020.pdf](http://pap-journal.in.ua/wp-content/uploads/2020/08/PAP-4_2020.pdf).
8. Дешко Л., Іконнікова Н.В. Імплементация рішень міжнародних судових установ в національні правові системи. *Порівняльно-аналітичне право*. 2018. № 1. С. 361–364.
9. Дешко Л. Критерії ефективності національного засобу юридичного захисту щодо невиконання чи затримок у виконанні рішень національних судів (за матеріалами практики Європейського суду з прав людини). *Правничий часопис Донецького університету*. 2012. № 1. С. 84–91.
10. Совгіря, О.В., Шукліна, Н.Г. Конституційне право України. Повний курс: навч. посіб.. 5-те вид., перероб. і допов. К.: Юрінком Інтер, 2022. 556 с.
11. Dешко L., Vasylychenko O., Sherbak I., Galai V., Medvid A. Ukraine's international liabilities on initiation of measures for public health protection and the role of local authorities in implementation of health care policy. *Georgian medical news*. 2021. Volume 312. P. 163–168.
12. Dешко L., Vasylychenko O., Lotiuk O. Crimean Tatar National-Territorial Autonomy: Regulatory and Legal Guarantees of the Rights and Freedoms for the Indigenous Peoples of Ukraine. *Visegrad Journal on Human Rights*. 2022. № 3. P. 24–28.
13. Дешко Л.М. Конституційне право на звернення до міжнародних судових установ та міжнародних організацій: порівняльно-правове дослідження: монографія. Ужгород, 2016.
14. Пашук Т.І. Право людини на ефективний державний захист її прав та свобод: Дис...канд.юрид.наук: 12.00.01 – теорія та історія держави і права; історія політичних і правових учень. Львів, 2006. 175 с.
15. Белов Д.М., Белова М.В., Конституційно-правові засади статусу: окремих категорії громадян (на прикладі біженців). *Науковий вісник УжНУ. Серія «Право»*. Випуск 75(1). Частина 1. 2023. С. 65–71.
16. Белов Д.М. Белова М.В. Система захисту прав і свобод людини і громадянина: доктринальні та нормативні основи. *Науковий вісник Ужгородського національного університету. Серія «Право»*. 2022. Вип. 74. С. 85–90.
17. Придачук О.А., Белов Д.М. Місце та роль судової влади в системі органів державної влади: реалізація принципу народовладдя. *Аналітично-порівняльне правознавство*. № 1. 2023. С. 535–541.