

Research Article

MODERN TRENDS IN THE FORMATION AND DEVELOPMENT OF THE HUMAN RIGHTS MECHANISM IN UKRAINE¹

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Keywords: *human rights mechanism; human rights institutions; justice system; determinants of formation; development trends; rule of law; international standards; quality of law'*

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ABSTRACT

The article highlights the modern determinants of the formation and function of institutions of the national human rights mechanism in Ukraine. Particular attention is paid to the institutions of the justice system as key elements of the national human rights mechanism, the formation and functioning of which, at the present stage, are determined by a number of factors, at both internal (national) and external (supranational) levels. It is established that external determinants determine the impact on the human rights mechanism in Ukraine through functional indicators of its effectiveness in the evaluation and reporting documents of the institutions of the supranational (international) human rights mechanism. Internal determinants dictate the impact on the national human rights mechanism through functional indicators of its effectiveness in the evaluation and reporting documents of national human rights institutions, the results of sociological research, and expert assessments and depend directly on the 'quality of law'. The current trends in the development of human rights mechanisms in Ukraine, which are enshrined in a number of corresponding strategies in the field of human rights due to the need to improve the state's activities to promote and ensure human rights and freedoms, create effective mechanisms for their implementation and protection in the field of development of the justice system as a whole, as well as its constituent institutions, such as the prosecutor's office and the bar. Emphasis is placed on the priority of reaching consensus among stakeholders in the implementation of these strategic documents as a normative component, which determines the development trends of the institutional and functional components of the national human rights mechanism.

1 INTRODUCTION

Currently, the formation of the system of human rights institutions and the definition of the directions of the function of the human rights mechanism in Ukraine are determined by a number of factors, both internal and external. The purpose of this process should first determine the desire of the state to fulfil its main constitutional duty, which is the establishment and protection of human rights and freedoms. At the same time, ensuring an adequate level of protection of the rights, freedoms, and interests of the individual is one of the most important tasks of any state seeking to be recognised as legal, as one of the fundamental features of such a state is a system of effective remedies providing people with legal security.

The possibility of successful implementation of the tasks of the state outlined here primarily depends on the effectiveness of a set of authorised institutions, regulated by law and aimed at eliminating shortcomings in the functioning of such components of the legal mechanism of human rights as their protection and implementation, including various forms of effective legal services for persons whose rights have been violated, or, in case of threat of violation of such rights, normative procedures to follow.

In order to ensure and guarantee real legal protection, the state must create a number of human rights institutions, the most important of which are the institutions of the justice system. At the same time, the constitutional provisions defining the institutional components of justice give grounds to claim that the effectiveness of courts in exercising their human rights activities is due, *inter alia*, to the effectiveness of related legal institutions that promote justice, namely, lawyers and prosecutors.

Given the permanent reform of key components of the national human rights mechanism, like the judiciary, the prosecutor's office, and the bar, the current determinants of their formation and development trends in the Ukrainian state need coverage and legal analysis.

2 DETERMINANTS OF THE FORMATION OF THE HUMAN RIGHTS MECHANISM IN UKRAINE

First of all, it should be noted that determinism is the doctrine of the general conditionality of objective phenomena, the initial categories of which are the concepts of connection and interaction. The existence of a universal relationship between all phenomena and processes is the initial prerequisite for the principle of determinism.³ Based on this principle, the determinant is considered the reason that determines the occurrence of a certain phenomenon. In the context of this study, this is the reason that determines the need and direction of reforming the regulatory, institutional, and functional components of the national human rights mechanism.

Institutions of the justice system, as the key elements determining the directions of the formation and functioning of institutions of the national human rights mechanism in Ukraine, are currently provided for by a number of determinants, both internal (national) and external (supranational). External determinants dictate the impact on the human rights mechanism in Ukraine through the functional indicators of its effectiveness in the evaluation and reporting documents of the institutions of the supranational (international) human rights mechanism. Internal determinants dictate the impact on the national human rights mechanism through functional indicators of its effectiveness in the evaluation and reporting documents of national human rights institutions, the results of sociological research, and expert assessments and depend directly on the 'quality of law'.

2.1 External Determinants:

2.1.1. Rule of Law Index

An important determinant of external character, which can claim to be objective in assessing the effectiveness of the human rights mechanism in Ukraine, is the rating of states in accordance with the rule of law, efficiency of justice, and protection of rights and freedoms. This rating, in contrast to official assessments of authorised organisations, is based not on official reports of states and groups of experts but on the reports of individual experts whose activities are related to the rule of law in various segments of society, including justice and other forms of protection of human rights. As experts rightly point out, this allows the state of the rule of law in a particular state to be covered in the most balanced and comprehensive way.⁴

The index is based on the following criteria: absence of corruption, openness of government, limitation of powers of government institutions, protection of fundamental rights, regulatory support, law and order and security, civil justice, and criminal justice.

Thus, in 2021, Ukraine ranked 74th among 139 countries in the rule of law. The results of the rating were published on the website of the international non-governmental organisation World Justice Project.⁵ In '7. Civil Justice', it took 64th position, and in '8. Criminal Justice', it is, unfortunately, only 91st out of 139 countries in the world in which such the study was conducted.

3 D Besprosvaniy, 'Determination of Legal Prescriptions' (2012) 2 Socio-Political Sciences 65.

4 'The Rule of Law Index 2020: inside view' <<https://uba.ua/ukr/news/7292/>> accessed 20 February 2022.

5 'WJP Rule of Law Index 2021' <<https://worldjusticeproject.org/rule-of-law-index/global/2021/>> accessed 20 February 2022.

Thus, these indicators, on the one hand, determine the priority areas for reforming the regulatory, institutional, and functional components of the human rights mechanism in Ukraine and, on the other, comparatively reflect the best international practices in this ranking.

2.1.2 The Case Law of the European Court of Human Rights

The key external determinant of determining the directions of the formation and function of institutions of the national human rights mechanism in Ukraine, as well as guarantees of improvement of the national human rights mechanism, is the functioning of institutions of the supranational (international) human rights mechanism. The most common and effective international human rights bodies for the citizens of Ukraine are the European Court of Human Rights (hereafter, the ECtHR) and the UN Human Rights Committee. However, if the number of appeals to the UN Human Rights Committee on violations of rights under the International Covenant on Civil and Political Rights is calculated in units, the citizens of Ukraine actively apply to the ECtHR for the protection of violated rights more frequently.⁶

In this context, it should be noted that for many years, Ukraine has been one of the leading member states of the Council of Europe in the number of cases pending before the ECtHR. As of 31 December 2020, Ukraine ranked third. In particular, in 2020, the ECtHR adopted 89 decisions in cases against Ukraine on 226 applications. Of these, 84 found violations of the Convention. The main problems that led the ECtHR to find violations of the provisions of the Convention in Ukraine were:

- excessive length of proceedings in civil, administrative, and criminal cases;
- torture or inhuman or degrading treatment or punishment, as well as ill-treatment of persons under state control (in pre-trial detention or penitentiary institutions);
- shortcomings in the legislation due to the fact that life imprisonment cannot be reduced;
- shortcomings in the legislation and administrative practice of state bodies, which lead to prolonged, illegal, and/or unjustified detention of a person without a proper legal basis;
- shortcomings of judicial practice that lead to violation of a person's right to a fair trial;
- shortcomings in the legislation that lead to interference with the right of applicants to respect for private and family life in connection with the manner of applying to them the prohibitions provided by the Law of Ukraine 'On Purification of Power', etc.⁷

As individuals have the right to apply for protection of their rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant only after using all national remedies of legal protection, the statistics on the number of cases under the consideration of the ECtHR against Ukraine is an objective indicator of the level of effectiveness of the national human rights mechanism and a determinant of the directions of its reform.

