

Case Note

OPTIMISATION OF JUDICIAL GOVERNANCE IN UKRAINE AS A PREREQUISITE FOR THE STABILITY OF ITS COURT SYSTEM AFTER WAR¹

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ABSTRACT

Background: *The conditions of the legal regime of martial law, introduced in Ukraine in response to Russia's full-scale invasion, have ushered in a new legal framework that has reshaped the landscape for all state institutions and Ukrainian society. The judiciary, tasked with responding to new challenges, adapting to new living conditions, and charting a course for its future development, has found itself in a transformative position. The need to optimise the judicial system is becoming increasingly evident in Ukraine. The question arises of how to organise*

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judicial authorities to effectively administer justice for the state, even amidst a severe lack of funds and personnel.

The article attempts to forecast the prospects of optimisation of the judicial system of Ukraine, considering the national features of its model and the ongoing course of the war. We will focus on the optimisation of the judicial governance bodies responsible for upholding the independence of the judiciary and corresponding to the characteristics of the Judicial Council, whose institutional composition reflects Ukraine's distinct model.

In addition, in the lead-up to the imposition of martial law in Ukraine, the judicial governance bodies found themselves in a state of crisis, leading to dysfunctionality within this institution and demonstrating its vulnerabilities. It is essential to analyse the reasons that led to the negative consequences of the functioning of the judiciary, especially in the context of the war's influence. This analysis is important in constructing legislative rules to prevent crisis phenomena in judicial governance and ensure its stable and continuous functioning.

Methods: *The author employed a range of research methods in this article, including the historical method, analysis methods and synthesis of information. Using actual empirical information facilitated proper argumentation of the author's conclusions.*

Results and Conclusions: *It was concluded that the challenges caused by the war required a transformation of the political system in general and the judicial system in particular. One way is to optimise its judicial governance bodies as a necessary element of ensuring accessible and fair justice. The national model of judicial governance resulted from the introduction of advanced European practices into the national legal system in the organisation and functioning of such a body as the Judicial Council. However, the historical totalitarian past, peculiarities of the legal culture, and non-identity of political and social conditions influenced the result. As a result of numerous reforms, a hybrid model of the Judicial Council, which should be identified as dual, is functioning in Ukraine. The national experience of the functioning of judicial governance in crisis conditions demonstrated the vulnerability of such a model. This put the issue of implementing appropriate safeguards and guarantees to ensure stable and uninterrupted work of judicial governance on the agenda. Their discussion is a necessary step in developing scientific discussion about guarantees of judicial independence, an essential aspect of which is the effective functioning of judicial governance.*

1 INTRODUCTION

The conditions of the legal regime of martial law, introduced in Ukraine as a result of the full-scale invasion of Russia of our state, determined new rules for the existence of all its institutions and Ukrainian society. The judiciary, which not only responds to new challenges and adapts to new living conditions but also tries to orientate itself regarding its future development, was no exception. Specifically, the issue of optimising the judicial system will become urgent for Ukraine. This is due to this.

As a rule, 'optimisation' is understood as giving something the optimal, most favourable properties, and ratios; choosing the best (optimal) option from among many possible ones, improving system characteristics. From an economic point of view, optimization means determination of the values of economic indicators, allowing to achievement the optimum, that is, the best status of the system. Most often, the 'optimum' means achieving the best result at the given resource expenditure or achieving the specified result with the minimum resource expenditure.

Therefore, the decision to optimise the judicial system is determined by the combination of the following factors:

- a) the real state of functioning of the judicial system (its assessment) and compliance with societal conditions (public demand, political will);
- b) effectiveness/inefficiency of the judicial system's operation;
- c) resources available to the state (financial, human, material, temporal).

In the conditions of the war and the post-war situation for Ukraine, a natural question that arises is: how to construct the judicial authorities so that the judicial system could stably fulfil the global function of the state, namely justice administration, in the conditions of a total lack of funds and personnel (this is a statement of facts). In other words, how to ensure the effective functioning of the judicial system without harming the continuity and accessibility of justice with minimal costs for the judicial system.

