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Disciplinary Action Against Judges According To Subclause "B" Of Clause 1 Of Article 106 Of The Law Of Ukraine On The Judiciary And The Status Of Judges

Abstract. Using specific examples (in particular from the practice of the Grand Chamber of the Supreme Court), the research analyzes and describes which offenses by a judge are classified under subclause "b" of clause 1 of Article 106 of the Law of Ukraine On the Judiciary and the Status of Judges (omission to include the reasons for accepting or rejecting the arguments of the parties on the merits of the dispute into the court decision).

Research papers have been reviewed and information regarding the development and current state of this issue has been provided.

Controversial issues of applying this ground for disciplinary action have been considered. Based on statistical data, the dynamics of its implementation have been traced.

The paper will be useful not only for disciplinary inspectors and judges but also for complainants since it will help understand which specific violations are prospective in terms of appealing a judge's behavior to the High Council of Justice under subclause "b" of clause 1 of Article 106 of the Law of Ukraine On the Judiciary and the Status of Judges.

Keywords: disciplinary action against judges, reasoning of court decisions, evaluation of court decisions.

On the basis of particular examples from the practice of the Grand Chamber of the Supreme Court and other authorities applying disciplinary practice, violations committed by judges have been analyzed and described. Emphasis have been made on the grounds classified under subclause "b" of clause 1 of Article 106 of the Law of Ukraine On the Judiciary and the Status of Judges (omission to include the reasons for accepting or rejecting the arguments of the parties on the merits of the dispute into the court decision).

Controversial issues regarding application of this ground for disciplinary action have been outlined. The dynamics of its implementation have been traced based on statistical data. Research papers have been reviewed and information regarding the development and current state of this issue have been provided.

Examples of actions by judges classified as failure to include the reasons for accepting or rejecting the arguments of the parties on the merits of the dispute into the court decision have been outlined.



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The author declare that they have no conflict of interest.



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**DISCIPLINARY ACTION
AGAINST JUDGES
ACCORDING TO SUBCLAUSE
"B" OF CLAUSE 1 OF ARTICLE
106 OF THE LAW OF UKRAINE
ON THE JUDICIARY AND THE
STATUS OF JUDGES**

Using specific examples (in particular from the practice of the Grand Chamber of the Supreme Court), the research analyzes and describes which offenses by a judge are classified under subclause "b" of clause 1 of Article 106 of the Law of Ukraine On the Judiciary and the Status of Judges (omission to include the reasons for accepting or rejecting the arguments of the parties on the merits of the dispute into the court decision).

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Keywords: disciplinary action against judges, reasoning of court decisions, evaluation of court decisions.

According to authors, different practices of the High Council of Justice and its chambers concerning application of subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges* have resulted from not only varying interpretations of the *merits of the dispute* term but also from various ideas among legal professionals as to correlation between subclause "b" of clause 1 and clause 4 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*. Because the failure to indicate reasons for accepting or rejecting the parties' arguments in the court decision is inherently a violation of the right to a fair trial, the responsibility for such violations is envisaged under clause 4 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*.

It is stated that in order to restore trust in the judicial authority, it is necessary to review and adjust the procedure for taking disciplinary measures against judges. The authors point out that in order to make qualitative changes to the institute of grounds for the disciplinary action against judges, it is not enough to simply compare texts of such grounds under the legislation of Ukraine and European countries. It's necessary to study and compare disciplinary practices in both Ukraine and countries with developed legal systems in Europe, focusing on what specific behaviors result in disciplinary action against judges in these jurisdictions. While performing such research, it is vital to keep in mind that disciplinary action against judges cannot be studied separately from other types of legal liability (criminal, administrative, civil).

Research Problem Formulation. There are legislatively defined grounds for taking disciplinary measures against judges, however, a number of issues arise that require clarification, detailing, and specific practical resolution. Such pressing issues include:

- criteria for the reasoning of a court decision, in our opinion, is a key issue;
- distinction between *evaluation of court decisions* and *evaluation of judges' actions while its adoption*;

- ambiguity between *verification of court decision content* and *verification of how judges perform their official duties*;

- the authority of the Higher Council of Justice regarding whether it has the right to analyze a court decision, and if it does not, an explanation is needed as to why its decisions often include extensive quotations from court decisions;

- the possibility of applying subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges* without evaluating court decision and determining where is a line between judicial evaluation and evaluation provided by the disciplinary authority;

- the obligation or right of the disciplinary authority to take into account court decisions (in particular, decisions of higher courts on the merits of a case) when adopting its own decisions;

- subjecting a judge to disciplinary liability for deviating from approaches prevailing in judicial practice;

- the right of the Higher Council of Justice to identify judicial errors in an ongoing proceeding;

- consideration of cases where the overturning of a court decision may indicate disciplinary breach in the judge's actions;

