

Research Article

DISCIPLINARY PROCEEDINGS AGAINST JUDGES IN UKRAINE: CURRENT ISSUES OF LEGISLATION

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ABSTRACT

Background: *The paper highlights some current issues of the legislation of Ukraine in the field of disciplinary proceedings against judges. Special attention is drawn to the legal regulation of the time limits for imposing disciplinary sanctions on judges and standards of proof in disciplinary proceedings against judges, prerequisites, and tendencies predetermining their formation.*

This study was carried out to answer the following questions: how did the chosen approaches to reforming the High Council of Justice in Ukraine lead to the crisis of the disciplinary function of this judicial governance body? What were the prerequisites for accumulating a great number of pending disciplinary complaints against judges and the disciplinary body being overloaded? Which legislative provisions on the disciplinary procedure for judges require conceptual substantiation to simplify its procedures? To what extent do the statutory time limits for imposing disciplinary sanctions on judges meet the criteria of a reasonable time for consideration of a case? Is there any uniformity in the legislative approaches to setting such time limits for prosecutors and attorneys as representatives of related legal institutions in the Ukrainian justice system? How have the approaches to the formation of the standard of proof in disciplinary proceedings against judges changed, and what factors have influenced this? What are the tendencies in the development of legislation on disciplinary proceedings against judges? Will they contribute to achieving the aim of simplifying the procedures of such proceedings while guaranteeing reasonable time limits for consideration of such cases and ensuring guarantees of judicial independence?

The article aims to provide a conceptual justification for the legislative approaches to the disciplinary procedure for judges in Ukraine, identify the defects in legislation giving rise to the crisis in the disciplinary function of the High Council of Justice, and make proposals for ensuring high performance of this legal institution with due regard for international standards and best practices.

Methods: To achieve the research goals, general scientific and unique scientific research methods were applied. The concept of this paper is underpinned by fundamental sources of literature, including scientific papers, legislative acts, international conventions, and judicial practice. To meet the nature of the problem raised in the paper, research works, information, analytical reports, and practice summaries from respective reputable organisations were used. The methodological framework is based on an analysis method, a synthesis method, and a comparative method. The analysis method helped scrutinise relevant legal provisions and case law, while the synthesis method was used as part of the comparative methods. Thus, to meet the objective of the study, the Ukrainian legislation on the specifics of reforming the High Council of Justice at this stage of its development and on the peculiarities of disciplinary proceedings against judges in Ukraine was analysed. This helped outline the approaches entailing the crisis of the disciplinary function of this body, identify the prerequisites for a great number of pending disciplinary complaints against judges accumulated, and highlight the provisions of legislation in this area that require conceptual justification. A comparative legal analysis of disciplinary procedures against judges, prosecutors, and attorneys in Ukraine helped reveal a lack of a unified legislator's conceptual approach in this regard and the existence of discriminatory features in disciplinary procedures against judges. A legal analysis of the case law of the European Court of Human Rights carried out in the framework of this study leads to the conclusion that the legal position of this court has changed as to the applicability of the Convention's criminal procedural guarantees to cases of disciplinary liability of judges. The study highlights the doctrinal approaches shaping the legal concept of "standards of proof", the generalisation of which enabled their grouping according to the features inherent in the Anglo-American and continental systems of law. The legal analysis of these approaches helped identify the tendency in the development of legislation on disciplinary proceedings against judges, the controversy of which lies in the statement that Ukrainian law is shifting the approach to the standard of proof towards the distinction between civil and criminal cases, following the model of common law countries, even though, in general, the continental law system is not characterised by such differentiation. The use of the latest empirical data facilitated the proper argumentation of the author's conclusions. For example, the materials of the Summary of the practice for considering disciplinary cases against judges by Disciplinary Bodies were used in the study, the legal analysis of which showed that different standards of proof are applied in disciplinary proceedings against judges and that there is no clear legislative regulation of such a standard. The study employs the statistical data of the High Council of Justice shown in the Annual Report on the Status of Judicial Independence in Ukraine for 2022, as well as in the information and analytical report on the activities of this body in 2023 and 2024, as of the date of this study, which illustrate the quantitative indicators and dynamics of consideration of disciplinary complaints against judges, which enabled testing the hypothesis of whether the legislative provisions contribute to achieving reasonable time limits for consideration of such cases and ensuring guarantees of judicial independence.

Results and Conclusions: *it has been established that the legislative regulation of disciplinary proceedings against judges in Ukraine currently bears a range of deficiencies that entailed the so-called crisis of the disciplinary body and the accumulation of disciplinary complaints against judges left without consideration. It has been argued that the operative legislation, setting out limitation periods for imposing disciplinary sanctions on judges, necessitates a certain balance to ensure the principle of inevitability of legal liability and the principles of legal certainty and reasonable time limits. It has been ascertained that modern legal regulation of disciplinary proceedings against judges points to the shift in the approaches to the standard of proof toward differentiation of civil and criminal cases, which is predetermined, inter alia, by the impact of the case law of the European Court of Human Rights. The reasonableness of applying the “intime conviction” standard and the highest standards of procedural guarantees to judges in disciplinary proceedings, from the point of view of the judicial independence guarantees ensured, has been brought into focus. The prospective tendencies in developing the legislation on disciplinary proceedings against judges toward simplifying the procedures while simultaneously guaranteeing reasonable time limits for the consideration of such cases, as well as ensuring the guarantees of judicial independence on the pathway of achieving the due standard of proof.*

1 INTRODUCTION

Since the imposition of martial law, the State of Ukraine has consistently and convincingly pursued the aspirations of European integration for its citizens. A remarkable milestone in this process has been the decision of the European Council to open the negotiations on the accession of Ukraine to the European Union (hereinafter – the EU).¹ This preceded the Council’s earlier decision to grant candidate status to Ukraine² and the Recommendation of the European Commission to grant Ukraine a perspective of EU membership, provided that the range of criteria are met.³

The European Commission’s EU Enlargement Policy Report on Ukraine assessed the progress across several clusters, with special attention given to the issues of ensuring the

1 European Council, ‘European Council Conclusions on Ukraine, Enlargement and Reforms’ (1042/23, 14 December 2023) <<https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/european-council-conclusions-on-ukraine-enlargement-and-reforms/>> accessed 21 March 2024.

2 European Council, ‘European Council Conclusions on Ukraine, the Membership Applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and External Relations’ (611/22, 23 June 2022) <<https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/>> accessed 21 March 2024.