Given the above, the issue of optimisation of the judicial system of Ukraine will be considered from two perspectives:

- 1) optimisation of the network of courts;
- 2) optimisation of judicial governance bodies.

Application of such an approach is conditioned by (a) the hierarchical relations where the courts are of paramount importance and (b) the components of the judicial system's budget. In the latter case, we mean that, on average, 70% of the budget allocated to the judicial system goes to salaries, in particular to salaries of the judges.³ This corresponds to the issue of guarantees of judicial independence, which is always particularly sensitive.

It should also be considered that war adjusts the important criteria for determining the optimal number and location of courts. In addition to the usual criteria, the processes of large-scale migration, de-occupation of territories, changes in public demand for certain categories of cases, etc., should be considered in the issue of optimising the network of courts. Therefore, we will consider optimisation of the judicial system from this angle in the future.

At the same time, an important place in the system of factors for the stable functioning of the judicial system is given to effective management.

One of the mechanisms of effective management of the judiciary spread in Europe is the functioning of special bodies. Their model (structure), procedure of formation and powers vary depending on the country. At the same time, a commonality among these bodies is the existence of the function of managing various processes and areas of the judicial system. According to *Beers*, they can be defined as 'constitutionally mandated bodies endowed with the legal authority to manage the careers of judges, independent of government influence and oversight'.⁴ In general, the central idea of the existence of such bodies is the maximisation of judicial independence, which is central to the concept of the Rule of Law.⁵

In Ukraine, these bodies are called judicial governance bodies, the model of which is characterised by the specificity of the institutional composition. This specificity became one of the reasons for the emergence of the idea of optimising judicial governance bodies, which is essential for Ukraine given the abovementioned reasons. We also believe that the experience gained by judicial governance bodies under martial law in Ukraine is unique and valuable for other European states. In addition, our analysis will be a step forward in

3 European judicial systems CEPEJ Evaluation Report 2022 Evaluation cycle (2020 data). <<https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>> accessed 24 August 2023.

4 Daniel J. Beers, 'Judicial Self-Governance and the Rule of Law', 2012 59:5 *Problems of Post-Communism* 50-67.

5 P Castillo- Ortiz, 'Councils of the Judiciary and Judges' Perceptions of Respect to their Independence in Europe' 2017 9 *Hague Journal on the Rule of Law* 315-336.

developing the scientific discussion about the most effective model of the Judicial Council as a necessary condition for the stable functioning of the independent judiciary in the state. Its results can be used as additional arguments in the dispute about the attractiveness of the idea of centralisation of judiciary management, which fades in case of an imperfect institutional structure, becoming a source of new problems for judges and society.⁶

Therefore, we will predict the prospect of optimising the judicial system of Ukraine, taking into account the national features of the model of its judicial governance and the course of the war.

For this, we will use the methods of analysis and synthesis of information. The historical process will allow us to demonstrate the specificity of the development of the model of judicial governance in Ukraine. Empirical data will make it possible to substantiate relevant conclusions, which, among other things, will be based on the author's observations and many years of experience.

2 EVOLUTION OF THE MODEL OF JUDICIAL GOVERNANCE IN UKRAINE

Historically, a unique model of judicial governance was formed in Ukraine. It provides for the functioning of two independent state bodies — the High Council of Justice (HCJ) and the High Qualification Commission of Judges of Ukraine (HCCJ). The legislative purpose of the functioning of the first body is formulated as ensuring the independence of the judiciary. It is also essential to ensure the disciplinary procedure implementation for judges. At the same time, the second body implements personnel policy in the judicial system, which includes the selection of candidates for election as judges, transferring judges, and evaluating judges, which in itself acts as a necessary tool for ensuring the judicial system's independence.