- the right of the Higher Council of Justice to assess the correct application of substantive and procedural law norms. Which decisions relate to *the merits of the*





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RESPONSABILITÉ
DISCIPLINAIRE DES JUGES
SELON L'ALINÉA « b » DU
PARAGRAPHE 1 DE L'ARTICLE
106 DE LA LOI UKRAINIENNE «
SUR LE POUVOIR JUDICIAIRE ET
LE STATUT DES JUGES »

dispute within the meaning of subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*;

application of subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges* to judges for the lack of reasoning in court decisions on the application of measures to ensure a criminal proceeding, measures to secure a claim, renewal of procedural time limits, etc.;

correlation between a ground for disciplinary action provided by subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*, and other grounds, for example, those listed in subclause "b" of clause 1 and clause 4 of the mentioned law (in which cases there is competition, and in which the offense needs to be classified according to the accumulation of disciplinary offenses).

The above issues are just a small list of those generating discussions, some lead to various disciplinary practices, ambiguous resolution of problematic issues, etc.

The main reason for qualifying differently similar violations by judges is a great number of evaluative concepts among the grounds for disciplinary action ¹.

The same conclusion has been reached by researchers who analyzed decisions made by the Higher Council of Justice and court decisions adopted between 2019–2020 according to the results of their appeal conducted by the Center for Democracy and Rule of Law Public Organization with the support of USAID within the framework of the *New Justice* program ².

Analysis of Essential Researches and Publications. A significant contribution to the study of disciplinary action against judges have been made by S. Rabinovych, T. Pashuk, N. Antoniuk, Zh. Simonyshyna, O. Verba-Sydr, V. Hryshchuk, L. Paliukh, V. Plaksa, A. Miroshnychenko, R. Bondarchuk, A. Boiko, R. Kuibida, M. Sereda, M. Khavroniuk, and others. Disciplinary liability problematics has been the subject of several monographs, including those by L. Vynohradova (*Legal liability of judges of the courts of general jurisdiction in Ukraine*, 2004), S. Podkopaiev (*Disciplinary action against judges: essence, mechanism of implementation*, 2005), A. Maliarenko (*The basis of the legal liability of judges of general jurisdiction of Ukraine*, 2013), V. Paryshkura (*Legal liability of judges in Ukraine and the European Union countries: comparative legal analysis*, 2017), R. Bondarchuk (*Administrative and legal regulation of the procedure for bringing a judge to disciplinary responsibility*, 2021). However, many issues concerning practical aspects of applying subclause "b" of clause 1 remain controversial.

The Research Paper Purpose is to clearly explain, based on specific examples (including from the practice of the Grand Chamber of the Supreme Court), which violations by a judge are classified under subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*.

Main Content Presentation. Between 2017 and 2021, according to the register of acts of the Higher Council of Justice, 186 disciplinary proceedings were initiated on the basis of subclause "b" of clause 1, of which 38 cases were opened solely on the basis of subclause "b" of clause 1 ³. As stated in Information and Analytical Reports on the Activities of the Higher Council of Justice, under subclause "b" of clause 1 (omission to include the reasons for accepting or rejecting the arguments of the parties on the merits of the

Sur la base d'exemples spécifiques (notamment tirés de la pratique de la Grande Chambre de la Cour suprême), il a été analysé et caractérisé quelles infractions d'un juge sont admissibles en vertu de l'alinéa « b » du paragraphe 1 de l'article 106 de la loi de l'Ukraine. « Sur le pouvoir judiciaire et le statut des juges » (aucune indication dans la décision de justice des motifs d'acceptation ou de rejet des arguments des parties sur le fond du litige).

Une revue des travaux scientifiques a été réalisée et des informations ont été fournies sur l'évolution et l'état actuel de ce problème.

Discussion des questions d'application de cette base de responsabilité disciplinaire. Sur la base d'informations statistiques, la dynamique de son application a été surveillée.

L'article sera utile non seulement aux inspecteurs disciplinaires et aux juges, mais également aux plaignants, car il aidera à comprendre exactement quelles violations sont prometteuses du point de vue de la contestation de la conduite d'un juge auprès du Conseil supérieur de la justice en vertu du sous-paragraphe « b » du paragraphe 1 de l'article 106 de la loi ukrainienne « Sur le système judiciaire et le statut des juges ». L'objectif de l'article est d'expliquer clairement, sur la base d'exemples précis (notamment issus de la pratique de la Grande Chambre de la Cour Suprême), quelles infractions d'un juge sont qualifiées au titre de l'alinéa « b » du paragraphe 1 de l'article 106 de la loi ukrainienne « sur le système judiciaire et le statut des juges ». Conclusions. Conformément à la décision du Conseil de sécurité nationale et de défense de l'Ukraine du 23 juin 2023 « Sur l'accélération de la réforme judiciaire et la lutte contre les manifestations de corruption dans le système judiciaire », afin de restaurer la confiance dans le système judiciaire, il est nécessaire de revoir et d'ajuster la procédure de mise en responsabilité disciplinaire des juges, prévoyant une définition claire de chacun des motifs de la responsabilité disciplinaire du juge et du type de sanction disciplinaire correspondant, ainsi que les conditions et modalités de son remboursement, avec application des meilleures pratiques mondiales.