3 Press and information team of the Delegation to Ukraine, ‘EU Commission’s Recommendations for Ukraine’s EU candidate status’ (*Delegation of the European Union to Ukraine*, 17 June 2022) <https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232> accessed 21 March 2024.

supremacy of law. This included assessing the effectiveness of the organisation and functioning of various legal institutions of justice systems within Ukraine's justice system, which was in line with the declared goal of building a system of sustainable justice in Ukraine. In general, that report can claim to be one of the crucial modern indicators of topical issues that, in the opinion of European development partners, should determine the vectors of future reform steps in the justice sector in Ukraine in terms of its European integration and post-war reconstruction.

The report focuses on key aspects of justice, particularly the effectiveness of the organisation and the functioning of its components, including the disciplinary liability of judges and prosecutors in Ukraine. It "red-flagged" the issues pertinent to the consideration of disciplinary cases against judges as one of the key functions of the High Council of Justice (hereinafter – HCJ). Such attention has been caused by the partial dysfunction of the HCJ due to changes in the legislative regulation of its disciplinary function, which resulted in the temporary suspension of its function for more than two years and the accumulation of more than 11,500 pending disciplinary cases against judges at the time the report.

Given that the competent body for disciplinary proceedings against judges faced such a lasting incapacity to consider disciplinary complaints about the conduct of judges for the first time, the Committee on Legal Policy of the Verkhovna Rada of Ukraine adopted a decision where it clarified how certain legislative provisions on disciplinary proceedings against judges should apply⁴. That decision specifies the legislative provisions for determining the period included in the relevant disciplinary proceedings against a judge. This explanation deserves special research attention, given the peculiarity of determining the limitation period for imposing disciplinary sanctions on judges in Ukrainian legislation, which takes no regard to the duration of disciplinary proceedings.

In such circumstances, finding effective ways to resolve the crisis of the HCJ's disciplinary function as one of the components of the mechanism for restoring civil society's trust in the judiciary is becoming more relevant.

To achieve the goal of building a system of sustainable justice in Ukraine, there is a need for legal analysis and conceptual justification of legislative approaches to the disciplinary procedure concerning judges in Ukraine, search for legislative defects that provoke the probability of crises in the HCJ's disciplinary function, and also for proposals for improvements of this legal institution, considering international standards and best practices, which determines the aim of this study.

4 Decisions of the Committee on Legal Policy of the Verkhovna Rada of Ukraine of 21 July 2023 'On the Committee's explanation of the application of certain provisions of the laws of Ukraine "On the High Council of Justice" and "On the Judicial System and Status of Judges" in terms of disciplinary proceedings against judges' <<https://kompravpol.rada.gov.ua/uploads/documents/34298.pdf>> accessed 21 March 2024.

2 TIME LIMITS FOR IMPOSING DISCIPLINARY SANCTIONS ON JUDGES: THE EUROPEAN STANDARDS AND UKRAINIAN PRACTICES

First of all, it should be noted that European standards of judicial independence and the practice of the European Court of Human Rights (hereinafter – ECtHR) require that disciplinary proceedings fall under a range of guarantees of court proceedings. In particular, Recommendation CM/Rec(2010)12 **stipulates that:**

“Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction”.⁵

The European Charter on the statute for judges stipulates that:

“The dereliction by a judge of one of the duties expressly defined by the statute may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges, within the framework of proceedings of a character involving the full hearing of the parties, in which the judge proceeded against must be entitled to representation”.⁶

The ECtHR consistently maintains that empowering a disciplinary body, rather than a court, with authority to adopt decisions on disciplinary offences committed by judges and impose respective sanctions is nevertheless compatible with the requirements of para. 1 Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention).⁷ At the same time, when the Member States of the Council of Europe choose such an approach, a disciplinary body must comply with the requirements of para. 1 Art. 6 of the Convention (i.e. to be “an independent and impartial tribunal established by law”); otherwise, its decision shall be subject to sufficient court control from the body complying with the requirements of independence and impartiality.⁸

5 Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted 17 November 2010) <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805afb78> accessed 21 March 2024.

6 The European Charter on the statute for judges and Explanatory Memorandum (Strasbourg, 8-10 July 1998) para 5.1 <<https://rm.coe.int/090000168092934f>> accessed 21 March 2024.

7 Council of Europe, *European Convention on Human Rights* (Convention for the Protection of Human Rights and Fundamental Freedoms) (ECHR 2013) <https://www.echr.coe.int/documents/d/echr/convention_ENG> accessed 21 March 2024.

8 *Tsfayo v the United Kingdom* App no 60860/11 (ECtHR, 14 November 2006) <<https://hudoc.echr.coe.int/eng?i=001-77995>> accessed 21 March 2024; *Oleksandr Volkov v Ukraine* App no 21722/11 (ECtHR, 9 January 2013) <<https://hudoc.echr.coe.int/fre?i=001-115871>> accessed 21 March 2024; *Kamenos v Cyprus* App no 147/07 (ECtHR, 31 October 2017) <<https://hudoc.echr.coe.int/eng?i=001-178174>> accessed 21 March 2024; *Denisov v Ukraine* App no 76639/11 (ECtHR, 25 September 2018) <<https://hudoc.echr.coe.int/eng?i=001-186216>> accessed 21 March 2024; *Donev v Bulgaria* App no 72437/11 (ECtHR, 26 October 2021) <<https://hudoc.echr.coe.int/eng?i=001-212697>> accessed 21 March 2024.

In the seminal cases concerning Ukraine,⁹ the ECtHR considered these factors exactly when verifying the adherence to the requirements of independence and impartiality by a disciplinary body.

One of the guarantees of the court proceedings under the provisions of para. 1 of Art. 6 of the Convention is the consideration of a case by the court within a reasonable time. The national legislation of Ukraine (para. 11 Art. 109 of the Law of Ukraine "On the Judiciary and the Status of Judges") foresees the time limit for imposing a disciplinary sanction on a judge: *not later than three years after the offence, excluding the time of temporary incapacity to work or vacation, or relevant disciplinary proceedings.*¹⁰

Excluding *the time of temporary incapacity to work or vacation of a judge* from this time is thoroughly acceptable, as in the event of such circumstances, it is objectively impossible for the body responsible for observing the statutory deadline for bringing a judge to disciplinary responsibility to conduct disciplinary proceedings due to objective circumstances beyond the control of this body (a judge's vacation, and therefore the exercise of the right to rest guaranteed to him/her, and a judge's temporary incapacity, and therefore the exercise of the right to healthcare and medical assistance guaranteed to him/her).

At the same time, the legislator excluded the time of the relevant disciplinary proceedings from these three years for imposing a disciplinary offence on a judge, which, to some extent, levelled the legal significance of this time limit as such for the individual being held accountable. Such legislative regulation of the limitation period for imposing a disciplinary sanction on a judge is likely to allow us to characterise it as a "*sham*" period or a period fixed without the intention to motivate the body conducting disciplinary proceedings against the judge to comply with it, and without the intention to guarantee the occurrence of relevant legal consequences for both the person being disciplined and the body conducting the disciplinary proceedings.