Functionally, this model corresponds to the characteristics of Judicial Councils/Council for the Judiciary. This is the general name of the body, which is used by international institutions and represents various, in particular, in terms of composition and set of powers, bodies of different European states responsible for ensuring the independence of the judiciary in the state.⁷

This 'duality' of the Judicial Council model in Ukraine has developed under many interrelated factors. Among the main ones, the following should be highlighted:

- (a) spontaneous processes of democratisation of power in Ukraine, which belongs to the countries of the post-Soviet space, that affected the non-linearity of its development. Along with such countries as Armenia, Georgia, and Moldova, since gaining independence, Ukraine has been on the path of long-term political instability, permanent reforms and revolutions, which naturally affected the evolution of the judiciary;⁸
- (b) the previous factor led to large-scale judicial reforms in the state, which were cyclical and were initiated each time with a change in the political elite.⁹ The inconsistency in reforming brought the question of the independence of the judicial system to the fore. It was the need for its guarantees that became the most challenging task of the transition to democracy;¹⁰

6 P Castillo- Ortiz, 'Councils of the Judiciary and Judges' Perceptions of Respect to their Independence in Europe' 2017 9 *Hague Journal on the Rule of Law* 315-336.

7 Council of Europe. Opinion no.10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society. Strasbourg: 2007-11-23 <http://www.europeanrights.eu/public/commenti/CCJEOpinion101_consiglio_dei_giudici.pdf> accessed 24 August 2023.

8 O Khotynska-Nor, 'Judicial Transparency: Towards Sustainable Development in Post-Soviet Civil Society' 2022 2(14) *Access to Justice in Eastern Europe* 83-95.

9 O Khotynska-Nor, 'Theory and Practice of Judicial Reform in Ukraine' 2016.

10 A Mihr, 'Transitional Justice and the Quality of Democracy' 2013 7 *International Journal of Conflict and*

- (c) globalisation, intensification of international cooperation, and active involvement of international donors in reforming the judicial system collectively oriented Ukraine to world experience and European standards in the construction of the judiciary infrastructure;
- (d) at the same time, the burden of the historical totalitarian past, peculiarities of society and non-identity of conditions caused 'deformations' in the introduction of advanced European institutions and practices.

The foundation of functioning of the modern model of the Judicial Council in Ukraine was laid by creating the High Council of Justice (HCJ) in 1998. It was responsible for forming a highly professional judicial corps capable of competently, conscientiously and impartially administering justice professionally.

Understanding that this was a completely new institution for Ukraine is essential. It was proposed as an additional article of the draft Constitution a few months before its adoption (1996). Parliamentarians or domestic scientists did not study the foreign experience of the activities of similar bodies at that time; there were no scientific publications on its status, purpose and role in ensuring the independence of the judiciary. According to one of the drafters of the relevant law, when the Supreme Council of Justice was created in Ukraine, the experience of the Supreme Council of Magistrates, which operated in France, Italy, Spain, and Portugal, and the Councils of the Judiciary in Bulgaria and Poland,¹¹ was considered as an example.

Thus, it can be assumed that the 'creators' focused on the Southern European model of Judicial Councils.¹² Judicial Councils of this type are mostly constitutionally rooted and fulfil some primary function in the safeguarding of judicial independence, such as advice as regards the appointment or promotion of members of the judiciary or the exercise of the power of appointment or promotion by the Council itself, the training and the exercise of disciplinary powers with regards to a member of the judiciary.¹³ In fact, it was one of the most successful attempts to introduce foreign institutions into Ukraine's national judicial system.

Nonetheless, the effectiveness of transplanting the European Judicial Council model depended heavily on identical conditions within the political and social environment. In the countries with transitional democracy, to which post-Soviet Ukraine belonged, it was impossible to reproduce them, which had a corresponding effect on the result.

Consequently, as a tribute to the past that proved resistance to change, Ukraine maintained these bodies in parallel. This includes the qualification commissions of judges, the High Qualification Commission of Judges of Ukraine, and later, only the High Qualification Commission of Judges of Ukraine. Remarkably, the latter assumed the powers which duplicated the powers of the Supreme Council of Justice.