Afin d'apporter des changements qualitatifs à l'institution des motifs de responsabilité disciplinaire des

¹ Сімошніна Ж. В., Рибалко В. О. Підстави дисциплінарної відповідальності суддів: практичний посібник для дисциплінарних інспекторів. Львів: Видавець Вікторія Кундельська, 2023. С. 9.

² Дисциплінарна практика Вищої ради правосуддя і судова практика в дисциплінарних справах стосовно суддів в 2019-2020 роках. Аналітичний звіт з рекомендаціями за результатами моніторингу. URL: <https://pravo.org.ua>

³ Акти Вищої ради правосуддя. URL: <https://hcj.gov.ua/acts>

juges, il ne suffit pas de simplement comparer les textes de ces motifs dans la législation de l'Ukraine et des pays européens. Il est nécessaire d'examiner leur pratique disciplinaire et de comparer les responsabilités disciplinaires des juges dans notre pays et celles des pays européens. Lorsqu'on mène une telle étude, il faut garder à l'esprit que la responsabilité disciplinaire des juges ne peut être étudiée séparément des autres types de responsabilité juridique (pénale, administrative, civile). Il est possible que pour les violations pour lesquelles un juge en Ukraine porte la responsabilité disciplinaire, dans certains pays européens, il porte une responsabilité pénale ou autre.

Mener une étude comparative aussi complète de la pratique disciplinaire de l'Ukraine et des pays de l'Union européenne constitue une tâche future importante du Conseil supérieur de la justice. À notre avis, proposer une nouvelle édition de Art. 106 de la loi ukrainienne « Sur le pouvoir judiciaire et le statut des juges » ne sera possible qu'après l'étude et la généralisation de la pratique disciplinaire nationale et de nouvelles recherches comparatives avec la pratique des pays de l'Union européenne. Nous soulignons qu'il n'est pas nécessaire de comparer les textes de lois, mais plutôt les pratiques disciplinaires.

À notre avis, les différentes pratiques du Conseil supérieur de la justice et de ses chambres concernant l'application de l'alinéa « b » du paragraphe 1 sont dues non seulement à des interprétations différentes de la notion de « l'essence du litige », mais également à des différences d'idées d'avocats concernant la

dispute into the court decision ⁴⁾ 13 judges ⁵⁾ were held accountable in 2021, and 25 judges in 2020 ⁶⁾.

The requirement for reasoned court decisions is common to all Ukrainian procedural codes. In compliance with Part 4 of Article 370 of the Criminal Procedure Code of Ukraine, a decision is reasonable when it sets forth appropriate and sufficient motives and grounds for passing thereof ⁷⁾.

In accordance with clause 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, courts are obliged to support their decisions (decision dated July 18, 2006, in the case of Pronina v. Ukraine) ⁸⁾. Statement of reasons for adopting a decision not only facilitates understanding and contributes to recognition by the parties of the essence of the decision, but primarily serves as a safeguard against lawlessness.

The grounds for making a decision should be coherent, clear, unambiguous, and non-contradictory. In stating the reasons for a decision, it is required to respond to the parties' arguments. This allows the parties to make sure that their arguments have been examined and therefore taken into account by a judge. The statement of grounds for making a decision does not necessarily have to be long, as it is essential to find a proper balance between conciseness and correct understanding of the decision drawn ⁹⁾.

Judges' obligation to provide grounds for their decisions does not mean that they need to respond to each defense argument in support of every ground for the defense. The extent of this obligation may vary depending on the nature of the decision ¹⁰⁾.

Substantiation of a decision should confirm that the judge has indeed examined all the main issues addressed to him/her (ECHR decision in the cases of Boldea v. Romania, Helle v. Finland).

A decision can be considered duly motivated when a credible system of interconnected arguments of a factual, logical, and legal nature is provided to support the accuracy of the decision made, demonstrating correctness of conclusions drawn. A decision, essentially correct, can raise doubts about its validity if it is presented in such a way that it does not give a clear idea of its grounds and reasons. Reasoning connects legal conclusions with established facts ¹¹⁾.

In view of the above, the following circumstances should be established in a disciplinary proceeding:

– whether the court decision includes responses to the main arguments of the parties;

⁴⁾ Там само.