Thus, one of the recent decisions of the Constitutional Court of Ukraine (hereafter, the CCU) was adopted in the case of a review of the sentence of a person sentenced to life

6 M Antonovych, *Ukraine in the International System of Human Rights Protection: Theory and Practice* (Kyiv-Mohyla Academy 2007) 333.

7 'Annual report on the results of the activities of the Commissioner for the European Court of Human Rights in 2020' <<https://minjust.gov.ua/m/zviti-pro-rezultati-diyalnosti-upovnovajenogo-u-spravah-evropeyskogo-sudu-z-prav-lyudini>> accessed 20 February 2022.

imprisonment,⁸ in which it found Part 1 of Art. 81, part 1 of Art. 82 of the Criminal Code of Ukraine is inconsistent with the Constitution of Ukraine (i.e., unconstitutional) in that it makes it impossible to apply for parole and replace the unserved part of the sentence with a more lenient one for persons sentenced to life imprisonment.

This decision of the CCU is based on several documents of international law, as well as the practice of the ECtHR, which in a number of its decisions against Ukraine stated that Ukraine violated Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the grounds that life imprisonment is a sentence without the prospect of release. In particular, in the judgment in the case of *Petukhov v. Ukraine* (No. 2) of 12 March 2019 (application No. 41216/13) of the ECtHR, in view of the number of allegations that it is impossible to change the sentence of life imprisonment and the likelihood of new allegations on the same issue, noted the existence of a systemic problem that would require the respondent state to reform the system of revision of life imprisonment.⁹

Given that the ECtHR has established the fact of violation of Art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms by Ukraine on the grounds that life imprisonment is a sentence without the prospect of release, and given that Part 2 of Art. 28 of the Constitution of Ukraine is identical to Art. 3 of the Convention, the CCU concluded that the sentence of life imprisonment imposed by the Criminal Code of Ukraine as a sentence without the prospect of release is incompatible with the requirements of the Constitution of Ukraine and obliged the Verkhovna Rada of Ukraine to immediately bring the regulations established by Arts. 81 and 82 of the Criminal Code of Ukraine, in accordance with the Constitution of Ukraine and its Decision in this case.

It should be noted that the resolution of the Cabinet of Ministers of Ukraine of 1 April 2020¹⁰ established the Commission for the Implementation of ECtHR Decisions, whose main tasks include developing mechanisms to address systemic and structural problems identified in ECtHR decisions against Ukraine and prevent such problems in the future; the preparation and submission to the Cabinet of Ministers of Ukraine of proposals on the implementation of the decisions of the ECtHR in cases against Ukraine, as well as relevant decisions of the Committee of Ministers of the Council of Europe on measures to implement them; directing the actions of central executive bodies and ensuring their interaction in order to fully and effectively implement the decisions of the ECtHR in cases against Ukraine; as well as improving the regulatory framework to implement ECtHR decisions.

Another step in the process of implementation of ECtHR decisions by Ukraine was the submission by the Cabinet of Ministers of Ukraine to the Verkhovna Rada of Ukraine of the draft Law No. 4049 of 3 September 2020 'On Amendments to the Code of Administrative Offenses, the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on implementation of the decisions of the European Court of Human Rights',¹¹ which is designed to bring the provisions of these regulations into line with the case law of the

8 Decision of the Constitutional Court of Ukraine from 16 September 2021 No 6-p/2021 in case No 3-349/2018 (4800/18,1328/19, 3621/19, 6/20) <<https://zakon.rada.gov.ua/laws/show/v006p710-21#Text>> accessed 20 February 2022.

9 *Petukhov v Ukraine* (No 2) App no 41216/13 (ECtHR, 12 March 2019) §194 <<http://hudoc.echr.coe.int/eng?i=001-191703>> accessed 20 February 2022.

10 The resolution of the Cabinet of Ministers of Ukraine 'On the establishment of the Commission for the Implementation of Decisions of the European Court of Human Rights' of 1 April 2020 No 258 <<https://zakon.rada.gov.ua/laws/show/258-2020-%D0%BF#Text>> accessed 20 February 2022.

11 Draft Law 'On Amendments to the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine and the Criminal Procedure Code of Ukraine on the Implementation of Decisions of the European Court of Human Rights' of 3 September 2020 No 4049 <http://w1.c1.rada.gov.ua/pls/web2/webproc4_1?pf3511=69827> accessed 20 February 2022.

ECtHR. Considerable attention is paid in this bill to the humanisation of certain provisions of criminal law as an attempt to reform the system of review of sentences in the form of life imprisonment to implement the ECtHR decision in the case of *Petukhov v. Ukraine*.

Other important legislative initiatives include draft legislation aimed at resolving issues related to ensuring effective appellate review of decisions on the imposition of administrative penalties in the form of administrative arrest; acquaintance with the materials of criminal proceedings after the entry of the court decision into force; strikes at transport enterprises and the procedure for resolving collective labour disputes (conflicts) aimed at resolving problematic aspects of national legislation set out in the ECtHR Judgments in the cases of *Shvydka v. Ukraine*,¹² *Vasyl Ivashchenko v. Ukraine*,¹³ *Naydyon v. Ukraine*,¹⁴ *Veniamin Tymoshenko and others v. Ukraine*,¹⁵ and others.

2.1.3 Conclusions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

One of the main problems that led the ECtHR to find violations of the provisions of the Convention by Ukraine is the established facts of torture or inhuman or degrading treatment or punishment, as well as ill-treatment of persons under state control (in pre-trial detention facilities or imprisonment or execution of sentences). An important indicator that objectively reflects the state of human rights in detention facilities, pre-trial detention, and imprisonment is the systematic inspections of these institutions by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereafter, the CPT) and assessment of the state's activities on this issue in periodic annual reports on compliance with the minimum standards of the CPT,¹⁶ which are a summary of global best practices in ensuring the proper treatment of detainees and prisoners.¹⁷

According to the analysis of the implementation of the penitentiary system recommendations provided to Ukraine by the CPT since its first visit to Ukraine in 1998, experts conclude that Ukraine has long failed to comply with several CPC strategic recommendations, indicating a fundamental problem in Ukrainian treatment of its obligations in the field of protection of the rights of prisoners. This problem is steadily growing, along with the number of non-implemented recommendations, which is due to the lack of a binding mechanism for their implementation and the lack of a structure responsible for coordinating the implementation of CPC recommendations.¹⁸

12 *Shvydka v Ukraine* App no 17888/12 (ECtHR, 13 October 2014) <<http://hudoc.echr.coe.int/rus?i=001-147445>> accessed 20 February 2022.