Even in the wake of the ECtHR's ruling delivered against Ukraine in the case *Oleksandr Volkov v. Ukraine*(2013)¹⁴ — a landmark case that addressed the issues of the composition of the Judicial Council and guarantees of judicial independence — there was no significant impact on the construction of a new model of the Judicial Council.

Violence 298-313.

- 11 V.V Kryvenko, 'On Status and Role of the Supreme Council of Justice (from the standpoint of further judicial reform in Ukraine)' *The Supreme Council of Justice — 15 years of activity* 2013.
- 12 W. J. M Voermans, 'Councils for the Judiciary in Europe: Trends and Models' 2003 *The Spanish Constitution in the European Constitutional Context* 2133-2144.
- 13 S Farkasova, 'The constitutional reform of the Judicial Council in the Slovak Republic from the European comparative context' 2022 12 (2) *Juridical Tribune* 142-176.
- 14 Case of *Oleksandr Volkov v. Ukraine*, No. 21722/11, 2013, In: HUDOC ECHR <<https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-115871%22%5D%7D>> accessed 24 August 2023.

Upon implementation of the constitutional reform in the justice field in Ukraine in 2016, the field of judicial governance was modernised. The Supreme Council of Justice changed its name to the High Council of Justice, and the powers of the High Council of Justice and the High Qualification Commission of Judges of Ukraine were reallocated. However, compositionally, the 'dual' model of the Judicial Council remained functioning in Ukraine, under which the powers to manage the judiciary remained divided between two bodies.

Therefore, due to the abovementioned factors, the judicial reforms resulted in a model of the Judicial Council that modern researchers call a hybrid model. Hybrid models of the Judicial Council are so specific that they do not allow generalising them into a single pool. For example, Bobek M. and Kosař D. cite the model existing in England and Wales: they include judicial appointment commissions that deal only with the selection of judges up to the ascertain tier of the judicial system, whereas the rest of the court administration is vested in another organ.¹⁵

This feature became one of the reasons for the emergence of optimising judicial governance bodies, which took root, taking into account the current state of their functioning.

3 MODERN FORMAT FEATURES

Ukraine's current state of judicial governance bodies should be characterised as a crisis.

In the autumn of 2019, the judicial system of Ukraine underwent yet another round of reform, highlighting once again the extent to which its stability is intertwined with shifts in the country's political elite. However, another problem became apparent: the lack of quality, systematicity, thoughtfulness and predictability of the consequences of legislative changes that lead to judicial reform.

Thus, due to the shortcomings of the new legislation,¹⁶ targeted at rebooting the composition of the High Qualification Commission of Judges of Ukraine, this body ceased to exercise its powers. This led to the suspension of all personnel procedures in the judicial system (appointment, transfer, evaluation of judges). The responsibility for forming a new composition of the High Qualification Commission of Judges was assigned to the HCJ (this made the dual model of the Judicial Council vulnerable). Nevertheless, it was impossible to do this, and on 10 March 2020, the HCJ made a statement about the impossibility of forming the High Qualification Commission of Judges.

At the same time, on 11 March 2020, the Constitutional Court of Ukraine delivered Judgement No. 4-p/2020, which stated the following: "The Constitutional Court of Ukraine notes that the change in the... quantitative composition and subjects of appointment of the members of the High Qualification Commission of Judges of Ukraine without the introduction of an appropriate transitional period led to the suspension of performance of constitutional functions concerning selection and evaluation of judges, the impossibility of High Council of Justice to exercise its individual constitutional powers, and also created significant obstacles to the functioning of an effective judiciary and in some cases made it impossible to realise everyone's right to access to justice as required by the principle of the rule of law."¹⁷

15 M Bobek, D Kosař, 'Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe' 2014 15:07 *German Law Journal* 1257-1292.

16 Verkhovna Rada of Ukraine. Law of Ukraine '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' 2019-12-16 <<https://zakon.rada.gov.ua/laws/show/193-20#Text>> accessed 24 August 2023.