The legal institution of closing disciplinary proceedings due to the expiry of time limits for applying legal liability measures (in this case, disciplinary sanctions) is very indicative of the efficiency of the competent body because the statistics of terminated (closed) disciplinary proceedings on this ground, de facto, shows organisational deficiencies in the operation of this body, either of a subjective nature (low-level organisation of disciplinary proceedings) or an objective nature (deficiencies in the legal regulation of the disciplinary procedure: defects of the legislation).

On the other hand, the legal institution of discontinuation of disciplinary proceedings on the grounds of expiry of the limitation period for bringing a person to such liability is an

9 *Oleksandr Volkov v Ukraine* (n 8) paras 112-115; *Denisov v Ukraine* (n 8) para 65.

10 Law of Ukraine no 1402-VIII of 2 June 2016 'On the Judiciary and the Status of Judges' (amended 26 March 2024) <<https://zakon.rada.gov.ua/laws/show/1402-19/ed20240326#Text>> accessed 27 March 2024.

important guarantee of ensuring and exercising the right to a fair trial guaranteed by para. 1 Art. 6 of the Convention,¹¹ as it is aimed at ensuring the right to due process for a person held liable for such an offence. An important element of this procedure is to guarantee a reasonable timeframe for the consideration of the case.

Exercising the right to a fair trial in various aspects through the prism of national legislation has some peculiarities that have been the subject of various scientific studies¹². Ensuring a judge's right to a fair trial in the context of disciplinary proceedings against him or her has become particularly important in the context of the ECHR case law. It is worth recalling international standards in the field of disciplinary liability of judges *in terms of the timing of disciplinary proceedings*: disciplinary cases should be considered within a reasonable time, and time limits should be set for opening disciplinary proceedings and imposing disciplinary sanctions. Thus, according to para. 17 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 and endorsed by General Assembly resolutions 40/32 28 of 29 November 1985 and 40/146 of 13 December 1985:

*“A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under appropriate procedure”.*¹³

Following Principle VI-3 of the Recommendation No. R(94) 12 of the Committee of Ministers of the Council of Europe to Member States on the Independence, Efficiency and Role of the Judges, dated 13 October 1994:

*“The law should provide for appropriate procedures to ensure that judges in question are given at least all the due process requirements of the Convention, for instance, that the case should be heard within a reasonable time and that they should have a right to answer any charges”.*¹⁴

11 Council of Europe (n 7) art 6, para 1.

12 Olena Boryslavska, 'Judicial Reforms in Eastern Europe: Ensuring the Right to a Fair Trial or an Attack on the Independence of the Judiciary?' (2021) 4(1) Access to Justice in Eastern Europe 122, doi:10.33327/AJEE-18-4.1-a000049; Natalia Sakara, 'The Applicability of the Right to a Fair Trial in Civil Proceedings: The Experience in Ukraine' (2021) 4(1) Access to Justice in Eastern Europe 199, doi:10.33327/AJEE-18-4.1-n000053; Maryna Stefanchuk, Oleksandr Hladun and Ruslan Stefanchuk, 'The right of access to a court in Ukraine in the light of the requirements of the Convention on Protection human rights and fundamental freedoms' (2021) 4(1) Access to Justice in Eastern Europe 186, doi:10.33327/AJEE-18-4.1-n000052; Yuriy Prytyka, Iryna Izarova, Liubov Maliarchuk and Olena Terekh, 'Legal Challenges for Ukraine under Martial Law: Protection of Civil, Property and Labour Rights, Right to a Fair Trial, and Enforcement of Decisions' (2022) 5(3) Access to Justice in Eastern Europe 219, doi:10.33327/AJEE-18-5.4-n000329.

13 Basic Principles on the Independence of the Judiciary (adopted 6 September 1985) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>> accessed 21 March 2024.

14 Recommendation no R(94)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (adopted 13 October 1994) <<https://www.legal-tools.org/doc/d67e7z/>> accessed 21 March 2024.

In para. 3.12 of the Recommendation of the European Network of Councils for the Judiciary in Europe dated 2011:

*“Lengthy investigations, which could negatively impact upon the career of a judge, should be avoided in disciplinary proceedings”.*¹⁵

In this context, it seems controversial, from the point of view of ensuring reasonable time limits for consideration of cases, to enshrine the provision that the time of the relevant disciplinary proceedings shall not be taken into account in the time of imposing disciplinary sanction on a judge in the national legislation of Ukraine. *In our opinion, under such circumstances, the statutory guarantee of resolving the issue of imposing a disciplinary sanction on a judge within a legally defined period from the moment of its commission or limitation period for imposing a disciplinary sanction is levelled out, and this period becomes unlimited and depends solely on the discretion and capacity of the body that decides on the imposition of such a sanction, which is inconsistent with the guarantees of judicial independence.*

Moreover, notwithstanding the principle of inevitability of legal liability, we believe that such legislative provisions that envisage an unlimited period for deciding on the application of disciplinary sanctions to a judge can, with some probability, be characterised as *discriminatory* as compared with the legislative regulation of the time limits for applying disciplinary sanctions to other legal professionals in the justice system in Ukraine. In particular, according to the Law of Ukraine “On the Public Prosecutor's Office” (para. 4 Art.48):

*“A decision to impose a disciplinary sanction on a prosecutor or a decision on the impossibility of further holding the position of a prosecutor may be made no later than one year after the date of the offence is committed, without taking into account the time of temporary incapacity or vacation of the prosecutor”.*¹⁶

According to the Law of Ukraine, “On the Bar and Practice of Law”, the attorney may be brought to disciplinary liability within one year from the date of committing a disciplinary offence (para. 2 Art. 35).¹⁷

The previous version of the Law of Ukraine, “On the Judiciary and the Status of Judges”, dated 7 July 2010, provided that the disciplinary sanction shall apply to a judge no later than three years from the date of the offence, without considering the period of temporary incapacity for work or vacation (para. 4 Art. 96).¹⁸

15 European Network of Councils for the judiciary, *Councils for the Judiciary: Report 2010-2011* (ENCJ 2011) <https://www.encj.eu/images/stories/pdf/workinggroups/report_project_team_councils_for_the_judiciary_2010_2011.pdf> accessed 21 March 2024.

16 Law of Ukraine no 1697-VII of 14 October 2014 ‘On the Public Prosecutors Office’ (amended 1 January 2024) <<https://zakon.rada.gov.ua/laws/show/1697-18#Text>> accessed 21 March 2024.