13 *Vasiliy Ivashchenko v Ukraine* App no 760/03 (ECtHR, 26 July 2012) <<http://hudoc.echr.coe.int/rus?i=001-112481>> accessed 20 February 2022.

14 *Naydyon v Ukraine* App no 16474/03 (ECtHR, 14 October 2010) <<http://hudoc.echr.coe.int/rus?i=001-100941>> accessed 20 February 2022.

15 *Veniamin Tymoshenko and Others v Ukraine* App no 48408/12 (ECtHR, 2 October 2014) <<http://hudoc.echr.coe.int/rus?i=001-146671>> accessed 20 February 2022.

16 CPT standards (2002) 1 – Rev 2010 <<https://www.refworld.org/docid/4d7882092.html>> accessed 20 February 2022.

17 The CPT and Ukraine <<https://www.coe.int/en/web/cpt/ukraine>> accessed 20 February 2022.

18 V Chovhan, 'Analysis of the implementation of the recommendations on the penitentiary system provided to Ukraine by the European Committee for the Prevention of Torture since 1998' <<https://khpg.org/1591169185>> accessed 20 February 2022.

At the same time, it should be noted that the Action Plan for the implementation of the National Strategy for Human Rights for 2021-2023, approved by the Cabinet of Ministers of Ukraine of 23 June 2021 No. 756-r,¹⁹ among the measures to implement this document, provides for the development and submission to the Cabinet of Ministers of Ukraine on draft laws on preventive and compensatory measures in connection with inadequate conditions of detention of convicts and persons in custody, regarding the following:

- the establishment of an institute of preventive complaint for persons detained in inappropriate conditions in places of detention, subjected to torture and other cruel, inhuman, or degrading treatment or punishment;
- take immediate and effective judicial precautionary measures against persons detained in inappropriate conditions or subjected to ill-treatment in order to prevent further detention in such conditions;
- creation of a double system of regular penitentiary inspections.

For the purpose of practical implementation of the last measure, the Verkhovna Rada of Ukraine registered a draft Law No. 5884 of 2 September 2021 'On the Establishment of a Dual System of Regular Penitentiary Inspections', which should limit the supervisory powers of the prosecutor's office in this area.

2.1.4 Conclusions of the Group of States against Corruption (GRECO)

In one of the recent GRECO evaluation documents on Ukraine – Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges, and prosecutors, Compliance Report, Ukraine, adopted by GRECO at its 84th Plenary Meeting (Strasbourg, 2-6 December 2019) – it was stated that although some legislative initiatives were taken by the previous legislature to address GRECO recommendations, most of them have apparently been abandoned.

The Compliance Report assesses the measures taken by the authorities of Ukraine to implement the recommendations issued in the Fourth Round Evaluation Report on Ukraine, which was adopted at GRECO's 76th Plenary Meeting (23 June 2017), following authorisation by Ukraine (GrecoEval4Rep (2016)9).²⁰ GRECO's Fourth Evaluation Round deals with 'Corruption prevention in respect of members of parliament, judges and prosecutors'.

With regard to judges, a Law reforming judicial self-governance was adopted in October 2019. It introduces a new institutional setup with reshaped responsibilities. At the start, GRECO notes that it regrets that such an important reform was not preceded by an assessment of the former system, which would justify its complete overhaul, and was not coupled with adequate involvement of all relevant stakeholders. Moreover, it will be crucial to ensure that the new institutional setup guarantees, at all times, the individual independence of judges (including dissenting voices) and shields them from undue political pressure. GRECO further regrets that no meaningful progress has been made to review the system of periodic performance evaluation of judges and review the definitions of disciplinary offences.²¹

19 Ruling of the Cabinet of Ministers of Ukraine of 23 June 2021 No 756-p 'On approval of the action plan for the implementation of the National Strategy in the field of human rights for 2021-2023' <<https://zakon.rada.gov.ua/laws/show/756-2021-%D1%80#Text>> accessed 20 February 2022.

20 GRECO, 'Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors: Evaluation Report Ukraine' GrecoEval4Rep (2016) 9 <<https://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207>> accessed 20 February 2022.

21 Ibid, 187.

With regard to prosecutors, a new Law on the reform of the prosecutor's office was adopted in October 2019. It entails a comprehensive restructuring and downsizing of the prosecution service. The reform provides for a revision of the system of selection, appointment, and disciplining of public prosecutors. A re-qualification procedure for all serving prosecutors has been launched reportedly for integrity purposes. This development requires close follow-up. The establishment of temporary personnel commissions, whose composition and rules of functioning are deferred to the Prosecutor General and which are entrusted with appointment and discipline powers, is a matter of concern. A system of random allocation of cases also is yet to be put in place. On a more encouraging note, qualification criteria have been introduced for the appointment of the Prosecutor General, and efforts are underway to introduce a new system for promotion and periodic evaluation of prosecutors, as well as to improve their awareness of integrity matters (p 188). In view of the above, GRECO notes that in the present absence of final achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations can be achieved.²²

Thus, the GRECO conclusions outlined above state the lack of final achievements in striving for the appropriate level of compliance with the recommendations, as well as identify guidelines for further improvement of such components of the justice system in Ukraine as the judiciary and the prosecutor's office.

3 INTERNAL DETERMINANTS

3.1 Report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine

One of the important internal determinants of determining the directions of formation and functioning of institutions of the national human rights mechanism for the institutions of the justice system in Ukraine is the data of the Annual Report of the Ukrainian Parliament Commissioner for Human Rights (hereafter, the Commissioner) 'On the state of observance and protection of human and civil rights and freedoms in Ukraine'. This document of the Commissioner for 2020 states that the number of reports of violations of human and civil rights and freedoms received by it during 2020 increased by 40% compared to last year (from 33,800 in 2019 to 48,400 in 2020). As a confirmation of the imperfection of the judicial protection system, this document mentions 10,426 reports of violations of procedural rights received by the Commissioner during 2020, including 5,744 on violations at all stages of criminal proceedings and during court proceedings, 807 on civil and administrative proceedings, 3,154 on violations of procedural rights in places of detention in Ukraine, and 721 abroad and in the temporarily occupied territories, as a result of which appropriate measures were taken to restore violated rights (reports – M. Stefanchuk).²³

²² *ibid.*

²³ Annual Report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine 'On the State of Observance and Protection of Human and Civil Rights and Freedoms in Ukraine for 2020' <<https://ombudsman.gov.ua/ua/page/secretariat/>> accessed 20 February 2022.

