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The Oath Concept: Basis for Dismissal from Office “for Breach of Oath” and System of Guarantees for Labor Rights Protection

The specified article studies the oath concepts, “breach of oath”, and the dismissal of a special subject — a judge — on this basis. It emphasizes the importance of ensuring that the norms governing the procedure and process of dismissal from office are effective, taking into account high standards imposed on judges (both in their appointment to the office and in the administration of justice), and should serve as a reliable safeguard against wrongful dismissals. Each stage of a disciplinary proceeding involving a judge must uphold labor guarantees of rights security that cannot be violated. The paper summarizes that dismissal from office should take place considering the provisions of the Labor Code of Ukraine, along with the norms of special legislation defining the status of a judge. In addition, there should be an effective system of guarantees for the protection of labor rights, which should operate in today’s conditions.

Keywords: oath, oath text, judge dismissal, breach of oath, guarantees of labor rights protection, disciplinary proceeding.

Introduction. Currently, due to political and social events in Ukraine, including a personnel shortage in the justice system and the imposition of martial law in the country, the number of cases of judges being dismissed from office has increased in our state. Therefore, it is crucial to examine the grounds for a judge’s dismissal, with specific attention to the “breach of the judge’s oath”, and to establish appropriate labor guarantees to prevent arbitrary dismissals based on this criterion.

Analysis of Essential Research and Publications. Many researchers in the field of labor law science, including scientists such as Prylypko S. M., Kravchenko N. M., Shersten S. Yu., Tsarenko V. I., Dovhan A. K., and others have already considered these issues. However, at present, the mentioned topic remains relevant and not fully explored.

Research Problem Formulation. The Article Purpose is to define the oath concept and to examine the basis for dismissing judges on the grounds of “breach of oath”, as well as to explore labor guarantees for protecting their rights in such cases of dismissal.

Main Content Presentation. In our country, there are professions and posts that require taking an oath before beginning the fulfillment of assigned duties. These posts are typically associated with the execution of state functions, and the post of a judge is among them.

The oath concept is understood as a rather complex category in legal science, interpreted differently by various scholars across different types of court proceedings. Some define it as an official solemn commitment taken on the occasion of assuming state functions or attaining a particular social status. However, there is no official codification of this concept in our legislation.

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Declaration of Competing Interest

The author declare that they have no conflict of interest.



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**ПОНЯТТЯ «ПРИСЯГА»,
ПІДСТАВА ЗВІЛЬНЕННЯ
З ПОСАДИ СУДДІ «ЗА
ПОРУШЕННЯ ПРИСЯГИ»,
ТА СИСТЕМА ГАРАНТІЙ
ЗАХИСТУ ТРУДОВИХ ПРАВ**

It should be noted that as early as 1743 in the city of Hlukhiv (Sumy Oblast, Ukraine), a draft code was signed, titled The Rights under Which the Little Russia People are Judged, which contained various legal norms, including those from civil, commercial, administrative, criminal, and procedural law. What is more, it included the text of the judge's oath, which read as follows: «I, [full name], solemnly pledge and swear before Almighty God, as witnessed by His Holy Gospel, that I am committed to maintaining a clear conscience and unwavering loyalty to His Imperial Majesty in the judicial duties and responsibilities bestowed upon me. I acknowledge this duty as both a divine calling and a legal obligation, bound by the authority of summons and responsibility and the weight of evidence presented by the parties involved. I pledge to judge without bias, adding and subtracting nothing, and to render verdicts without delay; to accept protests, confessions, and records without regard to high or low rank, wealth or poverty, local or foreign origin; neither out of prejudice, friendship, quarrel, malice, nor hatred, nor for promises or gifts, without expecting gifts or rewards later; and not to advise one party to the detriment of the other; not to fear anyone's revenge or threats, but to look to God alone for guidance, as the source of holy truth, while safeguarding my conscience. I vow never to miss a court appointment, except in cases of serious and unavoidable illness or other pressing needs. I am committed to steadfastly adhering to and fulfilling these obligations, and I solemnly swear to do so with righteousness. May God assist me in keeping this oath. As a final gesture of commitment, I kiss the words and cross of my Savior. Amen»¹. However, the mentioned draft code did not come into force; nevertheless, it had a significant impact on the development of Ukrainian legislation, as its norms contradicted Russian policies at that time.