17 Law of Ukraine no 5076-VI of 5 July 2012 ‘On the Bar and Practice of Law’ (amended 3 August 2023) <<https://zakon.rada.gov.ua/laws/show/5076-17#Text>> accessed 21 March 2024.

18 Law of Ukraine no 2453-VI of 7 July 2010 ‘On the Judiciary and the Status of Judges’ (amended 15 April 2020) <<https://zakon.rada.gov.ua/laws/show/2453-17#Text>> accessed 21 March 2024.

In this context, it is appropriate to point out the Decision of the Constitutional Court of Ukraine No. 19-rp/2004 dated 1 December 2004, which stated that:

“The independence of judges is a constitutional principle of the organisation and functioning of courts; it is ensured, in particular, by a special procedure for bringing judges to disciplinary liability; it is not allowed to reduce the level of guarantees of independence and immunity of judges in the event of the adoption of new laws or amendments to operative laws (subparagraph 1.1, second indent of subparagraph 1.3 of paragraph 1 of the operative part)”.¹⁹

Indicative is the legal position of the ECHR in the case of Oleksandr Volkov v. Ukraine (App no21722/11), which stated that the limitation period should serve several purposes, in particular:

“The Court has held that limitation periods serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent any injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time”.²⁰

At the same time, although the ECtHR does not consider it appropriate to indicate how long the limitation period should be in national law, it has eventually recognised the approach that if the period of disciplinary liability in disciplinary cases concerning judges is uncertain, this poses a serious threat to the principle of legal certainty and therefore constitutes a violation of para. 1 Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms²¹.

The legislator attempted to provide legal certainty in para. 13 Art. 49 of the Law of Ukraine “On the High Council of Justice,” according to which the Disciplinary Chamber shall consider the disciplinary case within ninety days from the date of its opening. This period may be extended by the Disciplinary Chamber for no more than thirty days in exceptional cases if additional verification of the circumstances and/or materials of the disciplinary case is required.²²

19 Decision no 19-rp/2004 in Case no 1-1/2004 ‘On the constitutional petition of the Supreme Court of Ukraine on the official interpretation of the provisions of parts one and two of Article 126 of the Constitution of Ukraine and part two of Article 13 of the Law of Ukraine “On the Status of Judges” (the case on the independence of judges as a component of their status)’ (Constitutional Court of Ukraine, 1 December 2004) [2004] Official Gazette of Ukraine 49/3220.

20 *Oleksandr Volkov v Ukraine* (n 8) para 137.

21 *ibid*, para 139.

22 Law of Ukraine no 1798-VIII of 21 December 2016 ‘On the High Council of Justice’ (amended 30 December 2023) <<https://zakon.rada.gov.ua/laws/show/1798-19#Text>> accessed 21 March 2024.

In this regard, it should be noted that the Law of Ukraine, “On the High Council of Justice”, has been recently amended with provisions establishing the total duration of disciplinary proceedings without considering the period of suspended consideration of the disciplinary case into account.²³

At the same time, the law²⁴ does not stipulate the period of suspension of a disciplinary case, not counted in the total duration of disciplinary proceedings, but only the grounds upon which the Disciplinary Chamber may suspend the consideration of a disciplinary case, including the existence of other circumstances that make it impossible to consider such a case.

In view of the foregoing, the enshrining of a non-exhaustive list of circumstances in the law that may be recognised as grounds for suspension of disciplinary proceedings against a judge at the discretion of the competent body is questionable in terms of compliance with the principle of legal certainty in proceedings related to bringing a judge to disciplinary responsibility, as well as guarantees of judicial independence.

To sum up, we believe that the failure to take the period of disciplinary proceedings on imposition of a disciplinary sanction against a judge into account in the limitation period for imposing such a sanction and the establishment of a non-exhaustive list of circumstances that may be recognised as grounds for suspension of disciplinary proceedings against a judge at the discretion of the respective competent body raises the issue of compliance of such legislation with para. 1 of Art. 6 of the Convention in terms of ensuring such a component of the right to a fair trial as a reasonable time for consideration of the case. Moreover, such provisions of the national legislation of Ukraine can, with some probability, be characterised as discriminatory to disciplinary proceedings against judges as compared with the rules of disciplinary procedure for other legal professionals in the justice system in Ukraine, such as prosecutors and attorneys.

3 STANDARD OF PROOF IN DISCIPLINARY PROCEEDINGS AGAINST JUDGES

3.1. “Beyond a reasonable doubt” or “balance of probabilities”

For a long time, Ukrainian legislation has not specified which standard of proof should apply in disciplinary proceedings against judges. As stated in the Summary of the practice for considering disciplinary cases against judges by HCJ and its disciplinary bodies (based on the case records of 2017-2021), developed by a working group established in the HCJ

23 Law of Ukraine no 3378-IX of 6 September 2023 ‘On Amendments to the Law of Ukraine “On the Judiciary and Status of Judges” and Certain Laws of Ukraine on Changing the Status and Procedure for Forming the Service of Disciplinary Inspectors of the High Council of Justice’ [2023] Official Gazette of Ukraine 96/5695.

24 *ibid.*

Secretariat,²⁵ contrary to the procedure codes, no standards of proof were set in disciplinary proceedings against judges, which led to that disciplinary bodies applied different standards.

During the legal analysis of the practice of the HCJ disciplinary bodies, the working group identified cases when the “beyond reasonable doubt” standard, usually used in criminal proceedings, was applied when deciding on the disciplinary liability of judges. At the same time, the Disciplinary Body referred to the decision of the Grand Chamber of the Supreme Court dated 8 October 2019 (case No. 9901/855/18), which states:

*“When choosing the standard of proof to be used in disciplinary proceedings, and considering the public law nature of disciplinary liability, the standard of “beyond reasonable doubt” should be preferred to the standard of “balance of probabilities”. It means that there should be no reasonable doubt as to the authenticity of the fact (the person’s guilt). This does not mean that there are no doubts about its authenticity at all, but it does mean that all alternative explanations for the evidence are highly improbable. The “beyond a reasonable doubt” standard is based on a fundamental value of society: it is worse to convict an innocent person than to allow a guilty person to escape punishment; accordingly, a society that values the good name and freedom of everyone should not convict a person when there is reasonable doubt about his or her guilt”.*²⁶

At the same time, in other cases, the Disciplinary Chambers pointed out that:

*“The presumption of innocence guaranteed by para. 2 of Art. 6 of the Convention applies to a procedure which is inherently criminal and in which the court concludes that the person is guilty in the criminal law sense (ECtHR judgment dated 11 February 2003 in Ringvold v. Norway’, App no34964/97). Therefore, disciplinary proceedings, which, according to para. 1 of Art. 6 of the Convention, are within the scope of the concept of a dispute over rights and obligations of a civil nature (the standards of proof in disciplinary proceedings and criminal proceedings differ significantly), cannot fall under the said guarantee”.*²⁷

25 High Council of Justice, *Summary of the Practice of Considering Disciplinary Cases against Judges by the High Council of Justice and its Disciplinary Bodies (Based on the Materials of Cases from 2017-2021)* (HCJ 2023) <https://hcj.gov.ua/sites/default/files/field/uzagalnennya_dysc.prahyky_ost.pdf.crdownload> accessed 21 March 2024.