3.2 Results of Sociological Research

Among the internal determinants of a subjective nature (those which reflect the thoughts or experiences of a particular subject²⁴), the formation of components of the human rights mechanism in Ukraine currently includes the results of sociological research that reflect the assessment of civil society's level of trust in them.

Thus, when conducting a legal analysis of the results of research conducted by the Razumkov Centre's sociological service from September 2019 to March 2021 on citizens' assessment of government activities and the level of trust in social institutions, distrust was found to be increasing, most often in such components of the human rights mechanism of the state as the judiciary in general and the prosecutor's office: 72% and 61% respectively in 2019;²⁵ 77.5% and 73% in 2020;²⁶ 79% and 71% in 2021.²⁷ These statistics show that there are problems with the legitimacy of the judiciary and the justice system as a whole in Ukraine at present.

When examining the outlined determinant of reforming the institutions of the human rights mechanism in the Ukrainian state, it is necessary to express some concerns about its substantive validity. Thus, between February and March 2021, USAID's New Justice Program conducted national surveys on trust in the judiciary, other branches of government and public institutions, the independence and accountability of judges, perceptions of corruption in the judiciary, and willingness to report on its manifestations,²⁸ based on the results of which it was established that there is a negative trend in the issue of trust in the judiciary in Ukraine. At the same time, it is noteworthy that only 14% of the surveyed population reported that they had experience in participating in court proceedings at least once in the last 24 months. At the same time, their perception of the courts was more positive than that of the general population. Thus, 62% of users of judicial services admitted that they did not receive requests for bribes, informal payments, or gifts during their experience of interaction with the courts, 46% admitted that judges made legal and fair decisions, and 35% of respondents with experience in interaction with courts indicated that they trust the courts in which they participated in court proceedings. This gives grounds to conclude about the debatable objectivity of this determinant, which dictates the impact on the formation of the components of the national human rights mechanism.

24 V Busel (ed), *Large Explanatory Dictionary of the Modern Ukrainian Language* (Perun 2005) 1409.

25 'Citizens' assessment of the situation in the country and government activities' <<https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-gromadianamy-sytuatsii-v-kraini-ta-diialnostivlady>> 20 February 2022.

26 'The beginning of a new political year: trust in social institutions' (July 2020) <<https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/pochatok-novogo-politychnogo-roku-dovira-dosotsialnykh-institutiv-lypen-2020r>> accessed 20 February 2022.

27 'Assessment of the situation in the country, trust in the institutions of society and politicians, electoral orientations of citizens' (March 2021) <<https://razumkov.org.ua/napriamky/sotsiologichni-doslidzhennia/otsinka-sytuatsii-v-kraini-dovira-do-institutiv-suspilstva-ta-politykiv-elektoralni-oriantatsii-gromadian-berezen-2021r>> accessed 20 February 2022.

28 'Results of national surveys of the population and lawyers involved in court proceedings on trust in the judiciary, judicial independence and accountability, perception of corruption and willingness to report its manifestations' <<https://newjustice.org.ua/uk/novini/rezultati-natsionalnih-opituvan-naseleennyata-pravnikiv-yaki-ye-uchasnikami-sudovih-provazhen-shhodo-doviri-do-sudovoyi-gilki-vladi-suddivskoyi-nezalezhnosti-j-pidzvitnosti-spriynatya-korupsiyi-ta/>> accessed 20 February 2022.

3.3 Expert Perspectives

The next important subjective determinant of reforming the components of the human rights mechanism in Ukraine is expert opinions and conclusions. Thus, one of the reasons for the next stage of judicial reform, marked by the provisions of the Law of Ukraine of 16 October 2019 No. 193-IX 'On Amendments to the Law of Ukraine' On Judiciary and Status of Judges' and some laws of Ukraine 'On Judicial Governance'²⁹ (hereafter, Law No. 193-IX), according to the explanatory note to the corresponding bill, is that *experts linked* (highlighted by the author – M. Stefanchuk) most of the problems that existed in the judiciary at the time of drafting with the activities of judicial governance bodies. For example, this included pointing to the *de facto* unlimited discretion of members of the High Qualifications Commission of Judges of Ukraine (hereafter, the HCJU of Ukraine) in conducting competitive procedures for the selection of judges and their qualification assessment or delaying consideration of disciplinary complaints by members of the Supreme Council of Justice about the actions of judges. As a result, the bill proposed to clarify the powers of the judiciary, including the principles of the SCJ, to change the procedure for forming the composition of the HCJU of Ukraine.

Similarly, in response to calls from a number of public expert organisations on the need to reset the SCJ in the judicial reform process by terminating the powers of some SCJ members following a public and international audit, as well as involving international experts and members of the public in the selection process of new members of SCJ,³⁰ the Verkhovna Rada of Ukraine adopted the Law of Ukraine of 14 July 2021 No. 1635-IX 'On Amendments to Certain Legislative Acts of Ukraine on the Procedure for Election (Appointment) to the Positions of Members of the Supreme Council of Justice and Disciplinary Inspectors of the Supreme Council of Justice' Law No. 1635-IX.³¹

This law provides for amendments to improve the quality of selection of SCJ candidates by conducting a preliminary examination of potential candidates and establishing their compliance with the criteria of professional ethics and integrity, as well as a one-time assessment of compliance with current SCJ members' criteria of professional ethics and integrity. The justification for the need to adopt this Law mentioned the commitments made by Ukraine in 2020 to the International Monetary Fund and the European Union, including the reform of the judiciary.

Thus, the Memorandum on Economic and Financial Policy of 2 June 2020 outlines the intentions of the Ukrainian state to amend the law defining the legal status of SCJ in order to strengthen the quality of selection so that SCJ members are people with impeccable reputation and integrity.³² The Memorandum of Understanding between Ukraine as a Borrower and the European Union as a Lender and the Loan Agreement between Ukraine as a Borrower and the National Bank of Ukraine as a Borrower's Agent and the European

29 Law of Ukraine of 16 October 2019 No 193-IX 'On Amendments to the Law of Ukraine "On the Judiciary and the Status of Judges" and some laws of Ukraine on the activities of judicial authorities' <<https://zakon.rada.gov.ua/laws/show/193-20#Text>> accessed 20 February 2022.

30 'Real judicial reform is impossible without a qualitative update of the Supreme Council of Justice' <<https://ti-ukraine.org/news/spravzhnya-sudova-reforma-nemozhlyva-bez-yakisnogo-onovlennya-vyshhoi-rady-pravosuddya-zayava/>> accessed 20 February 2022.

31 Law of Ukraine No 1635-IX of 14 July 2021 'On Amendments to Certain Legislative Acts of Ukraine Concerning the Procedure for Election (Appointment) to the Positions of Members of the Supreme Council of Justice and Activities of Disciplinary Inspectors of the Supreme Council of Justice' <<https://zakon.rada.gov.ua/laws/show/1635-20#Text>> accessed 20 February 2022.