Our legislature prescribes the judge's oath as follows: «I, (name and surname), taking office as a judge, solemnly swear to the Ukrainian people to administer justice in the name of Ukraine objectively, impartially, independently, fairly and competently, guided by the rule of law, obeying the law alone, to exercise the powers and perform the duties of a judge honestly and conscientiously, to adhere to the ethical principles and rules of conduct of a judge, to refrain from committing acts that defame the title of a judge or undermine the authority of justice»².

Analyzing the content of decisions of the European Court of Human Rights, one could argue that all legal constructs mentioned in the text of the judge's oath of Ukraine are interconnected and complement each other. As an example, the decision of the ECtHR in the case of *Minelli v. Switzerland* dated March 25, 1983 states: «During trial, the presiding judge, other judges, and lay judges must avoid forming opinions or making judgments about the case until they convene in the deliberation room to reach a verdict, thus ensuring impartiality and objectivity»³.

Under these circumstances, judges take an oath during a solemn ceremony in the presence of our state's leadership and officials of the judicial branch, including the President of Ukraine, the Chief Justice of the Supreme Court, the Chairperson of the Council of Judges of Ukraine, the Chairperson of the High Council of Justice, and the Chairperson of the High Qualification Commission of Judges of Ukraine, thereby assuming both legal obligations and moral responsibility for their fulfillment. Thus, oaths for judges in other countries are often concise because their essence is not only in the words themselves but also in a person taking the oath, the environment in which the judge works, and the system of corresponding moral values of society

У статті досліджуються поняття «присяга», «порушення присяги», та звільнення з посади за вказаною підставою спеціального суб'єкту – судді. Зазначено, що норми, які передбачають порядок та процедуру звільнення з посади повинні бути дієвими, з огляду на те, що до судді висуваються високі вимоги (як під час призначення на посаду, так і під час здійснення правосуддя), та повинні виступати надійним гарантом від незаконних звільнень. Кожна стадія дисциплінарного провадження щодо судді повинна передбачати трудові гарантії безпеки прав, які порушені бути не можуть. Підсумовано, що звільнення з посади повинно відбуватись з урахувань положень КЗпП України, враховуючи норми спеціального законодавства, яким визначено статус судді, та повинна бути дієва система гарантії захисту трудових прав, яка повинна діяти в умовах сьогодення.

Ключові слова: присяга, текст присяги, звільнення з посади судді, порушення присяги, гарантії захисту трудових прав, дисциплінарне провадження.

¹ Котляревский Г. С., Назаров Б. Л. Проблемы теории права : монография. 1973. С. 102-105.

² Про судоустрій і статус суддів : Закон України від 02.06.2016 N 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

³ Case of *Minelli v Switzerland* (App. no. 8660/79) ECHR, 25 March 1983. European Court of Human Rights: website. URL: <http://hudoc.echr.coe.int/rus/?i=001-57540>

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Das Konzept des „Eides“, der Grund für die Entlassung aus dem Amt eines Richters „wegen Verletzung des Eides“ und das System der Arbeitsrechtsschutzgarantie

Der Artikel untersucht die Begriffe „Eid“, „Eidbruch“ und die Entlassung aus dem Amt aus den angegebenen Gründen eines besonderen Subjekts – eines Richters. Es wird darauf hingewiesen, dass die Normen, die das Verfahren und das Verfahren zur Entlassung aus dem Amt regeln, angesichts der Tatsache, dass an den Richter hohe Anforderungen gestellt werden (sowohl bei der Ernennung zum Amt als auch bei der Rechtspflege), wirksam sein sollten und sollten fungieren als verlässlicher Garant für rechtswidrige Entlassungen. In jeder Phase des Disziplinarverfahrens gegen einen Richter müssen Arbeitsgarantien für die Sicherheit von Rechten gegeben sein, die nicht verletzt werden dürfen. Es wurde der Schluss gezogen, dass die Entlassung gemäß den Bestimmungen des Arbeitsgesetzbuchs der Ukraine und unter Berücksichtigung der Normen der Sondergesetze, die den Status eines Richters festlegen, erfolgen sollte und dass es ein wirksames System von Garantien für den Arbeitsschutz geben sollte Rechte, die unter den heutigen Bedingungen gelten sollten.