26 Case no 9901/855/18 (Grand Chamber of the Supreme Court of Ukraine, 8 October 2019) para 74 <<https://reyestr.court.gov.ua/Review/84900516>> accessed 21 March 2024.

27 Decision no 1956/3dp/15-20 (High Council of Justice, 24 June 2020) <<https://hcj.gov.ua/doc/doc/7103>> accessed 21 March 2024; Decision no 2932/0/15-20 (High Council of Justice, 22 October 2020) <<https://hcj.gov.ua/doc/doc/4154>> accessed 21 March 2024.

This legal position was formed in some resolutions of the Grand Chamber of the Supreme Court.²⁸

In recent legislative amendments, an attempt has been made to bring legal certainty to the debate on the legal nature of the standard of proof in disciplinary proceedings against judges by supplementing the Law of Ukraine “On the High Council of Justice” with provisions, under which:

“The grounds for bringing a judge to disciplinary liability shall be deemed established by the Disciplinary Chamber (High Council of Justice) upon consideration of the disciplinary case if the evidence provided and obtained within the disciplinary proceedings is clear and convincing to confirm the existence of such grounds. Clear and convincing evidence is the evidence that, from the viewpoint of an ordinary reasonable person, in its totality, allows one to conclude that there are or are not circumstances that constitute grounds for bringing a judge to disciplinary liability.”²⁹

Experts characterise this standard as similar to the one used in civil proceedings, namely the “balance of probabilities”.³⁰

In this regard, it should be noted that the concept of the standard of proof has been relatively unknown in Ukrainian law until recently. The experts note that, given that this issue has hardly been addressed in the scientific literature and the absence of any legislative provisions to the contrary, the general expert opinion was that in both civil and criminal cases, the judge must be equally convinced of the truthfulness of the parties' statements. The Civil Procedure Code of Ukraine reiterated the provisions of the Criminal Procedure Code of Ukraine, according to which proof cannot be based on assumptions.³¹

At the same time, the legal concept of “standards of proof” has been developed in both Anglo-American and continental legal systems. Thus, in the common law system, researchers distinguish (at least) two different standards of proof: one for civil cases and the other for criminal cases. The standard of proof in civil cases is called

28 Case no 800/547/17 (П/9901/87/18) (Grand Chamber of the Supreme Court of Ukraine, 25 April 2018) <<https://reyestr.court.gov.ua/Review/73837584>> accessed 21 March 2024; Case no 800/454/17 (П/9901/141/18) (Grand Chamber of the Supreme Court of Ukraine, 22 January 2019) <<https://reyestr.court.gov.ua/Review/79958086>> accessed 21 March 2024; Case no 11-39sap20 (Grand Chamber of the Supreme Court of Ukraine, 3 June 2021) <<https://reyestr.court.gov.ua/Review/97566010>> accessed 21 March 2024.

29 Law of Ukraine № 3378-IX (n 23) art 49, para 16.

30 High Council of Justice (n 25) 25.

31 Bohdan Karnaukh, 'Standards of Proof: A Comparative Overview from the Ukrainian Perspective' (2021) 4(2) Access to Justice in Eastern Europe 34, doi:10.33327/AJEE-18-4.2-a000058.

“preponderance of the evidence” (or “balance of probabilities” in English law).³² According to this standard, an assertion (of fact) shall be deemed proven if the factfinder, after considering all the evidence, concludes that the assertion is true, is greater than the probability that it is not. Therefore, this standard is also known as the 50+ standard, which means that to prove a statement, it is sufficient that its probability exceeds 50%.³³

One of the main differences between the common law and continental law systems is the standard of persuasion applied in either system in civil (non-criminal) cases. In most continental law jurisdictions, it is generally accepted that the standard of persuasion is the same for criminal and civil proceedings. Such a standard is sometimes interpreted as equivalent to the common law standard of proof beyond a reasonable doubt and is called “intime conviction”, which is suggested to mean “...an inner, personal, subjective conviction or belief in the truth of the facts in question”,³⁴ “...constituting a method to assess the evidence, entails a concept of conviction which comes close to certainty, leaving no reasonable doubt”.³⁵ At the same time, although it is recognised that absolute certainty is impossible to achieve, the required degree of belief is often expressed in terms of virtual certainty or at least a very high probability.³⁶ Thus, in general, the continental law system does not differentiate between civil and criminal law by the standard of proof, unlike the Anglo-American system of law.

In Ukrainian law, the approach to the standard of proof, as noted by scholars, is shifting timidly and haphazardly, but still towards the distinction between civil and criminal cases, following the model of common law countries, due, among other things, to the influence of the ECHR case law, which recognises that the standard applicable in criminal cases is “beyond reasonable doubt”, and the standard for civil cases should be lower.³⁷

Given the above, the legal analysis of para. 16 Art. 49 of the Law of Ukraine “On the High Council of Justice,” which enshrines the requirement to establish the grounds for bringing

32 Kyriakos N Kotsoglou, ‘How to Become an Epistemic Engineer: What Shifts When We Change the Standard of Proof?’ (2013) 12(3/4) *Law, Probability & Risk* 275, doi:10.1093/lpr/mgt002; Mark Schweizer, ‘The Civil Standard of Proof – What is it, Actually?’ (2013) 12 *Preprints of the Max Planck Institute for Research on Collective Goods* 1-2, doi:10.2139/ssrn.2311210; Richard W Wright, ‘Proving Facts: Belief versus Probability’ in Helmut Koziol and Barbara C Steininger (eds), *European Tort Law 2008* (Springer 2009) 80, doi:10.1007/978-3-211-92798-4_5.

33 Karnaukh (n 31) 28; Michael S Pardo, ‘The Paradoxes of Legal Proof: A Critical Guide’ (2019) 99(1) *Boston University Law Review* 245-6; Vern R Walker, ‘Preponderance, Probability and Warranted Factfinding’ (1996) 62 *Brooklyn Law Review* 1079-80; Wright (n 32) 87.

34 Richard W Wright, ‘Proving Causation: Probability Versus Belief’ in Richard Goldberg (ed), *Perspectives on Causation* (Hart Publishing 2011) 195.