32 Memorandum on Economic and Financial Policy of 2 June 2020 <https://mof.gov.ua/uk/memorandum_of_economic_and_financial_policies_by_the_authorities_of_ukraine-435> accessed 20 February 2022.

Union as a Lender (up to EUR 1 billion)³³ provided for a number of international commitments to reform the judiciary.

In this regard, the Annual Report for 2020 'On the state of ensuring the independence of judges in Ukraine', approved by the SCJ decision of 5 August 2021 No. 1797/0 / 15-21, noted that the adoption of international commitments to reform the judiciary not in the manner provided for in Art. 9 of the Constitution of Ukraine creates a state of legal uncertainty because the norms of international treaties are part of national law, but the norms of international treaties that contradict the Constitution of Ukraine cannot be included in the legal system through the direct ban of Art. 9 of the Constitution of Ukraine. Thus, a question arises as to the binding nature of such norms to the extent that the norms of the Constitution of Ukraine are norms of direct effect.³⁴

In addition, the SCJ reacted to the adoption of Law No. 1635-IX by Decision of 12 August 2021 No. 1822/0 / 15-21 'On the appeal of the Supreme Council of Justice to the Supreme Court as a subject of the right to a constitutional petition on the constitutionality of certain provisions of law', noting that the legislation of Ukraine provided all the necessary mechanisms and procedures to verify the compliance of SCJ members with the criteria of professional ethics and integrity. At the same time, the creation of an entity (Ethical Council – M Stefanchuk), which has no constitutional basis and is endowed with functions and powers that, according to the Constitution of Ukraine, are within the competence of other entities, distorts the reform of the judiciary and threatens the independence of the judiciary guaranteed by the Constitution of Ukraine.³⁵

This highlights the debatable objectivity of expert visions as determinants, which dictates the impact on the formation of components of the national human rights mechanism, given their controversial nature. In this context, the Venice Commission's Conclusion on Amendments to the Legislation of Ukraine Regulating the Status of the Supreme Court and Judicial Governments, adopted at its 121st Plenary Session (Venice, 6-7 December 2019),³⁶ aptly stated that trust in the judiciary could only grow within a stable system, as persistent institutional instability when reforms follow changes in political power can also be detrimental to public confidence in the judiciary as an independent and impartial institution (para. 13).

3.4 'Quality of Law'

The controversy of expert views on the directions of reforming the national human rights mechanism is expected to be embodied in its normative component. In this context, it should be noted that certain provisions of Law No. 193-IX have already been declared

33 Law of Ukraine No 825 – IX of 25 August 2020 'Ratification of the Memorandum of Understanding between Ukraine as a Borrower and the European Union as a Lender and the Credit Agreement between Ukraine as a Borrower and the National Bank of Ukraine as a Borrower's Agent and the European Union as a Lender' <<https://zakon.rada.gov.ua/laws/show/825-20#Text>> accessed 20 February 2022.

34 Annual Report for 2020 'On the state of ensuring the independence of judges in Ukraine' <https://hcj.gov.ua/sites/default/files/field/file/shchorichna_dopovid_za_2020_rik_0.pdf> accessed 20 February 2022.

35 Decision of the Supreme Council of Justice of 12 August 2021 No 1822/0/15-21 'On the appeal of the Supreme Council of Justice to the Supreme Court as a subject of the right to a constitutional petition on the constitutionality of certain provisions of laws' <<https://hcj.gov.ua/doc/doc/8643>> accessed 20 February 2022.

36 Opinion on the Legal framework in Ukraine governing the Supreme Court and judicial self-governing bodies, adopted by the Venice Commission at its 121st Plenary Session, Venice, 6-7 December 2019. CDL-AD (2019)027-e Ukraine <[https://venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)027-e](https://venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)027-e)> accessed 20 February 2022.

unconstitutional by the Decision of the CCU of 11 March 2020 No. 4-r/2020.³⁷ In addition, the CCU provided a legal assessment of the shortcomings of the legislative technique in this Decision, due to which the change in the number and appointments of the HCJU of Ukraine without the introduction of a transitional period led to the suspension of constitutional functions for selection and evaluation of judges and the impossibility of the SCJ exercising its separate constitutional powers, as well as created significant obstacles to the functioning of effective justice and in some cases prevented the exercise of everyone's right of access to justice as a requirement of the rule of law.

Note that the peculiarities of the legislative regulation of the reform of another state institution of the human rights mechanism – the prosecutor's office – are regarded in the expert community as doubtfully constitutional. Thus, the priority measures for the reform of the prosecutor's office, introduced by the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on Priority Measures for the Reform of the Prosecutor's Office' of 19 September 2019 No. 113-IX (hereafter, Law No. 113-IX) are subject of the constitutional petition on their compliance with the Constitution of Ukraine, in which the subject of the constitutional petition defends the position that the adoption of the disputed law led to a narrowing of the content and scope of existing rights of citizens and introduced the dualism of the legal principles of the organisation and activity of prosecutors.³⁸

In the legal regulation of the status of the bar as a non-governmental self-governing institution that promotes the administration of justice, there is some legislative uncertainty in the issue of introducing the so-called 'bar monopoly'. Thus, the attempt to introduce a limited lawyer's monopoly in Ukraine to represent another person in court provoked a loud discourse about its expediency, timeliness, and demand. Moreover, its legal regulations can boast of two conclusions of the CCU in 2016³⁹ and 2019.⁴⁰

It is noteworthy that in the Conclusion of 2016, the CCU set out the legal position according to which the amendment of the Constitution of Ukraine Arts. 131-2 regarding the representation of another person in court exclusively by a lawyer is consistent with the provisions of Art. 59 of the Basic Law of Ukraine on the right of everyone to professional legal assistance. At the same time, the CCU noted that it is based on the fact that a lawyer has the necessary professional level and the ability to ensure the realisation of the right of a person to represent his/her interests in court.

In the CCU Conclusion 2019 on the draft law amending the Constitution of Ukraine, which aimed to ensure the right of everyone to receive professional legal assistance through the abolition of the lawyer's monopoly on such assistance, the CCU concluded that the proposed

37 Decision of the Constitutional Court of Ukraine of 11 March 2020 No 4-r/2021 in case No 1-304/2019(7155/19) <<https://zakon.rada.gov.ua/laws/show/v004p710-20#Text>> accessed 20 February 2022.

38 The Constitutional Court received a constitutional petition from 50 people's deputies of Ukraine on the compliance of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine Concerning Priority Measures to Reform the Prosecutor's Office' <<https://ccu.gov.ua/novyna/do-ksu-nadiyshlo-konstytuciyne-podannya-50-narodnyh-deputativ-ukrayiny-shchodo-vidpovidnosti>> accessed 20 February 2022.

