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## THE PLACE AND ROLE OF THE SUPREME COUNCIL OF JUSTICE IN THE SYSTEM OF STATE AUTHORITIES

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### **Deshko L. The place and role of the Supreme council of justice in the system of state authorities.**

The Supreme Council of Justice is an important body in the system of state authorities in Ukraine. This article analyzes the place and role of the Supreme Council of Justice in the context of the Ukrainian justice system and state power.

The Supreme council of justice emerged to replace the former High Council of Justice and aims to ensure the independence of the judiciary. It consists of 21 members who are elected to the positions of judges and representatives of society. One of the main tasks of the Supreme council of justice is to determine the selection procedures and qualification requirements for judges, which ensures a high professional standard in the judicial system.

One of the key functions of the Supreme Council is to determine the principles of disciplinary responsibility for judges and control their activities. This helps ensure judicial ethics and judges' compliance with high standards of professional conduct. The Supreme Administrative Court also handles appeals against decisions regarding judges and other matters related to their activities. This provides the possibility of reviewing and correcting decisions, which contributes to the improvement of the quality of justice.

In addition, the Supreme council of justice plays an important role in promoting reforms in the judicial system, introducing new approaches to the judiciary and ensuring the independence of the courts from the influence of other branches of government. In general, the Supreme Council of Justice in Ukraine plays a key role in ensuring the independence and high quality of the judicial system. It contributes to the improvement of the judicial system, the determination of standards of professional behavior of judges and ensuring compliance with their principles of justice and legality.

**Key words:** Supreme council of justice, judiciary, human rights, restrictions of human rights, democracy, constitutionalism, rule of law, judicial governance, civil society.

### **Дешко Л.М. Місце та роль Вищої ради правосуддя в системі органів державної влади.**

Вища рада правосуддя є важливим органом в системі органів державної влади в Україні. Ця стаття аналізує місце та роль Вищої ради правосуддя в контексті української системи правосуддя та державної влади.

ВРП виникла на зміну колишньої Вищої ради юстиції та має на меті забезпечити незалежність судової влади. Вона складається з 21 членів, які обираються на посади суддів та представників суспільства. Одним із головних завдань ВРП - визначення процедур відбору та кваліфікаційних вимог до суддів, що забезпечує високий професійний стандарт у судовій системі.

Однією з ключових функцій Вищої ради є визначення принципів дисциплінарної відповідальності для суддів та контроль за їхньою діяльністю. Це допомагає забезпечити судову етику та відповідність суддів високим стандартам професійної поведінки. ВРП також займається розглядом апеляційних скарг щодо рішень щодо суддів та інших питань, пов'язаних із їхньою діяльністю. Це забезпечує можливість перегляду та коригування рішень, що сприяє підвищенню якості правосуддя.

Крім того, Вища рада правосуддя грає важливу роль у сприянні реформам у судовій системі, впровадженні нових підходів до судочинства та забезпеченні незалежності судів від впливу інших гілок влади. Загалом, Вища рада правосуддя в Україні відіграє ключову роль у забезпеченні незалежності та високої якості судової системи. Вона сприяє вдосконаленню судочинства, визначенню стандартів професійної поведінки суддів та забезпеченню дотримання їхніми принципами справедливості та законності.

**Ключові слова:** Вища рада правосуддя, судова влада, права людини, обмеження прав людини, демократія, конституціоналізм, верховенство права, суддівське врядування, громадянське суспільство.

**Actuality of theme.** The Supreme Council of Justice is one of the key institutions in the system of state authorities in many modern countries. Its

role and place in the justice system are extremely relevant and important, especially in the context of changes in society, politics and the legal system.

In modern democratic societies, where the rule of law and equality before the law are considered important principles, the Council plays the role of guarantor of the independence of the judicial system. This legitimacy becomes extremely important in the conditions of constant political, economic and socio-cultural changes.

In addition, the Council promotes justice by providing recommendations and resolving conflicts in the judicial system. It helps in correcting shortcomings in the work of the courts and ensuring access to a fair trial for all citizens.

In the light of global requirements to fight corruption, it can play an important role in identifying corruption abuses in the judicial system and taking appropriate measures.

All these aspects demonstrate that the Supreme Council of Justice is a relevant topic for discussion in the modern world, as it affects justice, the rule of law and democracy in society.