Schlüsselwörter: Eid, Eidtext, Entlassung aus dem Amt des Richters, Verletzung des Eides, Garantien zum Schutz der Arbeitsrechte, Disziplinarverfahren.

as a whole. For example, it can be pointed out that a judge of the European Court of Human Rights takes a brief oath as follows: “I swear that I will perform the duties of a judge honestly, independently, and impartially, and keep secret all discussions”⁴. A similar oath had been previously taken by a judge in our country in accordance with the Law of Ukraine On Status of Judges, which was repealed, specifically swearing: “I solemnly swear to perform the duties of a judge honestly and conscientiously, to administer justice, obeying only the law, to be objective and fair”⁵. However, by abolishing the aforementioned law and adopting a new one, our legislature believed that the loftier catchphrases in the oath, the better the judge would fulfill his/her official duties. Therefore, it includes not only the rule of law, moral principles, ethical standards of conduct, but also the authority of the entire judiciary, etc. In this regard, Maliarenko A. V. pointed out the tautology of the legislation, as the observance of “moral-ethical principles of a judge’s conduct” and “abstention from actions that disgrace the title of a judge and undermine the authority of the judiciary” essentially amount to the same thing⁶.

However, while incorporating numerous moral and ethical principles into the text of the oath, the legislator fails to mention the main ones: humanism and conscience. A judge must possess a well-developed conscience. This indicates the ability to exercise internal moral self-control both during hearing and when rendering a decision. The judge’s conscience should remain calm whether convicting or acquitting; the motives guiding him/her should be pure and morally impeccable. He/she must also be humane⁷.

Therefore, when swearing allegiance to the Ukrainian people, each judge undertakes a clearly defined set of obligations. Failure or improper performance of these duties (i.e., breach of oath) may result in certain sanctions being imposed (disciplinary action being taken against him/her). Among these obligations is the administration of justice, a function that cannot be delegated to others. As noted by S. V. Prylutskyi on this matter: “They should focus on the oath, representing clear legal categories that are not subject to extensive interpretation. The judge’s oath should become a public legal act between an individual and the state, the content of which should clearly outline which actions or behaviors are considered offenses. This approach is primarily motivated by the need to safeguard judges’ independence from unjustified and unfounded allegations of oath breach. Such circumstances may arise particularly during the formalization of the oath’s content, which is subject to interpretation. Under these conditions, any judge deemed “undesirable” or “disobedient” may be accused of being dishonest, unscrupulous, biased, and unfair”⁸.

Each judge can be dismissed from office only on the grounds listed in Part Six of Article 126 of our country’s Constitution. The relevant decision to dismiss a judge from his/her office is made by the Verkhovna Rada of Ukraine in the manner envisaged in the Law of Ukraine On the High Council of Justice⁹. The imposition of disciplinary responsibility on judges also falls within the competence of the Verkhovna Rada of Ukraine.



⁴ Регламент Європейського суду з прав людини від 01.11.2003 (Правило 3. Присяга або урочиста заява). URL: https://zakon.rada.gov.ua/laws/show/980_067#Text

⁵ Про статус суддів: Закон України від 15.12.1992 N 2862-XII. URL: <https://zakon.rada.gov.ua/-laws/show/2862-12#Text> Втратив чинність від 01.01.2012

⁶ Малиarenko A. B. Про присягу судді та відповідальність за її порушення. Вісник Верховного Суду України. 2012. №2. С. 27-28..

⁷ Прилуцький С.В. Присяга судді: стара категорія – новий правовий зміст. Право України. 2001. № 6. С. 105.

⁸ Там само.

