

## The essence of the administrative and legal principles of the implementation of the judicial independence guarantees

**Gorinov Pavel.**

*Post-graduate student of the National Aviation University*



**Abstract.** *The article deals with the fact that the administrative and legal principles of implementing guarantees of the judiciary independence are attributed to material and procedural guarantees of independence and are related to the judiciary organization. The author notices the administrative and legal principles of the implementation of guarantees of the independence of judges can be conventionally subdivided into two large groups: external principles and internal ones. External administrative legal principles relate to the organizational conditions and means of ensuring the independence of judges outside the judicial system. Internal administrative legal principles concern internal organizational activity of courts and are connected with conditions and means of ensuring the independence of judges, first of all, in the course of their administration of justice, as well as the organization of courts activity.*

**Key words:** *administrative and legal principles of implementing guarantees of the judiciary, administration of justice, courts activity, judicial system, Constitution of Ukraine, Constitutional Court of Ukraine*

### Problem statement

Independence as a basis for the judicial power functioning is directly formalized in Article 1 of the Law of Ukraine "On the Judiciary and Status of Judges" of 02.06.2016 No. 1402-VIII [1], and guaranteeing the independence of judges is one of the conditions for the proper administration of justice. I.E. Marochkin noted that the independence of the judiciary constitutes the universal context of functioning both of this branch of power and its holders, provides a single regime for the proper administration of justice. The scholar stressed that the independence of judges is the constituent part and one of the possible means to achieve the independence of the court in the system of other bodies of state power, which is provided by a variety of guarantees [2, p. 94-96].

Article 129 of the Constitution of Ukraine stipulates that judges in the administration of justice are independent and obey only the law [3]. The legal position of the Constitutional Court of Ukraine being the only body of constitutional jurisdiction regarding the judiciary independence is provided in the declaration of the decision of July 12, 2011 No. 8-rp/2011 "In the case under the constitutional petition of 54 people's deputies of Ukraine regarding the compliance of certain provisions of the Law of Ukraine "On the Judiciary and Status of Judges" with the Constitution of Ukraine (constitutionality), which provides paragraph 2 of the operative part of the Decree of December 1, 2004 No. 19-rp/2004 in the case on the judiciary independence as part

of their status regarding prohibition of influencing the judges in whatever form and by whatever medium.

Such a prohibition should be understood as ensuring the judiciary independence, connected with their effectuation of justice, as well as the prohibition of any actions by judges, regardless of the form of their display by the state authorities, institutions and organizations, local self-government bodies, their public officials, individuals and legal entities in order to prevent the judges from fulfilling their professional duties or to incline them to an illegal decision, etc. It is noted that under the phrase "in any way" the legislator united all possible ways of influencing judges [4].

Addressing the international standards concerning the independence of judges, it is possible to refer to Opinion No.1 (2001) of the Advisory Council of European Judges for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges, the Basic Principles on the Independence of Justice, approved by resolutions 40/32 and 40/146 of the General Assembly of the United Nations of November 29 and December 13, 1985, 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 judges [5, p. 10-32].

Consequently, the independence of judges is always considered in conjunction with the independence of the court as an integral part of it and the principle of justice. This indicates the need to study the guarantees of the independence of judges, whose functioning creates conditions for the exercise of judicial power on the principles of independence.

**Review of recent research and publications.** The problem of guarantees of the independence of judges remains relevant, especially in view of the fundamental principle of the democratic organization of the state – the separation of powers into legislative, executive and judicial, which is formalized in Article 6 of the Constitution of Ukraine. The multidimensionality of the problem of judiciary independence guarantees determines the need to study the works on the legal status of courts and judges, the organization of the activity of courts, in particular, by O.O. Garkusha, V.V. Kryvenko, R.O. Kuybida, I.E. Marochkin, L.M. Moskvych, M.D. Savenko. The systemic problem of the independence of the judiciary power and judges was researched by such scholars as V.A. Croytor, T.V. Galaydenko, V.V. Gorodovenko. Of special interest are the works by A.P. Rachynskiy, A.V. Ohilko which study the problem of the judiciary independence. The system analysis at the level of monographs is presented in works by S.V. Prylutsky, Yu.O. Remeskova and others. One can distinguish the research by A.L. Borka, who analyzes the theoretical and practical problems of organizational and legal support for the activity of administrative courts [6]. However, the issue of the administrative and legal framework for implementing the guarantees of the judiciary independence

remains insufficiently analyzed in scientific works. The necessity to define the content of the administrative-and-legal aspect of ensuring the independence of judges is determined by the consolidating essence of the administrative-and-legal regulating influence on social relations, which ensures its efficiency and effectiveness.

**The purpose of the article** is to determine the essence of the administrative and legal framework for implementing the guarantees of the independence of judges.

**Statement of basic materials.** Conceptual provisions on the essence of administrative legal relations are formed within a framework of administrative law, which distinguishes them among other legal relationships. The key features of administrative legal relations, as it is commonly known, are: the recognition of one of the parties in the capacity of the authoritative powers holder, established by the administrative legal norm, with respect to other subjects; public character; occurrence on the initiative of any of the parties provided that there is no agreement with the other party; settlement of disputes, as a rule, in extrajudicial procedure [7, p. 172-173].