⁵⁾ Інформаційно-аналітичний звіт про діяльність Вищої ради правосуддя у 2021 році. URL: https://hcj.gov.ua/sites/default/files/field/file/zvit_2021.pdf

⁶⁾ Інформаційно-аналітичний звіт про діяльність Вищої ради правосуддя у 2020 році. URL: https://hcj.gov.ua/sites/default/files/field/file/informaciyno-analitychnyy_zvit_za_2020_rik.pdf

⁷⁾ Кримінальний процесуальний кодекс України. URL: <https://zakon.rada.gov.ua/laws/show/4651-1>

⁸⁾ Рішення від 18 липня 2006 року у справі «Проніна проти України» (Заява № 63566/00). URL: https://zakon.rada.gov.ua/laws/show/974_096#Text

⁹⁾ Висновок № 11 (2008) Консультативної ради європейських суддів до уваги Комітету Міністрів Ради Європи щодо якості судових рішень. URL: <https://court.gov.ua>.

¹⁰⁾ Там само.

¹¹⁾ Толочко А. Н. Роль мотивировки в обеспечении законности, обоснованности и справедливости актов социалистического правосудия, выносимых судом первой инстанции по уголовным делам: дис. ... канд. юрид. наук : 12.00.09. Харьков, 1985. С. 36.





– whether the court decision proves that the parties have been heard by the court;

– whether the court decision is the result of an unbiased examination by the court of comments, arguments, and evidence presented by the parties;

– whether the court decision substantiates the court's actions in terms of choosing arguments and accepting/rejecting evidence of the parties.

According to the practice of taking disciplinary measures against judges, we can single out the following examples of judges' actions which were classified as omission to include the reasons for accepting or rejecting the arguments of the parties on the merits of the dispute into the court decision¹²:

in the minutes for customs rules violation, there was a reference to inoperative legislation, but the judge ignored these arguments, limiting himself to a general phrase about a person's disagreement with the minutes; he failed to address the argument that actions charged against the individual were not an offense under Part 1 of Article 483 of the Customs Code of Ukraine, since the essence of an offense outlined in the minutes did not coincide with crime elements (Decision of the Higher Council of Justice No. 2060/0/15-18 dated June 26, 2018);

the investigating judge had seized 3003 (three thousand and three) land plots, which were leased by an agricultural company, but did not explain what circumstances of a criminal proceeding necessitated such a measure; did not justify how land plots could be used as evidence in the criminal proceeding (Decision of the Higher Council of Justice No. 1975/0/15-20 dated June 25, 2020);

the judge took a formalistic approach to the case: without summoning the respondent, within a month he issued an unreasoned default judgment, thereby depriving the man of parental rights over his youngest daughter. Moreover, the judge resolved the issue of alimony payment in fixed amounts, even though the case lacked any evidence of the man's financial status: the only document present was a copy of his passport (Decision of the Higher Council of Justice No. 363/0/15-21 dated February 16, 2021);

the judge seized the property and established prohibition on its use, but did not provide any reasons as to what conditioned prohibition on use (Decision of the Third Disciplinary Chamber No. 3108/3DP/15-18 dated October 10, 2018);

the judge unjustifiably applied measures to secure the claim, groundlessly suspending the effect of several city council decisions and the order of the city mayor, which were aimed at reorganization of state hospital, conducting a competition to fill the vacant position of senior doctor (Decision of the Higher Council of Justice No. 63/0/15-19 dated January 10, 2019);

in court decisions on imposition of arrest and refusal to remove it, it is not specified how property of private law legal entity can be evidence in a criminal proceeding against state enterprise officials (Third Disciplinary Chamber Decision No. 605/3дп/15-19 dated February 27, 2019);

in the reasoning part of the decision on imposing an arrest, circumstances and evidence are not indicated, only the motion content is partially outlined and legislation is quoted (Decision of the Second Disciplinary Chamber No. 726/2dp/15-20 dated March 11, 2020);

while choosing a preventive measure, the investigating judge did not respond to the suspect's notification concerning the use of violence against him; he did not clarify circumstances of violating a person's right to freely choose a defense counselor; the choice of a preventive measure in favour of detention is justified solely by the severity of punishment; the preventive measure was applied without taking into account that the record of the vehicle search is inadmissible evidence, as the search was conducted without

relation entre l'alinéa « b » du paragraphe 1 et le paragraphe 4 de l'article 106 de la loi ukrainienne « sur le pouvoir judiciaire et le statut des juges ». Après tout, le fait de ne pas indiquer dans la décision de justice les raisons pour lesquelles les arguments des parties ont été acceptés ou rejetés constitue, par essence, également une violation du droit à un procès équitable, dont la responsabilité pour la violation est prévue au paragraphe 4 de l'article 106 de la loi « Sur le pouvoir judiciaire et le statut des juges ». Comment les motifs de responsabilité disciplinaire prévus à l'alinéa « b » du paragraphe 1 de ladite loi sont-ils liés à d'autres motifs, par exemple avec l'alinéa « b » du paragraphe 1, le paragraphe 4 de l'article 106 de la loi « Sur le système judiciaire Système et statut des juges » (dans quels cas y a-t-il compétition et dans lesquels les personnes commises doivent être classées selon un ensemble de fautes disciplinaires). Les problèmes évoqués dans l'article et d'autres questions discutables soulevées ne prétendent pas être complets et constituent une perspective pour de futures recherches scientifiques.