35 Kai Ambos, ‘“Intime Conviction” in Germany: Conceptual Foundations, Historical Development and Current Meaning’ (2023) 4(1) *Quaestio Facti* 167, doi:10.33115/udg_bib/qf.i.22839.

36 Karnaukh (n 31) 28; Wright (n 34) 195.

37 Karnaukh (n 31) 35.

a judge to disciplinary responsibility by clear and convincing evidence, which, from the viewpoint of an ordinary reasonable person, in their totality, allow one to conclude that such circumstances exist or not, with a certain probability, gives grounds to refer this legal provision to the “intime conviction” standard, which, in our opinion, is more justified from the point of view of ensuring guarantees of judicial independence.

3.2. Applicability of criminal procedural or civil procedural guarantees under Article 6 of the Convention

As noted above, the standard of proof in disciplinary proceedings against judges is enshrined in Ukrainian legislation due to the established practice of the ECtHR, which has formed legal positions that disciplinary sanctions, unlike criminal sanctions, are usually intended to ensure that members of certain groups act by special rules governing their behaviour, i.e. apply only to a limited number of persons who have a special right. Therefore, they are not subject to one of the criteria applied by the ECtHR to determine cases where criminal charges are involved.³⁸ These criteria serve as a yardstick for determining the applicability of criminal procedure guarantees under Art. 6 of the Convention, i.e. the applicability of criminal liability, including *legal qualification of the offence under national law; the range of persons (usually an indefinite range of persons) to whom the rule may apply; the severity of the punishment that the person concerned is at risk of incurring*.

According to these criteria, it is obvious that disciplinary proceedings fail to meet them, especially in terms of the first two criteria: *legal qualification of the offence under national law and the range of persons, since the legal norms defining disciplinary liability* apply only to a limited range of persons with special rights. Concerning the third criterion – *the degree of severity of the punishment that the person concerned is at risk of incurring* – the ECtHR set out an exception to the general rule that disciplinary proceedings do not meet the criteria for the applicability of criminal liability in *Engel and Others v. the Netherlands* (App no. 5100/71),³⁹ in which the ECtHR recognised disciplinary proceedings against persons liable for military service as a criminal charge within the meaning of the Convention because the relevant offences were punishable by long-term imprisonment.

At the same time, in the case of *Philis v. Greece (no. 2)* (App no. 19773/92), the ECtHR stated that disciplinary proceedings concerning the right of a person to continue to carry out professional activities are classified as civil rights disputes within the meaning of para. 1 of Art. 6 of the Convention.⁴⁰ This approach is applied by the ECtHR to proceedings in various

38 *Weber v Switzerland* App no 11034/84 (ECtHR, 22 May 1990) para 33 <<https://hudoc.echr.coe.int/eng?i=001-57629>> accessed 21 March 2024.

39 *Engel and Others v the Netherlands* App nos 5100/71, 5101/71, 5102/71, 5354/72, 5370/72 (ECtHR, 8 June 1976) para 81 <<https://hudoc.echr.coe.int/tur?i=001-57479>> accessed 21 March 2024.

40 *Philis v Greece (no 2)* App no 19773/92 (ECtHR, 27 June 1997) para 45 <<https://hudoc.echr.coe.int/eng?i=001-58049>> accessed 21 March 2024.

professional disciplinary bodies, confirming its applicability to disciplinary proceedings against judges in *Baka v. Hungary* (App no20261/12).⁴¹ And in the case of *Ramos Nunes de Carvalho e Sá v. Portugal*, the ECtHR held a legal position that proceedings in a disciplinary body should provide not only procedural guarantees but also measures for proper fact-finding when the applicant may be subjected to severe punishments.⁴²

Regarding the classification of an act as a disciplinary or criminal offence at the national level, the ECHR has formed a legal position in the leading case *Engel and Others v. the Netherlands*, according to which the Convention allows states to establish a distinction between criminal and disciplinary law in the exercise of their functions as guardians of the public interest provided that such freedom does not entail results incompatible with the purpose and object of the Convention.⁴³

At the same time, the expert community expresses reservations that:

*“...there are no convincing reasons for sanctions, such as suspension or dismissal from the exercise of the judicial profession, to be found “non-criminal” in nature”.*⁴⁴

Thus, the ECHR's approach to disciplinary proceedings against judges has changed, departing from its previous practice and excluding disciplinary proceedings against judges from the scope of application of criminal procedure guarantees provided for in Article 6 of the Convention. Such an approach has not been unanimously accepted due to the lack of logical arguments that would convince that disciplinary sanctions aimed solely at regulating a particular profession and applied only to certain persons engaged in such a profession cannot be criminal.⁴⁵ Moreover, the expert community emphasises that such disciplinary proceedings should provide for the highest standards of procedural guarantees, as there is always a risk that they will be arbitrarily used or even abused to exert undue pressure on judges, which necessitates a review of the ECtHR's legal position, given the importance of protecting judicial independence in democratic societies.⁴⁶

41 *Baka v Hungary* App no 20261/12 (ECtHR, 23 June 2016) paras 104, 105 <<https://hudoc.echr.coe.int/fre?i=001-163113>> accessed 21 March 2024.

42 *Ramos Nunes de Carvalho E Sá v Portugal* App nos 55391/13, 57728/13, 74041/13 (ECtHR, 6 November 2018) paras 197, 198 <<https://hudoc.echr.coe.int/eng?i=001-187507>> accessed 21 March 2024.

43 *Engel and Others v the Netherlands* (n 39).

44 Lorena Bachmaier, 'Disciplinary Sanctions against Judges: Punitive but not Criminal for the Strasbourg Court: Pragmatism or another Twist towards Further Confusion in Applying the Engel Criteria?' (2022) 4 *Eu crim* 263, doi:10.30709/eu crim-2022-018.

45 Pedro Caeiro, 'The Influence of the EU on the 'Blurring' Between Administrative and Criminal Law' in Francesca Galli and Anne Weyembergh (eds), *Do Labels Still Matter? Blurring Boundaries Between Administrative and Criminal Law. The Influence of the EU* (European Studies, Editions de l'Université de Bruxelles 2014) 187.

46 Bachmaier (n 44) 264.

4 DISCIPLINARY PROCEEDINGS AGAINST JUDGES IN UKRAINE: RELEVANT STATISTICS

In the Annual Report on the Status of Judicial Independence in Ukraine for 2022,⁴⁷ the main factor that made it impossible to ensure guarantees of judicial independence regarding the special procedure for bringing judges to disciplinary responsibility, as defined by the relevant legislation, was the absence of the HCJ's competent composition and the ability of its disciplinary bodies to function for a long time in 2022.