17 Judgement of the Constitutional Court of Ukraine No. 4-p/2020 dated 11 March 2020 in the case upon the constitutional submission of the Supreme Court with regard to conformity of certain provisions of the laws of Ukraine with the Constitution of Ukraine (constitutionality), namely: the Law on the Judiciary and the Status of Judges No. 1402-VIII dated 2 June 2016, the Law on Amendments to the

Such a position of the body of constitutional jurisdiction formalised the quite obvious connection and influence of the stability of functioning of judicial governance on ensuring the availability of justice in the state.

Thus, a 'conflict' arose in the legal regulation of the status of the High Qualification Commission of Judges, which could only be resolved through legislative changes, the development of which required some time. Therefore, the formation of this key body of the judicial system was blocked, and its work was paralysed.

The crisis in judicial governance deepened immediately on the eve of a full-scale war.

On 22 February 2022, two days before the Russian full-scale invasion of the territory of Ukraine, the HCJ ceased to exercise its powers. This happened due to the simultaneous resignation of most of its members.

Thus, on the eve of a full-scale war in Ukraine, the judiciary found itself in a state of 'management dysfunction', which naturally destabilised it and affected the speed of its response to martial law challenges.

The fact that the High Council of Justice had the key powers, the implementation of which depended on the stable functioning of the judicial system (termination of the work of courts, transfer of judges, change of territorial jurisdiction of cases, etc.), led to the urgent need for legislative changes and delegation of the relevant powers to other bodies and representatives of the judiciary, who could respond promptly to the situation.¹⁸

By making changes to the legislation in March 2022, during the dysfunctionality of the High Council of Justice, the aforementioned powers to govern the judiciary were transferred to the Chairman of the Supreme Court.^{19,20} Moreover, although these powers are not typical for a judge of the highest court, it made it possible to stabilise the judicial system of Ukraine.

The situation with the crisis in judicial governance, the impact of the war, and the reaction of the public authorities also made it possible to draw a number of conclusions:

- 1) the judiciary is capable of reflection and redistribution of functions between its bodies (during the period of dysfunction of one body, its functions are temporarily performed by another body);
- 2) judicial authorities should be flexible and avoid excessive formalism in wartime;
- 3) there must be coordinated and operational communication with the parliament, which must quickly change the legislative basis of the judiciary's activities in accordance with the stage of the war.²¹

Law of Ukraine on the Judiciary and the Status of Judges and some laws of Ukraine on the Activity of Judicial Governance Bodies No. 193-IX dated 16 October 2019, the Law on the High Council of Justice No. 1798-VIII dated 21 December 2016 <<https://zakon.rada.gov.ua/laws/show/v004p710-20#top>> accessed 24 August 2023.

18 O Khotynska-Nor, A Potapenko, 'Courts of Ukraine in Wartime: Issues of Sustainable Functioning' 2022 31 *Revista Jurídica Portucalense*, 218–240.

19 Verkhovna Rada of Ukraine. Law of Ukraine on Amendments to Part Seven of Article 147 of the Law of Ukraine on the Judiciary and the Status of Judges on Determining Territorial Jurisdiction of Judicial Cases. 2022-03-03 [viewed date: 24 August 2023]. Available from: <<https://zakon.rada.gov.ua/laws/show/2112-20#n2>>

20 Verkhovna Rada of Ukraine. Law of Ukraine on Amendments to Section XII" Final and Transitional Provisions of Law of Ukraine on the Judiciary and the Status of Judges on Ensuring Sustainable Functioning of Judiciary in Absence of Plenipotentiary of the High Council of Justice. 2022-03-15 [viewed date: 24 August 2023 2023]. Available from: <<https://zakon.rada.gov.ua/laws/show/2128-20#n5>>

21 O Khotynska-Nor, A Potapenko, 'Courts of Ukraine in Wartime: Issues of Sustainable Functioning' 2022 31 *Revista Jurídica Portucalense*, 218–240.