Mots-clés : responsabilité disciplinaire des juges, motivation des décisions de justice, évaluation des décisions de justice.

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**DISZIPLINARMASSNAHMEN
GEGEN RICHTER GEMÄSS
ARTIKEL 106 ABSATZ 1
UNTERABSCHNITT „B“ DES
GESETZES DER UKRAINE ÜBER
DIE JUSTIZ UND DEN STATUS
VON RICHTERN**

Anhand konkreter Beispiele aus der Praxis der Großen Kammer des Obersten Gerichtshofs und anderer Gremien, die Disziplinarpraxis anwenden, wurden die von Richtern begangenen Straftaten analysiert und charakterisiert, wobei besonderes Augenmerk auf die unter Buchstabe b fallenden Gründe gelegt wurde Absatz 1 von Artikel 106 des Gesetzes der Ukraine „Über das Justizsystem und den Status der Richter“ (keine Angabe in der Gerichtsentscheidung über die Gründe für die Annahme oder Ablehnung der Argumente der Parteien in Bezug auf den Inhalt des Streits). Besprochene Fragen bezüglich der Anwendung dieser Grundlage der disziplinarischen Verantwortung. Auf der Grundlage statistischer Informationen wurde die Dynamik seiner Anwendung

¹² Закон України «Про судоустрій і статус суддів». Відомості Верховної Ради. 2016. № 31. URL: <https://zakon.rada.gov.ua/laws/show/1402-19#Text>

überwacht. Es wurde eine Durchsicht wissenschaftlicher Arbeiten durchgeführt und über die Entwicklung und den aktuellen Stand dieser Problematik informiert.

Es wurden Beispiele für richterliches Vorgehen herausgegriffen, bei denen in der Gerichtsentscheidung keine Gründe für die Annahme oder Ablehnung der Argumente der Parteien zum Inhalt des Streits angegeben wurden.

Den Autoren zufolge ist die unterschiedliche Praxis des Obersten Justizrates und seiner Kammern hinsichtlich der Anwendung von Absatz 1 Buchstabe b der Kunst. 106 des Gesetzes „Über das Justizsystem und die Stellung der Richter“ ist nicht nur auf unterschiedliche Verständnisse des Begriffs „wesentlicher Streitigkeit“ zurückzuführen, sondern auch auf unterschiedliche Vorstellungen von Rechtsanwälten über das Verhältnis zwischen Unterabsatz „b“ von Absatz 1 und Absatz 4 von Artikel 106 des Gesetzes der Ukraine „Über das Justizsystem und den Status der Richter“. Schließlich stellt die Nichtangabe der Gründe für die Annahme oder Ablehnung der Argumente der Parteien in der Gerichtsentscheidung im Wesentlichen auch eine Verletzung des Rechts auf ein faires Verfahren dar, für dessen Verletzung in Absatz 4 die Verantwortung vorgesehen ist des Artikels 106 des Gesetzes „Über die Justiz und die Stellung der Richter“. Es wird darauf hingewiesen, dass es zur Wiederherstellung des Vertrauens in die Justiz erforderlich ist, das Verfahren zur disziplinarischen Verantwortung von Richtern zu

obtaining the court's permission (Decision of the Third Disciplinary Chamber No. 3919/3dp/15-17 dated December 6, 2017);

court judgment does not specify reasons for rejecting the party's arguments that it could not have been aware of the inauthenticity of documents provided for the car customs clearance (Decision of the Third Disciplinary Chamber No. 2511/3dp/15-17 dated August 23, 2017);

stating in the court's ruling that a person denies his/her guilt in driving while intoxicated and providing no legal evaluation of the fact that an administrative offense record was drawn up in connection with refusal by a person to undergo a breathalyzer test (Decision of the Third Disciplinary Chamber No. 1400/3dp/15-18 dated May 16, 2018);

application of a preventive measure in the form of detention without stating reasons for rejecting the defense arguments (Decision of the First Disciplinary Chamber No. 1204/1dp/15-18 dated April 20, 2018);

the decision does not specify which actions are illegal, what damages the plaintiff has suffered, and does not establish a causal link between actions of the party and the damage caused (Decision of the First Disciplinary Chamber No. 675/1dp/15-20 dated March 4, 2020);

the judge issued a court decision to leave the claim without consideration because that the plaintiff was delaying consideration of another civil case (Decision of the Third Disciplinary Chamber No. 2054/3dp/15-20 dated July 8, 2020);