39 In the case of the request of the Verkhovna Rada of Ukraine to provide an opinion on the compliance of the draft law on amendments to the Constitution of Ukraine (on justice) with the requirements of Arts. 157 and 158 of the Constitution of Ukraine: Case No 1-15/2016 <<https://zakon.rada.gov.ua/laws/show/v001v710-16#Text>> accessed 20 February 2022.

40 In the case of the constitutional appeal of the Verkhovna Rada of Ukraine on providing an opinion on the compliance of the draft law on amendments to the Constitution of Ukraine (on the abolition of the lawyer's monopoly) (Reg. No 1013) with the requirements of Arts. 157 and 158 of the Constitution: Opinion of the Constitutional Court of Ukraine 4-v / 2019. Case No 2-248/2019(5580/19) <<https://zakon.rada.gov.ua/laws/show/v004v710-19#Text>> accessed 20 February 2022.

amendments to the Constitution expand the possibilities of representation in court and also noted that the analysis of Part 1 of Art. 131-2 of the Constitution of Ukraine in connection with its Art. 59 follows a positive obligation of the state, which is to ensure the participation of a lawyer in providing professional legal assistance to a person only at the expense of the state in cases provided by law.

Taking into account the CCU Conclusion of 2019 by Resolution of the Verkhovna Rada of Ukraine of 14 January 2020 No. 434-IX, the draft law was previously approved by a majority of the constitutional composition of the Verkhovna Rada of Ukraine, and the Legal Policy Committee recommended the Verkhovna Rada of Ukraine to the Constitution of Ukraine (concerning the abolition of the lawyer's monopoly), register No. 1013 of 29 August 2019, to be finally adopted as a law,⁴¹ which indicates a steady current trend towards the abolition of the lawyer's monopoly on the representation of another person in court.

Due to the lack of consensus among stakeholders, the draft law in the field of reforming the free legal aid system can also be described as controversial. Currently, the subject of active expert discussion is the provisions of the draft Law of Ukraine 'On Amendments to Certain Legislative Acts on Facilitating Access to Free Legal Aid and Improving the Quality of Its Provision', which is designed to effectively implement the rights of persons, including children, incapacitated persons, and persons whose legal capacity is limited, to receive quality free legal aid by simplifying the mechanism of such assistance; resolving the issue of mandatory participation of a lawyer in court proceedings to limit the civil capacity of an individual; declaring an individual incapacitated and restoring the civil capacity of an individual; providing a person with compulsory psychiatric care; addressing involuntary hospitalisation in an anti-tuberculosis facility; improving the procedure for ensuring the quality of free secondary legal aid.

The Explanatory Note to this draft law states that the existing mechanism for monitoring the compliance of free secondary legal aid lawyers with the quality standards of free secondary legal aid needs to be improved, as evidenced by the conclusions and recommendations of the Council of Europe report according to the results of the 'Assessment of the Free Legal Aid System in Ukraine in the Light of Standards and Best Practices of the Council of Europe'.⁴² This report notes the need for effective monitoring and compliance with the quality of attorneys who provide free secondary legal aid requires a professional evaluation of the client's case file in addition to existing quality assessment methods, such as court monitoring and interviews with clients conducted by employees of free secondary legal aid centres. On this basis, the authors of the bill concluded that it is necessary to introduce a new tool to ensure the quality of free legal aid by introducing a mechanism for independent evaluation of the quality of free secondary legal aid provided by lawyers using the peer review tool.⁴³

Contrary to these proposals, the Bar Council of Ukraine presented the legal position of the bar association in this regard, which is that the introduction of a peer review tool for lawyers is not consistent with the basic guarantees of advocacy for professional independence and protection of legal secrecy and also poses a great threat to the destruction of the right to the protection guaranteed by the Constitution of Ukraine and violates the requirements of the Criminal Procedure Code of Ukraine on the inadmissibility of disclosure of the

41 Opinion of the Committee 05.02.2020. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66242> accessed 20 February 2022.

42 'Evaluation of the free legal aid system in Ukraine in the light of the standards and best practices of the Council of Europe' <<https://rm.coe.int/16806ff4a9>> accessed 20 February 2022.

43 Explanatory note to the draft Law of Ukraine 'On Amendments to Certain Legislative Acts on Facilitating Access to Free Legal Aid and Improving the Quality of its Provision' of 19 February 2021 No 5107. <http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=71159> accessed 20 February 2022.

pre-trial investigation and the Law of Ukraine 'On Personal Data Protection'. Thus, the introduction of a peer review tool in the proposed model for lawyers will lead, *inter alia*, to the economic weakening of the bar through the devaluation of the results of the intellectual work of lawyers. The introduction of a peer review mechanism is possible in a model where professional lawyers of the commissions for assessing the quality, completeness, and timeliness of free legal aid provided by lawyers at regional bar councils will review lawyers of free secondary legal aid centres, and professional lawyers will be reviewed by equivalent lawyers-members of the Commission for assessing the quality, completeness, and timeliness of the provision of free legal aid by lawyers acting under the bar councils of the regions.⁴⁴

This provides grounds for identifying another internal determinant of reforming the institutions of the human rights mechanism in Ukraine at the present stage – the 'quality of the law'. In this regard, a study by the European Commission 'For Democracy through Law' entitled 'Rule of Law Checklist' (developed and approved at the 106th plenary session on 11-12 March 2016)⁴⁵ concludes that the concept of 'quality of law' covers the following three components: the predictability, sustainability, and consistency of acts of law. In this case, 'predictability' means not only that the provisions of the act must be promulgated before their implementation but also that they must be predictable in their consequences: they must be formulated with sufficient clarity and certainty for the subjects of law to be able to organise their behaviour according to them.

Thus, the inconsistency of Law No. 193-IX with these criteria in the case under study led to the dysfunction of the judiciary, as due to shortcomings in the legislation on termination of powers of the entire HCJU of Ukraine stopped the selection of candidates for judges filling vacancies for judges in the courts, and thus prevented the courts from administering justice on the basis of the rule of law.

The shortcomings of the legislation regulating the procedure for attestation of prosecutors, particularly in determining the grounds for dismissal of prosecutors during the attestation defined by the provisions of Law No. 113-IX, formed a common practice of appealing the results of attestation in court by dismissed prosecutors. The lack of uniform jurisprudence in the field of research prompted the office of the general prosecutor to initiate the referral of the case to the Grand Chamber of the Supreme Court because the case contains an exclusive legal issue, and transfer is necessary to ensure law development and uniform law enforcement practice.