These provisions embody the recognition of the legal and administrative nature of administrative and legal influence. Although this concept has recently been to some extent subject to a critical caution concerning the non-recognition of the indisputable imperative nature of administrative legal regulation.

At the same time, the concept that allows the separation of administrative legal relations, which emphasizes their key feature – the public-legal nature and legal authority of the authority holder, established by the administrative-legal norm, is not causing a fundamental disclaimer. Legal power manifests itself in the regulatory nature of the respective activities of the entity whose powers regarding the adoption of legally binding decisions are established by the norm of administrative law, while non-execution or inappropriate execution of orders entails the application of legal liability.

This approach is the basis for the definition and characteristics of the administrative and legal framework for implementing the guarantees of the independence of judges.

As to the nature of the guarantees of the independence of judges, it is necessary to refer to the etymology and legal significance of the category of "guarantees."

In legal encyclopedias, this category is disclosed in a logical and semantic relation to the legality. Thus, the theory of law defines legal guarantees as the system of conditions and means stipulated by the laws of social development, which ensure legality and by so doing form the condition of social relations that promote the transition of a country to a country with the rule of law. There are two types of guarantees of legality – general (political-ideological, economic, etc.) and special (legal) [8, p. 177].

The above-mentioned doctrinal approach allows us to indicate the interconnection of independence guarantees with the trends of social development, political and legal processes taking place in the state. It implies dynamic character of the category of "guarantees of independence of judges", the content of which should correspond to the processes that are taking place in the society and the state.

Such a statement is confirmed by the changes taking place in the system of the judicial system, the principles of the organization of the judiciary, which finds its legislative consolidation at the level of the Basic Law, specialized laws (in particular, in the Law of Ukraine "On the Judiciary and Status of Judges" dated June 02, 2016 No. 1402-VIII). Another feature of the essence of the "guarantees of independence of judges" category should be highlighted – its designation of those conditions and means that ensure the independence of judges.

In the theory of law, the legal guarantees of the rights and freedoms of an individual and a citizen are the legal procedures of their implementation, the right to know your rights and duties, the right to legal services, without limitation to free of charge ones, regarding judicial protection, court decisions appeal, actions or inactivity of state power bodies, bodies of local self-government, officials and officers, etc. [9, p. 456-458].

Consequently, the procedural aspect of guaranteeing the independence of judges shall also be taken into account when defining the contents of the relevant guarantees.

Thus, pointing out the guarantees of independence of judges, it is expedient to proceed from the understanding of guarantees as a combination of conditions and means ensuring the independence of judges. Such conditions and means relate not only to independence in its constitutional and substantive terms, that is, as a prohibition of any interference with the activity of a judge. The guarantees of the independence of judges should also be indicated in their procedural aspect, which takes into account the procedural status of a judge, his procedural legal personality in the administration of justice in matters of the relevant jurisdiction.

Based on such a comprehensive understanding of the essence of the "guarantee of independence of judges" category, an approach should be developed to determine the administrative and legal framework for the implementation of such guarantees. At the same time, it can be predicted that such principles will apply to the conditions and means of ensuring the independence of judges in substantive and procedural aspects. The latter one is reproduced in the norm of Article 129 of the Constitution of Ukraine, which establishes the constitutional formula that "A judge, administering justice, is independent and acts under the rule of law." The specification of the mentioned constitutional formula is carried out in Articles 6 and 48 of the Law of Ukraine "On the Judiciary and Status of Judges" dated June 2, 2016, No. 1402-VIII.

Thus, pursuant to provisions of Article 6 of the above-mentioned Law, it is possible to specify the following elements of the independence of the courts: the prohibition of any unlawful influence; absence of judicial consideration of subjects' appeals that are not parties to the court proceedings, unless otherwise provided by law; the prohibition of interference with the administration of justice, the implementation of actions aimed at discrediting the court or affecting the impartiality of the court, appeals against non-enforcement of court decisions; abstention of state authorities, local self-government bodies from statements and actions that could undermine the judiciary independence; functioning of judicial self-government.

The guarantees of the independence of the judge are specified in Section 5, Article 48 of the Law of Ukraine "On the Judiciary and

Status of Judges" of June 02, 2016 No. 1402-VIII. These guarantees changed if at all, compared to those provided for in Section 4 of Article 47 of the Law of Ukraine "On the Judiciary and Status of Judges" dated July 07, 2010 No. 2453-VI, which has become null and void in part: 1) a special procedure for the appointment, election, prosecution and release; 2) the inviolability and immunity of the judge; 3) irremovability of judges; 4) the procedure for the administration of justice, stipulated by the procedural law, the secret of the court decision adoption; 5) prohibition of interference with the administration of justice; 6) responsibility for contempt of court or a judge; 7) a separate procedure for financing and organizational support for the activity of courts, established by law; 8) proper material and social security of the judge; 9) functioning of judicial self-government bodies; 10) the means of ensuring the personal safety of a judge, members of his family, property, as well as other means of their legal protection, stipulated by law; 11) the right of a judge to resign.