Having stabilised the situation in the justice system, despite the war, the issue of further measures to eliminate the dysfunction of the existing hybrid model of the Judicial Council became urgent.²²

After all, as practice has shown, such a hybrid model is vulnerable if the formation of one of its institutional components (HQCJ) depends on another (HCJ) and does not provide for appropriate safeguards or guarantees. The obvious things, such as the formation of the composition of both bodies, which was ensured in the first half of 2023, are globally unable to solve the problem because they cannot prevent the recurrence of the situation in the future.

4 OPTIMISATION PREREQUISITES AND PROSPECTS

Optimising judicial governance bodies (Judicial Council) in Ukraine is far from new.

In 2007, the Venice Commission noted that ‘there is no need for a separate Higher Qualification Commission and its powers must be transferred to the High Council of Justice, the majority of which is made up of judges’.²³

Consistently asserting its position, in 2015, the Venice Commission once again drew attention to the fact that ‘their parallel existence as separate bodies instead of specialized units of the HCJ forms a very complex system that creates dualism in the administrative management of the judicial system and increases the risk of overlaps and conflicts. However, this is a policy chosen by the Ukrainian authorities’.²⁴

In 2019, the Venice Commission stated, ‘All bodies vested with the relevant powers of judicial governance must be established and function by current international standards for Judicial Councils. In numerous opinions, the Venice Commission insisted that the system of judicial governance should be harmonised and recommended simplifying the structure of judicial governance bodies in Ukraine, in particular, in relation to the parallel existence of the HCJ, which is a constitutional body and the HQCJ, which has its legal basis only in law. The HQCJ is a historical relic of the time when, due to constitutional restrictions, it was considered difficult to reform the HCJ’.²⁵

However, the unsuccessful attempt to reform the HQCJ in 2019, which resulted in the suspension of the procedures for forming the judicial corps, put the issue of stable functioning of the judicial system on the agenda, due to which the Venice Commission emphasised the following: ‘There is a clear interrelation between the stability of the judicial system and its independence. Confidence in the judiciary grows only under the condition of a stable system. Although reforms in the field of the judiciary in Ukraine were considered necessary to increase public trust in the judicial system, constant institutional instability when reforms take place after a change of political power can also be dangerous from the point of view of

22 M Stefanchuk, ‘Recovery of Ukraine in the Field of Justice: Challenges and Priority Goals’ 2022 4-2 (17) *Special Issue Access to Justice in Eastern Europe* 186-201.

23 Opinion of the Venice Commission No. 401/2006 on the Draft Law on the Judiciary and the Draft Law on the Status of Judges of Ukraine. Strasbourg, 20.03.2007. <https://supreme.court.gov.ua/userfiles/CDL_AD_2007_003_2007_03_20.pdf> accessed 24 August 2023.

24 Interim opinion of the Venice Commission No. 803/2015 on the Proposed Amendments to the Constitution of Ukraine regarding the Judiciary. Strasbourg, 24.07.2015. <https://vkksu.gov.ua/userfiles/doc/promi_visnovok.pdf> accessed 24 August 2023.

25 Opinion of the Venice Commission No. 969/2019 on Amendments to the Legal Framework in Ukraine Governing the Supreme Court and Judicial Self-Governing Bodies. Strasbourg, 09.12.2019. <https://www.echr.com.ua/document/visnovok-shhodo-zmin-do-zakonodavchix-aktiv-yaki-regulyuyut-status-verxovngo-sudu-ta-organiv-suddivskogo-vryaduvannya/#_ftn11> accessed 24 August 2023.

public trust in the judiciary as independent and impartial institutions.²⁶ Therefore, 'unification of the HCJ (constitutional body) and the HQCJ (whose activities are regulated only by the law) can only be a long-term goal.'²⁷

Therefore, in the conditions of the war and post-war reconstruction, the lack of budget funds for financing the judiciary raises the question of the economic feasibility of the existence of two judicial governance bodies in the state, the distributed functions of which, under optimal conditions, might be and should be performed by one body with an extensive internal structure. In this case, the key question is: what conditions should be considered optimal?