The non-compliance with these criteria of Law No. 1635-IX led to the fact that the SCJ stopped considering disciplinary complaints as of its entry into force, as the Law provides for the establishment of a separate unit, the Disciplinary Inspector Service, which operates on the basis of its independence. Therefore, since the entry into force of this Law, the disciplinary inspector is a mandatory participant in disciplinary proceedings, regardless of the stage at which it is. Given that Law 1635-IX does not contain transitional provisions that would allow the completion of disciplinary proceedings under the rules in force before its entry into force, nor does it contain provisions that would allow disciplinary proceedings to be conducted on complaints received after entry into force and until the formation of the Service of Disciplinary Inspectors, it is impossible to implement the powers of the

44 Decision of the Bar Council of Ukraine of 5 August 2020 No 54 regarding the draft Law of Ukraine 'On Amendments to Certain Legislative Acts on Facilitating Access to Free Legal Aid and Improving the Quality of Its Provision' <https://unba.org.ua/assets/uploads/legislation/rishennya/2020-08-05-rshennya-rau-54_5f4638acd85fd.pdf> accessed 20 February 2022.

45 Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session CDL-AD(2016)007-e (Venice, 11-12 March 2016) <[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e)> accessed 20 February 2022.

SCJ to consider disciplinary complaints. In addition, such circumstances violate both the legal rights of persons who apply to the SCJ with a disciplinary complaint and the rights of judges whose complaints against the decisions of the disciplinary chambers are not considered by the SCJ.⁴⁶

Moreover, certain provisions of this Law are also subject to the constitutional submission of the Supreme Court⁴⁷ on the constitutionality of the provisions of the Law, which, according to the Supreme Court, threaten the principle of institutional continuity in public authorities established by the Basic Law of Ukraine; violate the principle of independence of the judiciary by re-evaluating judges who are members of the SCJ; or do not take into account established international standards, according to which the dismissal of persons from important public positions through the adoption of regulations is unacceptable.

Thus, the 'quality of the law', in terms of predictability, sustainability, and consistency of legal acts, is an important internal determinant of the formation and effective functioning of national human rights mechanisms, one indicator of which may be a consensus among stakeholders to implement regulatory measures to reform its institutional and functional components.

3 TRENDS IN THE DEVELOPMENT OF THE HUMAN RIGHTS MECHANISM IN UKRAINE

Current trends in the development of components of the human rights mechanism in Ukraine have found their normative consolidation in several corresponding strategies.

Thus, the Decree of the President of Ukraine in March 2021 approved the National Strategy for Human Rights,⁴⁸ prompted by the need to improve the state to promote and ensure human rights and freedoms and create effective mechanisms for their implementation and protection, thus solving systemic problems in this area.

One of the main goals of this Strategy is to ensure that everyone in Ukraine has access to a fair and efficient trial by an independent and impartial tribunal and effective mechanisms for enforcing court decisions. It is noteworthy that among the main factors that will indicate the achievement of this strategic goal and the level of public confidence in the court is the importance of indicators '7. Civil Justice' and '8. Criminal Justice' of the Rule of Law Index, which is evidence of the importance of the influence of these determinants on the formation and functioning of the components of the human rights mechanism in Ukraine.

46 S Shelest, 'SCJ implements law No 1635-IX, but some of its provisions, which have signs of unconstitutionality, may cause further problems with the administration of justice' <<https://hcj.gov.ua/news/svitlana-shelest-vrp-vykonuye-zakon-no-1635-ix-odnak-okremi-yogo-polozhennya-shcho-mayut-oznaky>> accessed 20 February 2022.

47 Regarding the constitutionality of the provisions of the thirteenth paragraph of paragraph 23-1 of Section III 'Final and Transitional Provisions' of the Law of Ukraine 'On the Supreme Council of Justice' of 21 December 2016 No 1798-VIII, paragraphs one, six, eleventh of item 4 of Section II 'Final and Transitional Provisions' of the Law of Ukraine 'On Amendments to Certain Legislative Acts of Ukraine on the Procedure for Election (Appointment) to the Positions of Members of the Supreme Council of Justice and Activities of Disciplinary Inspectors of the Supreme Council of Justice' of 14 July 2021 No 1635-IX: Court of 13 October 2021 No 4/395(21) <https://ccu.gov.ua/sites/default/files/4_395_2021.pdf> accessed 20 February 2022.

48 Decree of the President of Ukraine of 24 March 2021 No 119/2021 'On the National Strategy in the Sphere of Human Rights' <<https://zakon.rada.gov.ua/laws/show/119/2021#Text>> accessed 20 February 2022.

Trends in the development of the justice system and constitutional justice for 2021-2023 are reflected in the relevant Strategy approved by the Decree of the President of Ukraine in June 2021.⁴⁹ This document outlines the main problems that necessitate further improvement of the organisation of the judiciary and the administration of justice, including:

- the imperfection of the existing system of local courts;
- the inefficiency of the system of financial, logistical, and social support of guarantees of the independence of the judiciary;
- the imperfection of the system of judicial authorities and organisation of their activities, including financial, logistical, and other support of courts of all levels;
- the functional imperfection of the system of judicial governance and self-government;
- the lack of judges in local and appellate courts and excessive workload on judges in courts of all levels;
- the excessively complicated procedures for conducting a competition for a vacant position of a judge, as well as the procedure for passing the qualifying examination and the methodology for assessing judges and candidates for the position of a judge;
- the ineffective mechanisms for bringing judges to disciplinary responsibility;
- the improper execution of court decisions and ineffective mechanisms of judicial control over the execution of court decisions;
- the lack of effective mechanisms of alternative (extrajudicial) and pre-trial dispute resolution;
- the barriers to access to justice;
- the insufficient level of implementation of digital technologies in the administration of justice;
- the excessive length of court proceedings, over-regulation of court proceedings, and unjustifiably widespread use of collegiality in courts of first and appellate instances;
- the lack of proper communication policy in the courts;
- the low level of public trust in the judiciary and the prosecutor's office.

It should be noted that key problems in the proper administration of justice in this Strategy are incomplete reform of the prosecutor's office, the inadequate legislative regulation of mechanisms for prosecutors to exercise their constitutional powers, the functional imperfections of the legal system, and difficult access to advocacy.

At the same time, the increase in the level of efficiency of the prosecutor's office, particularly in ensuring the performance of constitutional functions and powers, improving external and internal communications, implementing a modern human capital management system, and improving the resources of the prosecutor's office as one of the related legal institutions, is the goal of a separate Strategy for the Development of the Prosecutor's Office for 2021-2023, approved by order of the Prosecutor General of 16 October 2020 No. 489.⁵⁰ It is noteworthy that the most important guidelines in the activities of the prosecutor's office in this document are the desire to protect people, their lives and health, inviolability and security, and high levels of confidence in the work of prosecutors.

49 Decree of the President of Ukraine of 11 June 2021 No 231/2021 'On the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021-2023' <<https://zakon.rada.gov.ua/laws/show/231/2021#Text>> accessed 20 February 2022.

50 Order of the Prosecutor General of 16 October 2020 No 489 'On approval of the Prosecutor's Office Development Strategy for 2021-2023' <<https://www.gp.gov.ua/ua/posts/strategiya-rozvitku-prokuraturi-na-2021-2023-roki>> accessed 20 February 2022.