in a civil case on debt recovery, the judge secured the claim by suspending sale of the seized property, whereas the procedural legislation stipulates the possibility of applying such a type of claim security only to a claim related to recognizing property ownership rights and to lifting its seizure (Decision of the First Disciplinary Chamber dated September 18, 2020 No. 2662/1dp/15-20);

it is unclear whether the prejudicial ruling has come into legal force; the circumstances established by it were not included (decision of the First Disciplinary Chamber No. 99/1dp/15-20 dated January 17, 2020);

the judge unjustifiably moved away from the existing judicial practice, forbidding defendants from using their authority to conduct or continue the qualification assessment of judges until a certain decision came into legal force (Decision of the First Disciplinary Chamber No. 2437 /1dp/15-19 dated September 13, 2019).

Let us consider debatable issues raised at the beginning of the article, namely decisions related to *the merits of the dispute* within the meaning of subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges* and the problem of applying subclause "b" of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges* in respect of judges for lack of reasoned judicial decisions on the application of measures to ensure a criminal proceeding, measures to secure the claim, renewal of procedural time limits, etc.

At the legislative level, there is no definition of the *dispute merits* concept. According to the explanatory Dictionary of the Ukrainian language, *merits* is the essential, the main thing in something¹³. Obviously, conclusions concerning the

¹³ Словник української мови. URL: <https://slovnyk.ua/index.php?swrd=%D1%81%D1%83%D1%82%D1%8C>



application of legal norms in resolving key issues differ from those conclusions expressed as *obiter dictum*, i.e., which do not outline the merits of the dispute and serve as additional argumentation¹⁴. Therefore, the question arises about bringing disciplinary proceedings against a judge by the High Council of Justice for the decisions he made, which did not concern the resolution of the court dispute on the merits, but concern, for example, procedural time limits renewal.

According to the Decision of the Second Disciplinary Chamber No. 3621/2dp/15-17 dated November 8, 2017, the party that appealed with a cassation complaint has the right to understand the reason for time limits renewal. Disciplinary authority notes that such a decision is not subject to appeal, so it is important to reflect those circumstances that are taken into account. Subclause "b" of clause 1 cannot be interpreted in a narrow sense as making a decision only on the merits of the case. The merits of the dispute concept is used in a wider sense, namely as any issue on the basis of which the judge adopts a decision. It can also relate to consideration of procedural time limits renewal. However, the High Council of Justice, by Decision No. 364/0/15-18 dated February 6, 2018, reversed the decision of the Second Disciplinary Chamber No. 3621/2dp/15-17 dated November 8, 2017, stating that such a conclusion was erroneous and that, in a narrow sense, the merits of the dispute should be understood as the merits of the claim¹⁵.

We do not share the aforementioned position of the High Council of Justice. Let's stress that such decisions were not rare. The High Council of Justice drew similar conclusions regarding consideration of issues on taking measures to secure the claim, asserting that these issues do not concern resolution of the dispute on the merits. In view of this, the lack of reasoning in relevant court decisions does not constitute a disciplinary offense¹⁶.

In our opinion, the High Council of Justice practice was more justified when actions of the judge were classified under subclause "b" of clause 1 and under decisions adopted that did not concern the resolution of the court dispute on the merits¹⁷. From our perspective, the importance of such issues as the renewal of procedural time limits, the implementation of measures to secure a claim, the application of measures to ensure criminal proceedings, and the granting of permission for investigative (search) actions is so high that providing a statement of reasons for court decisions on these matters must be obligatory, as it serves as a guarantee against arbitrariness. It facilitates the understanding of the decision and its acceptance by the parties. The parties have the right to follow the logic of reasoning based on which a judge made a decision (clauses 3, 35, 36 of Conclusion No. 11 (2008) of the Consultative Council of European Judges). The requirement to present the main reasons for the drawn decision is provided by the procedural legislation. The European Court of Human Rights has also unequivocally stated that national courts are obliged to motivate the renewal of time limits for appeal and to ensure that the grounds for such renewal justify the interference with

überarbeiten und zu korrigieren. Die Autoren weisen darauf hin, dass es zur qualitativen Änderung der Institution der Gründe für die disziplinarische Verantwortung von Richtern nicht ausreicht, einfach nur die Texte dieser Gründe gemäß der Gesetzgebung der Ukraine und europäischer Länder zu vergleichen. Es ist notwendig, ihre Disziplinarpraxis zu untersuchen und zu vergleichen, für welche Richter in der Ukraine und für welche in Ländern mit einem entwickelten Rechtssystem in Europa die Disziplinarverantwortung liegt. Bei der Durchführung einer solchen Studie ist zu berücksichtigen, dass die disziplinarische Verantwortung von Richtern nicht getrennt von anderen Arten der rechtlichen Verantwortung (strafrechtlich, verwaltungsrechtlich, zivilrechtlich) untersucht werden kann.