In Ukraine, the first priority should be discussing stabilisation of personnel procedures. This is a question of a long-term perspective, which, at the moment, is not realistic to implement only by the HCJ's efforts. Among other things, this is due to the fact that for a long time, the HCJ itself did not have enough powers, which resulted in the accumulation of an array of unresolved issues directly related to its powers (for example, disciplinary proceedings against judges). Therefore, the fact that the personnel function is fully vested with the HCJ at this stage will not solve, but on the contrary, will aggravate the problem.

It is advisable to actualise the idea of liquidating the HQCJ and transferring its powers to the HCJ when the personnel crisis in the judicial system of Ukraine is overcome, and personnel procedures will acquire a planned, predictable character, which will make it possible to evaluate and calculate their progress taking into account:

- (a) the stable volume of necessary processes within certain temporal frameworks;
- (b) the measurement of their pace and expediency of simplification;
- (c) costs of available resources.

However, this is only one of the possible ways to optimise judicial governance bodies. Its implementation will require structural reform, which may again destabilise the judiciary.

There are other options. Thus, the state has the right to independently choose which model of the Judicial Council will be effective for it. Therefore, the dual model of the Judicial Council has the right to exist, if the law provides appropriate safeguards and guarantees to ensure stable and uninterrupted functioning of judicial governance.

In the case of Ukraine, such a safeguard may be the introduction of 'reserve' tools for the operational formation of the composition of the HCJ if it loses its powers. Alternatively, at the legal level, it is possible to provide for the obligation of the subjects of the formation of the HCJ to form a reserve rating of candidates for the position of a member of the HCJ according to their quota. If the current member of the HCJ resigns, the subject of the formation of the HCJ must appoint the first person in the ranking to the vacant position and thus ensure the stable functioning of the HCJ.

In any case, the proposed ideas require a comprehensive discussion considering their possible modifications and forecasting the consequences of implementation, thus laying the foundation for further scientific discussion.

26 Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law No. 999/2020 on the Draft Law of Ukraine on Amendments to the Law of Ukraine on the Judiciary and the Status of Judges and some laws of Ukraine on the Activities of the Supreme Court and Judicial Governance Bodies (Draft Law No. 3711). 09.10.2020.

27 Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law No. 1029/2021 on the Draft Law on Amendments to Certain Legislative Acts concerning the Procedure for Electing (Appointing) Members of the High Council of Justice (HCJ) and the Activities of Disciplinary Inspectors of the HCJ (Draft Law No. 5068). 05.05.2021. <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)004-ukr](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)004-ukr)> accessed 24 August 2023.

5 CONCLUSION

Despite the war, Ukraine continues to develop as a democratic and legal state. Its judicial system is an integral part of the national security system and ensures the continuity of protection of the rights and interests of an individual. The new challenges caused by the war required a general transformation of the political and judicial systems. One way is to optimise its judicial governance bodies as a necessary element of ensuring accessible and fair justice.

The national model of judicial governance resulted from the transplantation of advanced European practices in the organisation and functioning of such a body as the Judicial Council into the national legal system. However, the historical totalitarian past, peculiarities of the legal culture, and non-identity of political and social conditions influenced the result. As a result of numerous reforms, a hybrid model of the Judicial Council became functioning in Ukraine, which should be identified as dual. That is one that involves the distribution of key management functions in the judiciary between two bodies that are in a relationship of subordination and dependence. The national experience of the functioning of judicial governance in crisis conditions (loss of authority by its bodies) demonstrated the vulnerability of such a model. This put the issue of implementing appropriate safeguards and guarantees to ensure stable and uninterrupted work of judicial governance on the agenda. Their discussion is a necessary step in developing scientific discussion about guarantees of judicial independence, an essential aspect of which is the effective functioning of judicial governance.

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