**State of problem research.** The legal status of the High Council of Justice is determined by Article 131 of the Constitution of Ukraine [3], the laws of Ukraine "On the High Council of Justice" and "On the judiciary and the status of judges". According to Part 1 of Article 1 of the Law "On the Supreme Council of Justice" [4], the Supreme Council of Justice is considered a collegial, independent constitutional body of state power and judicial governance, which acts in Ukraine on a general basis to determine the independence of the judiciary, its activities on the basis responsibility, accountability to people, creation 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.

**Presenting main material.** The Supreme Council of Justice cannot be attributed to any of the branches of state power, although it is determined by the legal norms of "a body of state power", therefore it is necessary to make changes to the legal norms in this part and instead of the phrase "a body of state power" define "a state body", then it would be appropriate for her status. Basically, it can be determined that the Supreme Council of Justice is considered a body of public administration in relation to justice, which in this area performs administrative and management actions aimed at ensuring the propriety of justice, its implementation on the basis of the rule of law, legal norms, justice and integrity [1, p. 12].

The Supreme Council of Justice is considered a constitutional, governing, self-governing, independent and collegial state management body. Therefore, there is no basis and it is inappropriate to

condition its status as a body of judicial governance, but it leads to the usurpation of state power by judges in the direction of justice, the creation of a conflict of interests and corruption risks, when the judges themselves, prevailing in the Supreme Council of Justice, solve the problems of appointing judges to positions and dismissal them from their positions, disciplinary responsibility of judges, their detention and arrest, etc. It should also be noted that the Supreme Council of Justice should be a body for ensuring justice and should be created not primarily by judges themselves, but proportionally by all types of state authorities and the President of Ukraine, as well as representatives of local self-government bodies, the legal scientific field, and the bar.

The functions of the High Council of Justice are in fact administrative and managerial, it is especially important to ensure the presence of representatives of executive bodies in this body, which has a managerial orientation, and who should be appointed by the Cabinet of Ministers of Ukraine, but at the present time such representatives are completely absent from the composition of the High Council of Justice, and the government does not participate in its creation. The same applies to representatives of local self-government bodies, who are most closely related to the people and directly exercise people's power, but do not have any influence on the action of such an important body as the Supreme Council of Justice [2, p. 8].

It should be noted that the Supreme Council of Justice replaced the Supreme Council of Justice, which functioned in the judicial system of Ukraine, the legal status of which was similar and was also determined by Article 131 of the Constitution. Many of these changes and functions were lobbied by the judicial corps and did not benefit society and the country, but allowed judges to basically usurp state power, however, if you analyze its composition and the order of creation according to legal norms, then judges prevail here, who, according to the powers of this body, and determine the issue of appointing judges to perform certain functions, dismissing them from their positions, bringing them to various types of responsibility, giving consent to arrest a judge or keeping him in custody, etc.

The main functions of the High Council of Justice, which is the essence of its legal status, mainly the Constitution of Ukraine, these functions are extremely expanded in the Law of Ukraine "On the High Council of Justice", which also conditions certain aspects regarding the expediency of such an increase and the creation of threats of usurpation of power by specific individuals. Article 131 of the Constitution of Ukraine refers to the tasks of the High Council of Justice:

1) makes a submission on the appointment of a judge to a position;

2) makes a decision regarding violation by a judge or prosecutor of requirements regarding incompatibility;

3) analyzes complaints against the relevant body's decision to bring a judge or prosecutor to disciplinary responsibility;

4) determines the decision to dismiss a judge from office;

5) gives consent to detain a judge or keep him in custody;

6) determines the decision on the temporary suspension of the judge from the administration of justice;

7) applies measures to ensure the independence of judges;

8) determines the decision to transfer a judge from one court to another;

9) implements other functions defined by this Constitution and laws of Ukraine [3].

The Supreme Council of Justice is considered a very important body in the direction of justice, which is defined by the Constitution of Ukraine and laws with broad functions that have a clear impact on the organization and functioning of the judiciary, the creation of a high-quality and virtuous judicial corps, compliance with the principles of justice, the responsibility of judges and prosecutors [5, p. 66].

The Supreme Council of Justice in the system of state authorities plays an important and influential role aimed at ensuring the independence of the judicial system, strengthening the rule of law and ensuring justice in society. Here are the main aspects of her role:

*Ensuring the independence of the courts:* One of the key functions of the Council is to guarantee the independence of the courts from the influence of other branches of government, in particular, the executive and legislative powers. This ensures reliable protection of citizens from possible political interference and ensures the judicial process with objectivity and fairness.