Systematization of guarantees of judiciary independence can be carried out, based on an approach that provides for the allocation of material and procedural guarantees. Most of the listed guarantees can be attributed to the group of material and relates to ensuring that

the judge realizes his legal status. As regards procedural safeguards, they cover the conditions and means of ensuring the proper exercise of justice by a judge in a particular jurisdiction.

Pointing out the administrative and legal principles of the implementation of the guarantees of the independence of judges, it is necessary to indicate, first of all, the organizational aspect of courts functioning and the realization by a judge of his legal status in material and procedural legal relations. Such an approach is implied in the conceptual provisions grounded by A. L. Bork, A. A. Stryzhak, M. P. Zaporozhets, R. V. Ihonin, S.G. Shtogun concerning the administrative-and-legal nature of administrative relations in the field of courts activity organization.

Alongside with that the concept of V.D. Bryntseva also stirs some interest, as she proposes to implement the model of public administration functions formulated by V. Ya. Malynovsky into the system of judicial control: 1) basic (political-administrative, social, humanitarian); 2) general (strategic planning, management decisions, organization of activities, motivation, control); 3) auxiliary (human resources management, budget, legal-judicial, public relations, clerical correspondence) [10, p. 156-157; 11, p. 210].

## Conclusion

Thus, the conducted analysis allows to specify the following. The administrative and legal principles of implementing guarantees of the judiciary independence are attributed to material and procedural guarantees of independence and are related to the judiciary organization. Most guarantees of independence of judges are material, although it is necessary to indicate their interrelation with procedural guarantees. The administrative and legal principles of the implementation of guarantees of the independence of judges can be conventionally subdivided into two large groups: external principles and internal ones.

External administrative legal principles relate to the organizational conditions and means of ensuring the independence of judges outside the judicial system. Internal administrative legal principles concern internal organizational activity of courts and are connected with conditions and means of ensuring the independence of judges, first of all, in the course of their administration of justice, as well as the organization of courts activity.

## References:

1. Pro sudoustrij i status suddiv: Zakon Ukraïni vid 02.06.2016 № 1402-VIII// Vidomosti Verhovnoi Radi Ukraïni, 2016, N 31 (29.07.2016), st. 545.
2. Sudova vlada: monografija / I.Є. Marochkin, L.M. Moskvich, I.V. Nazarov ta in..; za zag.red. I.Є. Marochkina. – H.: Pravo, 2015. – 795s.
3. Konstitucija Ukraïni vid 28.06.1996 № 254k/96-VR// Vidomosti Verhovnoi Radi Ukraïni, 1996, N 30 (23.07.96), st. 141

4. U spravi za konstitucijnim podannjam 54 narodnih deputativ Ukraïni shhodo vidpovidnosti Konstitucïi Ukraïni (konstitucijnosti) okremih polozhen' Zakonu Ukraïni «Pro sudoustrij i status suddiv»: Rishennja Konstitucijnogo Sudu Ukraïni vid 12.07.2011 № 8-rp/2011// Oficijnij visnik Ukraïni, 2011, N 60 (15.08.2011), st. 2417
5. Mizhnarodni standarti u sferi sudochinstva. – K.: Istina, 2010. – 488 s.
6. Borko A. L. Administrativno-pravove zabezpechennja funkcionuvannja sudovoï sistemi Ukraïni: avtoref. dis. ... d-ra jurid. nauk: 12.00.07 / Borko Andrij Leonidovich; Harkiv. nac. un-t vnutr. sprav. – Harkiv, 2014. – 40 s.
7. Administrativne pravo Ukraïni. Akademichnij kurs: pidruch.: u 2 t. / [golov. redkol.: Aver'janov V. B. [ta in.]. — K.: Jurid. dumka, 2007. T. 1. – 2007. – 592 s.
8. Tihomirova L.V., Tihomirov M.Ju. Juridicheskaja jenciklopedija. Izdanie 6-e, dopolnennoe i pererabotannoe/ Pod red. M.Ju. Tihomirova. – M.: Izd. Tihomirova M.Ju., 2013. – 1088 s.
9. Zagal'na teorija derzhavi i prava: [Pidruchnik dlja studentiv juridichnih vishhiv navchal'nih zakladiv] / M.V. Cvik, O.V. Petrishin, L.V. Avramenko ta in.; Za red. d-ra jurid.nauk, prof., akad. APrN Ukraïni M.V. Cvika, d-ra jurid.nauk, prof., akad. APrN Ukraïni O.V. Petrishina. – Harkiv: Pravo, 2009. – 584 s.
10. Brincev V. D. Standarti pravovoï derzhavi: vtilennja u nacional'nu model' organizacijnogo zabezpechennja sudovoï vladi: monogr. / V.D. Brincev. – H.: Pravo, 2010. – 464 s.
11. Malinovs'kij V. Ja. Derzhavne upravlinnja / V.Ja. Malinovs'kij. – K.: Atika, 2003. – 575 s.