⁹ Про судоустрій і статус суддів: Закон України від 02.06.2016 N 1402-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

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**LE CONCEPT DE « SERMENT »,
LE MOTIF DE RÉCUPÉRATION
DE LA POSITION DE JUGE
« POUR VIOLATION DU
SERMENT » ET LE SYSTÈME DE
GARANTIE DE PROTECTION
DES DROITS DU TRAVAIL**

L'article examine les concepts de « serment », de « violation du serment » et de révocation pour les motifs spécifiés d'un sujet spécial - un juge. Il est à noter que les normes qui prévoient la procédure et la procédure de révocation devraient être efficaces, compte tenu du fait que des exigences élevées sont imposées au juge (à la fois lors de la nomination au poste et pendant l'administration de la justice), et devraient agir comme un garant fiable des licenciements illégaux. Chaque étape de la procédure disciplinaire contre un juge doit offrir des garanties professionnelles de sécurité des droits qui ne peuvent être violés. Il a été conclu que le licenciement devrait avoir lieu conformément aux dispositions du Code du travail de l'Ukraine, en tenant compte des normes de la législation spéciale qui définit le statut d'un juge, et qu'il devrait y avoir un système efficace de garanties pour la protection du travail, droits, qui devraient fonctionner dans les conditions actuelles.

Mots clés : serment, texte du serment, révocation du poste de juge, violation du serment, garanties de protection des droits du travail, procédure disciplinaire.

The Labor Code of Ukraine stipulates that for breaches of labor discipline, an employee may be subject to only one of the following disciplinary measures: reprimand or dismissal. Laws, statutes, and provisions concerning discipline for specific employee categories may encompass additional penalties beyond mere reprimand or dismissal¹⁰.

In other words, the Labor Code of Ukraine includes a provision that points to other laws, which could set forth varied disciplinary consequences for different types of employees. For instance, the legislature has outlined the possibility of dismissing judges for breaching their oath in the Constitution of Ukraine.

Analyzing judicial practice and research, it has been highlighted that breaches of a judge's oath include the following: 1) committing acts that tarnish the reputation of a judge and may cast doubt on his/her objectivity, impartiality, and independence, as well as the honesty and integrity of judicial bodies; 2) unlawfully acquiring specific material goods as a judge or incurring expenses that surpass the income of the judge and his/her family members; 3) intentionally delaying the hearing of a case beyond the time limits established by law (intentionally delaying the hearing of a case by a judge); 4) violating the moral and ethical principles of a judge's conduct. The mentioned list is not exhaustive.

The dismissal of judges for breaching their oath had been set out in our country's Constitution, specifically in Clause 5, Part 5, Article 126, as it was in force until September 30, 2016¹¹.

However, experts from the Venice Commission, while assessing our domestic legislation concerning the bases for judges' oath breaches in Ukraine, repeatedly noted its lack of clarity and ambiguous definition. They pointed out that the purpose of this provision of the law should be to identify all actions that may constitute the basis for disciplining a judge, leading to corresponding sanctions. Accuracy and predictability of these bases are crucial for legal certainty, particularly in guaranteeing the independence of judges. This necessitates avoiding vagueness and overly extensive interpretations¹².

The European Court of Human Rights, in its decision regarding the case of Oleksandr Volkov V. UKRAINE, also highlighted the absence of clear principles and consistent practices in Ukraine for interpreting the concept of a "judge's breach of oath" as grounds for dismissal. The court emphasized the importance of procedural safeguards to prevent arbitrary interpretations of relevant substantive law when dismissing a judge on this basis. As stated by the court, "this situation made it impossible to foresee the consequences of applying relevant provisions of national law"¹³. Thus, any misconduct committed by a judge during his/her service can, at the discretion of the disciplinary body, be interpreted as sufficient grounds for a disciplinary proceeding based on an accusation of "oath breach". Such actions may lead to dismissal from his/her post. Considering that judges are also ordinary individuals with their own preferences and interests, they may occasionally exceed the moral and ethical principles outlined in their oath, resulting in immediate disciplinary consequences.