In addition, a decision of the Cabinet of Ministers of Ukraine approved the Strategy for Combating Torture in the Criminal Justice System.⁵¹ Among the problems that led to the adoption of this document is the need to create a national system to combat torture committed by law enforcement officers and ensure the proper implementation by Ukraine of ECtHR decisions finding that Ukraine has violated Art. 3 (prohibition of torture) of the Convention for the Protection of Human Rights and Fundamental Freedoms by failing to conduct an effective investigation into cases of torture by law enforcement officials. In addition, this category of cases is under scrutiny by the Committee of Ministers of the Council of Europe and consists of more than 90 decisions, the number of which is growing due to the lack of proper and effective remedies.

The office of the general prosecutor announced the development of the Concept for the Development of Criminal Justice and Law Enforcement, which aims to create a balanced and coherent system that will help prevent and reduce crime, improve the quality and reduce the length of investigations and trials, and increase access to justice.⁵²

In the development of the Strategy for the Development of the Justice System, the Bar Council of Ukraine adopted the Development Strategy of the National Bar Association of Ukraine for 2021-2025, which outlines the main objectives, goals, and priorities for this period.⁵³

The new Strategy provides priority attention to such areas of advocacy as digitalisation, access to the profession and disciplinary procedures, and reform of the free legal aid system. In particular, the Strategy envisages the improvement of qualification procedures and access to the profession, as well as changes in disciplinary procedures. Other priorities of the strategy include reforming the free legal aid system so that it meets the goals of protecting the constitutional rights of citizens and ensuring the free choice of a lawyer.⁵⁴

The strategic directions of reforming key institutions of the human rights mechanism in Ukraine mainly embody the desire to achieve a high functional performance of the national human rights mechanism in the evaluation and reporting documents of institutions of supranational (international) human rights mechanisms and national human rights institutions, as well as expert assessments. At present, the priority in the process of obtaining these results is to reach a consensus among stakeholders in the implementation of these strategic goals, which depends on the quality of legislation that will implement these strategic reform measures – sustainability agreements will directly affect the predictability and sustainability of this legislation.

51 Order of the Cabinet of Ministers of Ukraine of 28 October 2021 No 1344-p 'On approval of the Strategy for Combating Torture in the Criminal Justice System and approval of the action plan for its implementation' <<https://zakon.rada.gov.ua/laws/show/1344-2021-%D1%80/conv#Text>> accessed 20 February 2022.

52 'Ukraine is developing a Concept for the Development of Criminal Justice and the Law Enforcement System' <sud.ua/ru/news/ukraine/207051-v-ukrayini-rozroblyayut-kontseptsiyu-rozvitku-kriminalnoyi-yustitsiyi-ta-sistemi-organiv-pravoporyadku> accessed 20 February 2022.

53 'NAAU Strategy for 2021 – 2025' <<https://zakon.rada.gov.ua/rada/show/vr038871-21#Text>> accessed 20 February 2022.

54 'NAAU's new Strategy envisages changes in access to the profession and simplification of disciplinary procedures' <<https://unba.org.ua/news/6780-nova-strategiya-naau-peredbachae-zmini-dostupu-do-profesii-ta-sproshennya-disciplinarnih-procedur.html>> accessed 20 February 2022.

4 CONCLUSIONS

The effectiveness of the human rights mechanism as a process of functioning of the set of authorised human rights institutions is regulated by legal norms and aimed at eliminating shortcomings in the functioning of such components of the legal mechanism of protecting and implementing personal rights by providing various forms of effective legal services. When these rights are violated or threatened with violation, normative procedures to address this are one of the signs of a state seeking to be recognised as a state governed by the rule of law.

In order to ensure such efficiency and, consequently, the reality of legal protection, a number of human rights institutions are being created. In Ukraine, the judiciary is a key element of this, implementing its human rights activities primarily through the administration of justice. Based on the content of constitutional provisions that determine the institutional components of due justice, the effectiveness of the courts in implementing their human rights activities is due, *inter alia*, to the effectiveness of related legal institutions that promote justice, namely, the bar and prosecutor's office.

Institutions of the justice system, as its key elements in determining the directions of the formation and function of institutions of the national human rights mechanism in Ukraine, are subject to a number of determinants, on both internal (national) and external (supranational).

External determinants provide for the impact on the human rights mechanism in Ukraine through functional indicators of its effectiveness in the evaluation and reporting documents of the institutions of the supranational (international) human rights mechanism. Internal determinants determine the impact on the national human rights mechanism through functional indicators of its effectiveness in the evaluation and reporting documents of national human rights institutions, the results of sociological research and expert assessments and depend directly on the 'quality of law'.

An important external determinant of determining the directions of formation and functioning of institutions of the national human rights mechanism in Ukraine, as well as a guarantee of improvement, is the functioning of institutions of the supranational (international) human rights mechanism, in particular: the mechanism leading to the ECtHR's finding that Ukraine has violated the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms; the importance of the Rule of Law Index, which, on the one hand, determines the priority areas for reforming the regulatory, institutional, and functional components of the human rights mechanism in Ukraine, and on the other, comparatively reflects the best international practices in this ranking; reports and conclusions of specialised international organisations on the compliance of the normative, institutional, and functional components of the national human rights mechanism with the provisions of international standards.

The key internal determinants of the formation of the human rights mechanism in Ukraine include the following: indicators of observance and protection of human and civil rights and freedoms in Ukraine, which are published annually in the Report of the Commissioner; the results of sociological research that reflect the assessment of civil society representatives of human rights institutions in the country and the level of trust in them; expert opinions and conclusions on the main problems of the functioning of the institutions of the national human rights mechanism; obligations of the Ukrainian state to international partners; inconsistency of normative-legal regulation of relations in the sphere of formation and functioning of institutions of human rights mechanism of the 'quality of law' criterion, which contains requirements for predictability, consistency, and sustainability of legal acts.

Current trends in the development of human rights mechanisms in Ukraine are enshrined in several corresponding strategies in the field of human rights due to the need to improve the state's activities to promote and ensure human rights and freedoms, creating effective mechanisms for their implementation and protection in the field of development of the justice system as a whole, as well as in the prosecutor's office and the bar.

The strategic directions of reforming key institutions of the human rights mechanism in Ukraine identified in these documents mainly embody the desire of the Ukrainian state to achieve high functional indicators of the effectiveness of the national human rights mechanism in evaluation and reporting documents of supranational (international) human rights mechanisms, as well as national human rights institutions, in the results of sociological research and expert assessments.

At present, the priority in the process of obtaining these results is to reach a consensus among stakeholders on the implementation of these strategic goals, which depends on the quality of legislation that will implement these strategic reform measures – sustainability agreements will directly affect the predictability and sustainability of this legislation.

Thus, the strategic directions of reforming the key institutions of the human rights mechanism in Ukraine are aimed at solving certain problems and identifying promising areas for further research.

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