Schlüsselwörter: Disziplinarverantwortung von Richtern, Motivation von Gerichtsentscheidungen, Bewertung von Gerichtssentscheidungen.

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POSTĘPOWANIE
DYSCYPLINARNE PRZECIWKO
SĘDZIOM ZGODNIE Z
PODPUNKTEM „B” KLAUZULI 1
ART. 106 UKRAIŃSKIEJ USTAWY
O SĄDOWNICTWIE I STATUSIE
SĘDZIÓW

Na podstawie konkretnych przykładów praktyki Wielkiej Izby Sądu Najwyższego oraz innych organów stosujących praktykę dyscyplinarną przeanalizowano i scharakteryzowano przestępstwa popełniane przez sędziów, szczególną uwagę zwrócono na przesłanki kwalifikujące się z lit. ust. 1 art. 106 ustawy Ukrainy „O systemie sądownictwa i statusie sędziów” (brak wskazania w orzeczeniu sądu powodów przyjęcia lub odrzucenia argumentów stron co do istoty sporu). Omówiono zagadnienia dotyczące stosowania tej podstawy odpowiedzialności dyscyplinarnej. Na podstawie informacji statystycznych monitorowano dynamikę jego stosowania. Dokonano przeglądu prac naukowych i przedstawiono informacje dotyczące rozwoju i aktualnego stanu tego problemu.

Wskazano przykłady działań sędziów, które zakwalifikowano jako niewskazanie w orzeczeniu

¹⁴ Ухвала КГС у складі ВС від 19.01.2022 по справі № 910/22858/1. URL: <https://reyestr.court.gov.ua/Review/102854560>

¹⁵ Рішення від 08.11.2017 № 3621/2дп/15-17. URL: <https://hcj.gov.ua/doc/doc/26406>, скасовано рішенням ВПІ від 06.02.2018 № 364/0/15-18. URL: <https://hcj.gov.ua/doc/doc/25546>

¹⁶ Рішення ВПІ від 24.07.2018 № 2414/0/15-18. URL: <https://hcj.gov.ua/doc/doc/25148>, залишено без змін постановою ВП ВС від 24.01.2019 по справі № 11-987can1. URL: <https://reyestr.court.gov.ua/Review/79439747>

¹⁷ Рішення ВПІ від 25.06.2020 № 1976/0/15-20. URL: <https://hcj.gov.ua/doc/doc/7227>; рішення ВПІ від 29.04.2021 № 980/0/15-2. URL: <https://hcj.gov.ua/doc/doc/7225>; рішення від 25.05.2018 № 1537/1дп/15-18. URL: <https://hcj.gov.ua/doc/doc/219>; рішення від 18.09.2020 № 2662/1дп/15-20. URL: <https://hcj.gov.ua/doc/doc/4214>, рішення від 03.03.2021 № 558/2дп/15-21. URL: <https://hcj.gov.ua/doc/doc/1489>, рішення від 12.05.2021 № 999/3дп/15-21. URL: <https://hcj.gov.ua/doc/doc/900>

powodów przyjęcia lub odrzucenia argumentacji stron co do istoty sporu.

Zdaniem autorów odmienna praktyka Najwyższej Rady Sądownictwa i jej izb w zakresie stosowania lit. b) ust. 1 art. 106 ustawy „O systemie sądownictwa i statusie sędziów” wynika nie tylko z odmiennego rozumienia pojęcia „istoty sporu”, ale także z odmiennych wyobrażeń prawników co do związku pomiędzy lit. „b” art. paragraf 1 i ustęp 4 artykułu 106 Ustawy Ukrainy „O systemie sądownictwa i statusie sędziów”. Przecież brak wskazania w orzeczeniu sądu powodów przyjęcia lub odrzucenia argumentacji stron jest w swej istocie także naruszeniem prawa do rzetelnego procesu sądowego, za którego naruszenie odpowiedzialność przewidziana jest w paragrafie 4. art. 106 ustawy „O sądownictwie i statusie sędziów”. Zaznacza się, że w celu przywrócenia zaufania do wymiaru sprawiedliwości konieczna jest rewizja i skorygowanie procedury pociągnięcia sędziów do odpowiedzialności dyscyplinarnej. Autorzy stwierdzają, że aby dokonać jakościowych zmian w instytucie podstaw odpowiedzialności dyscyplinarnej sędziów, nie wystarczy po prostu porównać teksty takich podstaw w ustawodawstwie Ukrainy i krajów europejskich. Konieczne jest zbadanie i porównanie ich praktyki dyscyplinarnej, za którą sędziowie ponoszą odpowiedzialność dyscyplinarną na Ukrainie, a za którą w krajach o rozwiniętym systemie prawnym w Europie. Prowadząc takie badanie, należy pamiętać, że odpowiedzialności dyscyplinarnej sędziów nie można badać w oderwaniu od innych

the *res judicata* principle (clause 47 of the Decision *Ustimenko vs. Ukraine*, clause 41 of the Decision *Ponomarov vs Ukraine*).