In light of the above, on September 30, 2016, our country's constitution was amended with regard to the bases for dismissing a judge. Specifically, clause 5 of the mentioned norm, which pertained to dismissal from office due to a breach of the judge's oath, was removed.

¹⁰ Кодекс законів про працю України: Закон від 10.12.1971 N 322- VIII. URL: <https://zakon.rada.gov.ua/laws/show/322-08#Text>

¹¹ Конституція України від 28.06.1996 р. № 254к/96-ВР. Редакція від 02.03.2014. URL: <https://zakon.rada.gov.ua>

¹² WydickR. Plain English for Lawyers. 5th ed. Durham: Carolina Academic Press, 2005. 139 p

¹³ Рішення ЄСПЛ у справі «Олександр Волков проти України» від 09.01.2013. URL: https://zakon.rada.gov.ua/laws/show/974_947#Text

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**ПОЯСНЕННЯ „Присяги”,
ПОДСТАВА ЗВОЛНЕННЯ
ЗЕ СТАНОВИЩА СІДІЗІА
„З ЗЛАМАННЯ ПРІЗІСІГІ”
ОРАЗ СИСТЕМ ГАРАНЦІЇ
ОХОРОНИ ПРАВ ПРАЦІ**

W artykule zbadano pojęcia „przysięga”, „złamanie przysięgi” oraz odwołanie ze stanowiska z określonej przyczyny w odniesieniu do podmiotu szczególnego – sędziego. Należy zauważyć, że normy określające tryb i tryb odwołania ze stanowiska powinny być skuteczne, mając na uwadze, że sędziemu stawiane są wysokie wymagania (zarówno w trakcie powoływania na urząd, jak i w trakcie sprawowania wymiaru sprawiedliwości) oraz powinny działać jako wiarygodny gwarant nielegalnych zwolnień. Każdy etap postępowania dyscyplinarnego wobec sędziego musi zapewniać pracownicze gwarancje bezpieczeństwa praw, których nie można naruszać. Stwierdzono, że zwolnienie powinno nastąpić zgodnie z przepisami Kodeksu pracy Ukrainy, z uwzględnieniem norm szczególnego ustawodawstwa określającego status sędziego, a także powinien istnieć skuteczny system gwarancji ochrony praw, które powinny funkcjonować w dzisiejszych warunkach.

Słowa kluczowe: przysięga, tekst przysięgi, zwolnienie ze stanowiska sędziego, złamanie przysięgi, gwarancje ochrony praw pracowniczych, postępowanie dyscyplinarne.

However, during the process of amending the Constitution, the legislature also took into account the following: requests or complaints related to the conduct of judges in local and appellate courts, which are submitted by the High Qualification Commission of Judges of Ukraine (HQCJ of Ukraine) to the High Council of Justice (HCJ), are reviewed by the Disciplinary Chambers of the High Council of Justice according to the procedures outlined in this Law. Verification of requests (complaints) for compliance with the requirements in effect on the day of submission is conducted individually by a member of the High Council of Justice.

The HCJ is obligated to adhere to the procedures outlined in Chapter 6 of Part II of this Law when reviewing the recommendation sent by the HCJ regarding the submission of a motion for the dismissal of a judge. This recommendation was made before the Law of Ukraine On the Judiciary and the Status of Judges, dated June 2, 2016, No. 1402-VIII, came into effect. By results of consideration, the HCJ may decide to dismiss the judge from his/her office under the provisions of clause 3, Part 6, Article 126 of the Constitution of Ukraine¹⁴.

That is, if a motion for the dismissal of a judge from office due to a breach of his/her oath had been accepted before the Law of Ukraine No. 1402-VIII came into force, the High Qualification Commission of Judges (HQCJ) may, as a result of its consideration, adopt a decision to dismiss the judge from office in accordance with clause 3, Part 6, Article 126 of the Constitution of Ukraine.