The necessity of unblocking the disciplinary procedure against judges, optimising the grounds for disciplinary liability of judges, effectively addressing the problem of accumulation of disciplinary complaints against judges' misconduct, and developing and approving criteria for prioritising disciplinary cases were stated among the topical issues of the judiciary outlined in the same document to be addressed urgently.⁴⁸

The problem outlined above is caused by legislative changes, which suspended the HCJ's consideration of disciplinary complaints and appeals against decisions in disciplinary cases against judges from 5 August 2021 to 1 November 2023.

According to the information and analytical report on the HCJ's activities in 2023, from the date of resumption of distribution of disciplinary complaints from 1 November to 31 December 2023, 14,004 disciplinary complaints were distributed. These included complaints whose disciplinary proceedings were not completed by the previous HCJ and complaints received from 5 August 2021 to 31 December 2023. Of these, 2,125 of which were fully completed in 2023.⁴⁹ In January-February 2024, the HCJ considered another 1,921 complaints and received another 1,525 disciplinary complaints.⁵⁰

In this context, the expert community quite rightly notes that the above statistics demonstrate the need to address the issue of a significant number of pending disciplinary complaints against judges and confirm the difficulty of bringing judges to disciplinary responsibility, in particular in the context of regulatory provisions that allow for an expanded interpretation of its grounds and unlimited discretion in its

47 High Council of Justice, *On the State of Ensuring the Independence of Judges in Ukraine: Annual Report for 2022* (HCJ 2023) <<https://hcj.gov.ua/page/shchorichna-dopovid-pro-stan-zabezpechennya-nezalezhnosti-suddiv-v-ukrayini>> accessed 21 March 2024.

48 *ibid* 73.

49 High Council of Justice, *Information and Analytical Report on the Activities of the High Council of Justice in 2023* (HCJ 2024) <<https://hcj.gov.ua/statistics/informaciyno-analitychnyy-zvit-pro-diyalnist-vyshchoyi-rady-pravosuddya-u-2023-roci>> accessed 21 March 2024.

50 'Work of the High Council of Justice' (*High Council of Justice*, 2024) <<https://hcj.gov.ua>> accessed 21 March 2024.

application, which may lead to negative consequences of a significant administrative burden of the disciplinary body.⁵¹

In 2023, the Directorate of Justice and Criminal Justice of the Ministry of Justice of Ukraine proposed to give feedback on some issues of improving the legal regulation of certain provisions on the disciplinary liability of judges. The feedback was collected from stakeholders, including judges, representatives of the judiciary, representatives of other public authorities, lawyers, law firms and practising lawyers, private notaries, NGOs and professional associations, representatives of scientific and expert institutions whose professional activities and functional focus are related or tangential to the judiciary and the status of judges. According to the results of this survey, 58.82% of respondents upheld that there was a need to further improve and simplify the procedures for disciplinary proceedings against judges,⁵² which, in my opinion, deserves support and should set the prospects for further research.

5 CONCLUSIONS

One of the crucial factors of the European integration progress of the Ukrainian state is the achievement of its declared goal of building a sustainable justice system in Ukraine, the achievement of which is assessed through the prism of the effectiveness of the organisation and functioning of its various legal institutions, including the disciplinary responsibility of judges and prosecutors in Ukraine.

The current state of legislative regulation of disciplinary proceedings against judges is characterised by several defects that have caused the so-called crisis of the HCJ's disciplinary function, entailed by changes in the legislative regulation of its disciplinary function, which led to the temporary suspension of the exercise of this function for more than two years, and the accumulation of a significant number of pending disciplinary complaints.

One of the controversial legislative provisions that raise the issue of legislation compliance with para. 1 of Art. 6 of the Convention, which guarantees the right to a fair trial within a reasonable time, is the failure to take the period of disciplinary proceedings on imposition of a disciplinary sanction against a judge into account in the limitation period for the imposition of such a sanction, as well as the consolidation of a non-exhaustive list of circumstances that may be recognised as grounds for suspension of disciplinary proceedings against a judge at the discretion of the body conducting the disciplinary proceedings. Such legislative provisions are likely to be characterised as discriminatory to

51 Ministry of Justice of Ukraine, *Monitoring Report 2023* (Pravo-Justice, Directorate of Justice and Criminal Justice 2024) 46, 59 <<https://www.pravojustice.eu/ua/post/minyust-prezentuvav-monitoringovij-zvit-2023>> accessed 21 March 2024.

52 *ibid* 61.

disciplinary proceedings against judges in comparison with the rules of disciplinary procedure for other legal professionals in the Ukrainian justice system, such as prosecutors and lawyers. Given this, the operative legislation of Ukraine requires achieving a certain balance between ensuring the principle of inevitability of legal liability and the principles of legal certainty and reasonableness of the timeframe for consideration of such cases.

As for standards of proof in disciplinary proceedings against judges, Ukrainian legislation has not specified for a long period which standard should apply in such proceedings, which led to disciplinary bodies applying different standards. In some cases, the disciplinary bodies applied the standard of proof “beyond reasonable doubt”, usually used in criminal proceedings, while in others – denied the possibility of applying such a standard in these proceedings, given that the criminal law guarantees set out in Article 6 of the Convention cannot apply to disciplinary proceedings covered by the concept of a dispute over rights and obligations of a civil nature.

The current legal regulation of disciplinary proceedings against judges points to a shift in the approach to the standard of proof towards differentiating civil and criminal cases due, among other things, to the influence of the ECtHR case law, which recognises that the standard applicable in criminal cases is “beyond reasonable doubt”, while the standard for civil cases should be lower, in particular, “balance of probabilities” or “intime conviction”, which seems more justified to be applied in terms of ensuring guarantees of judicial independence.

The ECHR's approach to disciplinary proceedings against judges has changed, now excluding such proceedings from the scope of application of criminal procedural guarantees set out in Art. 6 of the Convention. This shift has been met with mixed reactions from the expert community. In this context, the requirement to ensure that disciplinary proceedings against judges are subject to the highest standards of procedural safeguards deserves support, given the importance of protecting judicial independence in democratic societies.

The current statistical data on disciplinary proceedings against judges in Ukraine shows the need to address the issue of a significant number of pending disciplinary complaints against judges and to address the defects in the legislation allowing for an expanded interpretation of the grounds for disciplinary liability of judges and unlimited discretion of disciplinary bodies in applying such legislation, which leads to the administrative burden.