*Nomination and Appointment of Judges:* The Council usually has an important role in selecting, evaluating and recommending the appointment of judges. This contributes to the selection of competent and fair persons for the positions of judges, which is important for the quality of justice.

*Supervision and disciplinary measures:* The Council can take measures to supervise the work of judges and apply disciplinary sanctions in cases of violation of their professional duties, ensuring accountability and waiver of deficiencies.

*Reform of the judicial system:* Council can be the initiator of reforms of the judicial system, contributing to its modernization and improvement. This includes improving judicial infrastructure, procedures and legislation.

*Ensuring the observance of rights and freedoms:* the Council plays an important role in ensuring the

observance of the rights and freedoms of citizens before the law. It ensures that the judicial system works for the benefit of all citizens, regardless of their social, economic or political position.

*International cooperation:* Council can cooperate with other countries and international organizations in the field of justice and judicial reform, sharing experiences and best practices.

In conclusion, the Supreme Council of Justice plays a central role in guaranteeing justice, the rule of law and law and order. Its functions are aimed at strengthening democracy, ensuring civil rights and freedoms, and ensuring the effective functioning of the judicial system in the interests of society.

**Conclusions.** The Supreme Council of Justice is considered a specific body of state power, which, among other things, has the right to: ensure the independence of judges; to make submissions regarding the appointment of officials of the judicial branch of power as professionals in their field, who would possess appropriate competence and significant moral and ethical values, above all integrity; makes decisions on the suspension, dismissal, transfer, suspension of the resignation of judges, violation by judges and prosecutors of norms regarding incompatibility; regarding the disciplinary responsibility of judges – creates relevant bodies to resolve such issues, analyzes complaints about their decisions, etc.

Therefore, the Supreme Council of Justice as a body of state power and judicial governance, according to research by domestic and foreign scientists, meets the international requirements of judicial governance and is considered a full-fledged analogue of judicial governance bodies in foreign countries. This position is confirmed by the fact that the tasks, functions and limits of activity, as well as the specifics of the creation of the High Council of Justice in Ukraine are mostly considered identical to those in the leading countries of the world. The most objectionable is the definition in the Law of the Supreme Council of Justice as a body of judicial governance (although the Constitution does not stipulate this), in particular, it should be a body for ensuring justice, and it should not be judges, but representatives of the people as «the only source of power in Ukraine» in accordance with Part 1 of Article 5 of the Constitution of Ukraine, which will ensure, first of all, not the interests of the judges that we have today, but the interests of the people, the entire society and the state. It is also worth noting that when determining the legal status of the High Council of Justice, the legislator uses a new, previously unused term in legislation, «judicial governance», while not disclosing its meaning anywhere, which gave reasons for some scientists to identify this concept with judicial self-governance.

## REFERENCES:

1. Божик В.І. Ефективність судової реформи в контексті законодавчих новел щодо судівського врядування. *Сучасні виклики та актуальні проблеми судової реформи в Україні: матеріали міжнародної науково-практичної конференції (Чернівці, 24–25 жовтня 2019 р.)*. 2019. С. 12–13.
2. Куліш А.М. Організаційно-правові засади функціонування правоохоронної системи України : монографія у 2 ч. Ч. 1. Суми, 2007. 222 с.
3. Конституція України: Закон України від 28 червня 1996 р. № 254к/96-ВР / Верховна Рада України. Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-D0%B2%D1%80> (дата звернення: 05.10.2023).
4. Про Вищу раду правосуддя: Закон України від 21 грудня 2016 р. № 1798-VIII / Верховна Рада України. Законодавство України. URL: <https://zakon.rada.gov.ua/laws/show/1798-19#top> (дата звернення: 05.10.2023).
5. Росоляк О.Б. Правовий статус Вищої ради правосуддя в Україні та зарубіжних країнах: порівняльно-правовий аспект. *Південноукраїнський правничий часопис*. 2019. № 4. С. 65–69.
6. 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.
7. Белов Д.М., Швед І.І., Белова М.В. Правоохоронна функція держави: роль та місце органів прокуратури. *Науковий вісник УжНУ. Серія «Право»*. Випуск 76(2). Ч. 2. 2023. С. 13–20.