In other words, as stipulated in clause 14 of Section III Final and Transitional Provisions of Law No. 1798-VIII of Ukraine, the HCJ is authorized to consider motions from the HCJ for the dismissal of a judge if no decision has been taken by the President of Ukraine or the Verkhovna Rada of Ukraine prior to the entry into force of the amendments to the Constitution of Ukraine on the Judiciary (i.e., before September 30, 2016). This norm aims to ensure that the pertinent legal issues that emerged prior to the legislative changes in our country are handled in accordance with the new legal framework, particularly regarding the authority of the entities empowered to make such decisions¹⁵.

So, concerning a judge who has committed a significant disciplinary offense, coercive measures may be applied — disciplinary penalties — which will have certain negative consequences for the offender. However, it should be noted that the primary purpose of any applied coercive measures is to correct the individual's mindset rather than serving as punishment, which plays a derivative role. In spite of scientific studies on the legal consequences of judges committing disciplinary offenses and ensuring their labor rights, the issue of applying labor guarantees to judges in cases of dismissal for a “breach of oath” remains inadequately addressed and researched. This deficiency is due to the ambiguity of the legal definitions provided for these terms, their practical interpretation and correct application as a basis for disciplinary liability.

The concept of guarantees is explored by scholars in both labor and administrative law and remains controversial to this day. Thus, some scholars define legal guarantees as legal norms that encompass a mechanism designed to facilitate



¹⁴ Про Вищу Раду Правосуддя : Закон України від 21.12.2016 № 1798-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

¹⁵ Постанова Великої Палати Верховного суду від 04.04.2024 по справі № 990/194/23. URL: <https://reyestr.court.gov.ua/Review/118297145>

the implementation of laws. A qualitative characterization of legal guarantees involves assessing the entire legal system in terms of the comprehensiveness of coverage by legal instruments of all the most important interactions between state bodies and citizens, as well as among citizens themselves¹⁶. From the perspective of A. V. Mitskevych, legal guarantees are nothing more than established procedures for the activities of state bodies and institutions, public organizations, aimed at preventing and stopping encroachments on the rights and freedoms of citizens, restoring these rights, and holding accountable those who violate them¹⁷.

Depending on the stages of passing the state service as a judge, legal guarantees of official duties and employment can be united in three groups: 1) guarantees during appointment; 2) guarantees during a court proceeding; 3) guarantees upon termination of office or dismissal from office.

From the specific legal relations that arise directly between the judge and the state during the execution of state functions (conducting a court proceeding), guarantees aimed at protecting the judge's rights during dismissal from office on the basis of "breach of oath" are under research. Therefore, let us simultaneously clarify whether specific guarantees exist for the security of judges' rights when this basis arises, and whether these guarantees apply universally across all grounds for disciplining judges.

Norms outlining the procedure and process of dismissal from office must be effective, considering the high standards imposed on judges (both during appointment to the position and while administering justice), and they should serve as a reliable safeguard against wrongful dismissals.

In legal science, when discussing the protection of parties' rights upon the termination of their employment, certain peculiarities are emphasized. The first peculiarity is that in such cases, protection of rights applies to three blocks of rights: (a) ensuring lawful termination of employment relations with an employee; (b) ensuring the individual's right to work after termination; (c) ensuring the right to protection and restoration of violated rights. The second peculiarity is the dependence of the set of guarantees on the individual involved in the employment relations, whose rights must be safeguarded. The third peculiarity is the need to align national legislation with international and European acts relevant to the researched issue¹⁸.

Our Constitution guarantees all citizens protection from wrongful dismissal¹⁹. From this, it can be assumed that a judge who has taken an oath should have the right to lawful termination of state service, which is a constitutional guarantee for every citizen.

Clear incorporation into legislation of the concepts, types, and essence of disciplinary proceedings is a requirement of today.

Disciplinary liability cannot be applied in every individual case without the necessary legal procedures. These procedures aim to identify the offense and its perpetrators, ensure the gathering and verification of essential materials and evidence, and ultimately determine the legal and factual bases for liability (the presence of elements of an offense in a specific act) and the appropriate response to the offense²⁰.

In such cases, each disciplinary proceeding involving a judge follows a certain sequence, typically encompassing relevant participants, deadlines, evidence, and decisions.