The issue of renewing procedural time limits concerns correct interpretation of such an evaluative concept as *valid reasons* for its delay, and the issue of taking measures to ensure a criminal proceeding: such evaluative concepts as *reasonableness of suspicion* and the presence of *risks* of negative consequences for a criminal proceeding. Under these circumstances, it is important to state the reasons for making relevant decisions. Where there are evaluative concepts, the requirement for motivated court decisions is greater than in cases where the court applies formally defined norms of law. We deem that regardless of the type of procedural decision, judges need to consider requirements that procedural law imposes on them. Therefore, actions of judges who did not lay out reasons for adoption in their decisions should be classified under subclause “b” of clause 1 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*.

According to the legal position of the Grand Chamber of the Supreme Court set out in the ruling dated 09.09.2021 in case No. 11-21sap21, the grounds for disciplinary action against a judge, as defined in subclause “b”, are applicable to court decisions regardless of which law governs their adoption, and whether the concepts of *party* and *merits of the dispute* exist in the relevant process under that law¹⁸. A similar legal position is set out in the ruling of the Grand Chamber of the Supreme Court dated 23.09.2021 in case No. 11-90sap21. It states that the procedural requirement for a reasoned decision on the merits is a manifestation of the very nature of the decision as an act containing answers to the legal questions that have arisen in a case and determining actions that must be taken in connection with the established factual circumstances. Since every decision is taken in the light of certain factual circumstances, all procedural activities that take place before a decision is drawn ultimately consist of collecting, examining and evaluating the factual data (evidence) with the help of which certain decisions are made and which in fact substantiate them. At the heart of each court decision should be factual circumstances established in a case, indicating the presence of grounds with which the law associates the possibility of making this decision.

Conclusions. In line with the Decision of the National Security and Defense Council of Ukraine *On Judicial Reform Acceleration and Overcoming Corruption Manifestations in the Justice System*¹⁹ dated June 23, 2023, to restore trust in the judiciary, it is vital to review and adjust the procedure for taking disciplinary measures against judges. This includes providing clear definitions for each ground for disciplinary action, corresponding disciplinary punishments, as well as conditions and terms for their termination while applying the best global practices²⁰.

In order to introduce substantial changes to the grounds for disciplinary action against judges, it's not enough to simply compare the legislative texts of such grounds in Ukraine and European countries. It is necessary to study their disciplinary practices and compare the reasons for which judges are held

¹⁸ Постанова ВП ВС від 09.09.2021 по справі № 11-21sap21. URL: <https://reyestr.court.gov.ua/Review/101473367>

¹⁹ Рішення Ради національної безпеки і оборони України від 23 червня 2023 року «Про прискорення судової реформи та подолання проявів корупції у системі правосуддя». URL: <https://zakon.rada.gov.ua>

²⁰ Там само.



disciplinarily liable in our country versus in European countries. Conducting such research, it's crucial to remember that disciplinary action against judges cannot be examined separately from other types of legal liability (criminal, administrative, civil). It is quite possible that something that would be considered a disciplinary offense in Ukraine might be serious enough to be treated as a criminal offense in some European countries.

Conducting such a comprehensive comparative study of the disciplinary practice in Ukraine and European Union countries is an important future task for the High Council of Justice. In our view, a new version of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges* can be proposed only after studying and summarizing national disciplinary practice and further comparative research with the practice of European Union countries. We emphasize that what needs to be compared is not the texts of laws, but the actual disciplinary practice.

From our perspective, different practices of the High Council of Justice and its chambers regarding application of subclause "b" of clause 1 have resulted not only from differing interpretations of *the merits of the dispute* concept, but also from different understanding by lawyers of correlation between subclause "b" of clause 1 and clause 4 of Article 106 of the Law of Ukraine *On the Judiciary and the Status of Judges*. After all, not stating in the court decision reasons for accepting or rejecting the parties' arguments essentially also constitutes a violation of the right to a fair trial, the liability for which is envisaged in clause 4 of Article 106 of the Law *On the Judiciary and the Status of Judges*. How does the ground for disciplinary action stipulated in subclause "b" of clause 1 of the stated law relate to other grounds such as those in clause 4 of Article 106 of the Law *On the Judiciary and the Status of Judges* (in which cases there is competition, and in which the committed needs to be classified by the totality of disciplinary offenses)? The problems mentioned in the article, along with other controversial issues raised, do not claim to be exhaustive and highlight the need for further scientific research.

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rodzajów odpowiedzialności
prawnej (karnej, administracyjnej,
cywilnej).

Słowa **kluczowe:**
odpowiedzialność dyscyplinarna
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sądów, ocena orzeczeń sądów.

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