Thus, the current state of the legislation on disciplinary proceedings against judges requires further improvement aimed at simplifying its procedures while guaranteeing reasonable time limits for consideration of such cases, as well as ensuring guarantees of judicial independence in the regulation of the standard of proof in these proceedings, which should set prospective areas for further research.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ДИСЦИПЛІНАРНЕ ПРОВАДЖЕННЯ ЩОДО СУДДІВ В УКРАЇНІ: АКТУАЛЬНІ ПИТАННЯ ЗАКОНОДАВСТВА

Марина Стефанчук*

АНОТАЦІЯ

Вступ. У роботі висвітлено деякі актуальні питання законодавства України у сфері дисциплінарного провадження щодо суддів. Особливу увагу приділено правовому регулюванню строків накладення дисциплінарних стягнень на суддів та стандартам доказування у дисциплінарному провадженні щодо суддів, а також передумовам і тенденціям, що зумовлюють їх формування.

Це дослідження було здійснено, щоб надати відповіді на такі запитання: як обрані підходи до реформування Вищої ради правосуддя в Україні призвели до кризи дисциплінарної функції цього органу суддівського врядування? Які були передумови для накопичення великої кількості нерозглянутих дисциплінарних скарг на суддів та перевантаження дисциплінарного органу? Які законодавчі положення стосовно дисциплінарного

провадження проти суддів потребують концептуального обґрунтування для того, щоб спростити процедуру? Чи встановлені законом строки притягнення суддів до дисциплінарної відповідальності не суперечать критеріям розумного строку розгляду справи? Чи існує єдність у законодавчих підходах до встановлення таких строків для прокурорів та адвокатів як представників суміжних правових інституцій у системі українського правосуддя? Як змінилися підходи до формування стандарту доказування у дисциплінарних провадженнях щодо суддів та які чинники на це вплинули? Які тенденції розвитку законодавства стосовно дисциплінарного провадження щодо суддів? Чи сприятимуть вони досягненню мети спрощення процедур такого провадження, якщо гарантуватимуть розумні строки розгляду цих справ та забезпечать незалежність суду?

Метою статті є концептуальне обґрунтування законодавчих підходів до дисциплінарного провадження щодо суддів в Україні, виявлення недоліків законодавства, що спричинили кризу дисциплінарної функції Вищої ради правосуддя, та внесення пропозицій щодо забезпечення високої ефективності діяльності цього правового інституту з урахуванням міжнародних стандартів і найкращих практик.

Методи. Для досягнення зазначених цілей було застосовано загальнонаукові та спеціальні наукові методи дослідження. Концепція даної роботи підкріплена фундаментальними літературними джерелами, зокрема науковими працями, законодавчими актами, міжнародними конвенціями та судовою практикою. Відповідно до характеру проблеми, порушеної в цій статті, було використано науково-дослідні роботи, інформацію, аналітичні звіти та узагальнення практики відповідних авторитетних організацій.

Методологічна база ґрунтується на таких методах, як аналіз, синтез та порівняння. Метод аналізу допоміг уважно вивчити відповідні законодавчі положення та судову практику, тоді як метод синтезу використовувався як частина порівняльних методів. Таким чином, для досягнення мети дослідження було проаналізовано українське законодавство щодо особливостей реформування Вищої ради правосуддя на даному етапі його розвитку та особливостей дисциплінарного провадження щодо суддів в Україні. Це дозволило окреслити підходи, що призводять до кризи дисциплінарної функції цього органу, виявити передумови накопичення великої кількості нерозглянутих дисциплінарних скарг на суддів, висвітлити положення законодавства у цій сфері, які потребують концептуального обґрунтування. Порівняльно-правовий аналіз дисциплінарних проваджень щодо суддів, прокурорів та адвокатів в Україні дозволив виявити відсутність єдиного концептуального підходу законодавця стосовно цього та наявність дискримінаційних ознак у дисциплінарних провадженнях щодо суддів. Правовий аналіз практики Європейського суду з прав людини, здійснений у межах дослідження, дозволяє зробити висновок про зміну правової позиції цього суду щодо застосування кримінально-процесуальних гарантій Конвенції до справ про дисциплінарну відповідальність суддів.

У дослідженні висвітлено доктринальні підходи до формування правового поняття «стандарту доказування», узагальнення яких дозволило згрупувати їх за ознаками, що притаманні англо-американській та континентальній системам права. Правовий аналіз цих підходів дозволив виявити тенденцію розвитку законодавства стосовно дисциплінарного провадження щодо суддів, суперечливість якої полягає в тому, що в

українському законодавстві відбувається зміщення підходу до стандарту доказування в бік розмежування цивільних і кримінальних справ, за зразком країн загального права, хоча загалом для континентальної системи права така диференціація не характерна.

Використання новітніх емпіричних даних сприяло належній аргументації висновків автора. Наприклад, у дослідженні були використані матеріали Узагальнення практики розгляду Вищою радою правосуддя та її дисциплінарними органами дисциплінарних справ щодо суддів, правовий аналіз яких показав, що в дисциплінарних провадженнях щодо суддів задіюються різні стандарти доказування та немає чіткого законодавчого врегулювання. У дослідженні використано статистичні дані Вищої ради правосуддя, наведені у звіті «Про стан забезпечення незалежності суддів в Україні» за 2022 рік, а також в інформаційно-аналітичному звіті про діяльність цього органу у 2023 та 2024 роках станом на час проведення цього дослідження, які ілюструють кількісні показники та динаміку розгляду дисциплінарних скарг на суддів, що дало змогу перевірити гіпотезу про те, чи сприяють законодавчі норми досягненню розумних строків розгляду таких справ та забезпеченню гарантій незалежності суддів.

Результати та висновки. Встановлено, що законодавче регулювання дисциплінарного провадження щодо суддів в Україні на сьогодні має низку недоліків, які спричинили так звану кризу дисциплінарного органу та накопичення залишених без розгляду дисциплінарних скарг на суддів. Було аргументовано, що чинне законодавство, у якому встановлено строки давності для накладення дисциплінарних стягнень на суддів, вимагає певного балансу для того, щоб забезпечити принцип невідворотності юридичної відповідальності, принципи правової визначеності та розумних строків. Встановлено, що сучасне правове регулювання дисциплінарного провадження щодо суддів вказує на зміну підходів до стандарту доказування в бік розмежування цивільних і кримінальних справ, що зумовлено, у тому числі, впливом прецедентної практики Європейського суду з прав людини. Наголошено на доцільності застосування стандарту «*in time conviction*» та найвищих стандартів процесуальних гарантій до суддів у дисциплінарному провадженні з погляду забезпечення незалежності суддів. Визначено перспективні тенденції розвитку законодавства щодо дисциплінарного провадження проти суддів у напрямі спрощення процедури з одночасним забезпеченням розумних строків розгляду таких справ, а також гарантій незалежності суддів на шляху до досягнення належного рівня доказування.

Ключові слова: дисциплінарне провадження щодо суддів, судочинство, дисциплінарні органи, доступ до правосуддя, правова визначеність, недоліки законодавства, строки накладення дисциплінарних стягнень на суддів, стандарт доказування.