A disciplinary proceeding involving a judge typically go through the following stages: 1) preliminary examination of the disciplinary complaint, reviewing materials to identify signs of the judge's disciplinary offense, making decisions on dismissing the complaint without consideration and returning it, refusing to initiate a disciplinary proceeding, or initiating a disciplinary proceeding; 2) preparation of the disciplinary case for hearing, hearing of the disciplinary case, and making a decision on imposing disciplinary liability on a judge or on refusing to impose disciplinary liability on a judge; 3) consideration of an appeal against the decision to impose disciplinary liability on a judge or against the decision to refuse to impose disciplinary liability on a judge²¹.

Each stage of a disciplinary proceeding against a judge must provide guarantees of rights security. These rights cannot be violated.

In these circumstances, a breach of oath by a judge, similar to any other disciplinary offense, may occur due to failure to comply with legal and ethical principles of justice administration, or a failure to fulfill judicial duties. Proof of such breaches is mandatory. The purpose of adhering to the procedure and order of dis-

¹⁶ Солдатов В. Д. Сутність та загальна характеристика юридичних гарантій законності в адміністративній діяльності ОВС України. *Форум права*. 2010. №4. С. 846–852. URL: http://www.nbuv.gov.ua/e-journals/FP/2010_4/10cvddou.pdf

¹⁷ Загальна теорія держави і права : підруч. для студ. юрид. спец. вищих навч. закл. / М. В. Цвік, В. Д. Ткаченко, Л. Л. Богачовата ін.; за ред. М. В. Цвіка, В. Д. Ткаченка, О. В. Петришина. Харків : Право, 2002. С. 79.

¹⁸ Джепа Ю. А. Юридичні гарантії права на працю при припиненні трудових правовідносин : автореф. дис. ... канд. юрид. наук: 12.00.05. Луганськ, 2009. С. 11.

¹⁹ Конституція України від 28.06.1996 р. № 254к/96-ВР. Редакція від 01.01.2020. URL: <https://zakon.rada.gov.ua>

²⁰ Картузова І. О., Осадчий А. Ю. Адміністративно-процедурне право : навч.-метод. посіб. Одеса : Юрид. л-ра, 2008. С. 123.

²¹ Про Вищу Ряду Правосуддя: Закон України від 21.12.2016 № 1798-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

dismissal of a judge from office for a “breach of oath” should be to genuinely protect the rights and interests of a person whose employment contract is terminated. This should take into account the specific nature of the judge’s position and the scope of his/her duties.

Conclusions. In view of the above, it is important to emphasize that when swearing allegiance to the Ukrainian people, each judge undertakes a clearly defined set of obligations. Failure or improper fulfillment of these duties may lead to the judge’s dismissal from office based on the “breach of oath” outlined in our country’s Constitution dated 30.09.2016 (if the disciplinary offense occurred before 30.09.2016), and currently, to dismissal on the grounds of “dismissal of a judge who has committed a significant disciplinary offense”. Furthermore, it is essential that dismissals from office adhere to the provisions outlined in the Ukrainian Labor Code, given the specific laws that define a judge’s status. Therefore, we suggest refining national legislation to establish an effective framework for safeguarding the labor rights of judges upon dismissal. This is particularly important given the staffing shortages within the judiciary system and the prolonged absence of the judicial disciplinary body in the country. The HCJ only resumed its activities in January 2023 after an 11-month hiatus, highlighting the pressing need to address the workload of individual judges (for example, in the first quarter of 2024, the Pechersk District Court of Kyiv received 15,087 cases and materials for 19 active judges; the Kyiv District Court of Odessa – 11,668 cases for 19 judges; the Dzerzhinsky District Court of Kharkiv – 6,037 cases for 17 judges; and the Kyiv District Court of Kharkiv – 4,520 cases for 12 judges), and considering the heavy workload and high business and moral responsibilities imposed on judges. It will provide an opportunity to safeguard an employee’s rights effectively throughout a disciplinary proceeding and even post-dismissal. This is especially vital as the restoration of violated rights in our context can often be a lengthy process.

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