

Judicial Internal Independence Through the Lens of Legal Responsibility: Evidence from Ukrainian Administrative Courts



ACADEMIC ARTICLES

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ABSTRACT

The article provides a comprehensive analysis of the theoretical, legal, and practical aspects of the relationship between the judges' legal responsibility and ensuring their internal independence. Based on institutional and comparative legal analysis, the authors investigated the mechanisms of disciplinary and criminal liability of judges of administrative courts. The article also considers the system of indicators for violation of the internal independence of judges, which is based on international standards and national practice. The authors analyzed the practice of using these indicators in the activities of the Public Integrity Council and the High Qualification Commission of Judges of Ukraine. Based on the analysis of the experience of EU member states, the authors demonstrate that effective mechanisms of responsibility of judges are an important guarantee of their absolute independence. The article demonstrates the need to further refine the evaluative criteria framework, and verification methodology to ensure an effective balance between judicial independence and accountability to society within the context of European integration.

KEYWORDS:

legal responsibility;
internal independence;
administrative courts;
integrity indicators; and
judicial immunity

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1. INTRODUCTION

The independence of the judiciary, especially its internal aspect, is a cornerstone of democratic governance and the rule of law. In recent years, balancing judicial independence and legal responsibility has become increasingly complex, particularly in countries undergoing judicial reform and democratic transition. This complexity is especially evident in administrative courts, where judges regularly decide disputes between citizens and state authorities, making their internal independence crucial for maintaining public trust and democratic principles. The concept of internal judicial independence encompasses the judges' ability to make decisions without pressure or influence from the judiciary itself, including senior judges, court presidents, or judicial administrative bodies.

Ukraine's experience in reforming administrative courts offers a unique case study for examining the relationship between judicial responsibility mechanisms and internal independence. This reform process has highlighted the complex interrelationship between different forms of judicial responsibility – disciplinary, administrative, civil, and criminal – and their impact on the internal independence of judges.

The relevance of this research stems from Ukraine's ongoing judicial reforms and implementation of new integrity mechanisms through the Public Integrity Council and High Qualification Commission, with a focus on developing indicators of judicial independence violations based on international standards and national context.

The article analyzes the relationship between judges' legal responsibility and internal independence, exploring indicators of independence violations.

2. METHODOLOGY

The research methodology combines various scientific methods and approaches to examine the relationship between the legal responsibility of judges and their internal independence. The basis is institutional analysis, which allows the authors to explore the interaction between legal responsibility mechanisms and the independence of the judiciary in administrative courts. The study also employs a comparative legal analysis of the practices of European Union Member States, which provides context for Ukraine's reform efforts.

This research analyzes legislation, court rulings, policy documents, and the use of integrity indicators in Ukrainian administrative courts. The study pays particular attention to case law to assess in order to assess the practical application of legal responsibility mechanisms and their impact on the internal independence of judges

Empirical data analysis constitutes a key component, enabling a thorough evaluation of the effectiveness of different liability mechanisms. Methodological rigor is ensured by comparing legal documents with practical implementation examples and theoretical provisions with empirical observations.

3. LEGAL RESPONSIBILITY OF JUDGES: THEORETICAL ASPECT

In legal doctrine, two fundamental approaches have emerged to define the concept of "legal responsibility" and its essential characteristics. The first approach interprets

legal responsibility through the prism of the theory of state (state-legal) coercion. The second one considers this phenomenon in the context of the theory of legal relations.¹ It is important to emphasize that each of the above aspects is characterized by specific features in objective and subjective law, respectively.

According to M. Juzaszek, legal responsibility is a normatively determined category that arises automatically when a person's action meets the criteria established by legal norms (count-as rules), regardless of any subsequent court decision or anyone's awareness of this fact.² Within this framework specific types and forms of legal responsibility are formed through legal norms that regulate the corresponding groups of homogeneous social relations within specific sub-branches and branches of law.³

Legal responsibility means that, following legal norms, authorized entities can respond to actions of individuals or legal entities (collective entities) that are manifested in non-compliance with legislative prohibitions, failure to fulfill established duties, violation of civil law obligations, or causing harm or losses. Such responses may involve sanctions of a personal, property-related, or organizational nature.⁴

Legal professionals, including judges, are responsible for the quality of their work, and the question of their liability is a subject of debate. Contrary to a commonly held misconception, legal professionals – including judges – are not exempt from legal liability for the quality of their work. Such responses may involve sanctions of a personal, property-related, or organizational nature. Judges can be held responsible for their mistakes like any other legal professional. This liability can take the form of disciplinary, civil, administrative, or even criminal liability.⁵

In a law-governed state, civil society monitors the judiciary and upholds high standards for its members. This requirement stems from the fact that those who administer justice are empowered to make decisions that significantly impact the protection of fundamental human rights, the functioning of state authorities, and the public's confidence in the judiciary. At the same time, judges are not tasked with pleasing public opinion, even if they are affected by changes in public sentiment.⁶

The legal responsibility of a judge is characterized by its complexity and interdisciplinary nature, including regulatory and protective norms of public law. Although different types of such responsibilities have distinct characteristics, common elements and

1 Igor Bezklubyi, Svitlana Bobrovnyk, and Ivan Hrytsenko, *Responsibility in Law: Philosophy, History, Theory*, ed I. Bezklubyi (Kyiv, 2014), 121 (In Ukrainian).

2 Maciej Juzaszek, "Philosophical analysis of two types of legal responsibility," *Archiwum Filozofii Prawa i Filozofii Społecznej | Journal of the Polish Section of IVR*, no. 2 (2021): 17, <https://doi.org/10.36280/AFPiFS.2021.2.16>.

3 Lidiia Kalenichenko, "Legal Responsibility: Concept, Features," *State and Regions. Series: Law* 1, no. 1 (2020): 12–17, 13, <https://doi.org/10.32840/1813-338X-2020.1-1.2> (In Ukrainian).

4 Dmytro Lukianets, "Typology of Legal Responsibility," *Yuridichna Ukraina* 3, (2004): 4–10, 3. (In Ukrainian).

5 Valeriia Rytova and Alina Khomenko, "Legal Foundations of Judicial Responsibility in Post-Soviet Countries," *Legal Scientific Electronic Journal* no. 10 (2021): 616–619, 617 (In Ukrainian).

6 Lucy Kinski, Diane Fromage, and Michael Blauberger, "Responsible judges or judging responsibilities? EU Court of Justice, Bundesverfassungsgericht and EU economic governance," *Journal of European Public Policy* 31, no 4 (2023): 1051–1074, 1061, <https://doi.org/10.1080/13501763.2023.2297807> (2023).

systemic relationships unite them.⁷ Judges are obligated to uphold the law and ensure justice, remaining independent and honest so that their decisions inspire trust and a sense of justice in society,⁸ which implies the absence of any external or internal pressure that could influence their decision-making.

Different legal systems have different mechanisms for holding judges responsible. In common law countries, judges enjoy greater independence and protection but can be held responsible through impeachment for serious offenses. Federal judges in the United States can be removed from office through impeachment by the House of Representatives and conviction by the Senate. However, this procedure is rarely used (for example, in the case of Associate Justice Samuel Chase of the Supreme Court of the United States, who was impeached but not convicted).⁹

The legal responsibility of judges serves both as accountability for their decisions and as a deterrent against external influence, as their actions undergo review and scrutiny. Rather than being merely a negative motivator, it represents judges' professional duty and responsibility to society. This responsibility forms part of judges' professional status and works alongside other independence guarantees like professional training, legal culture, and selection mechanisms. The combination of institutional safeguards and internal values ensures high judicial standards in a democratic society.

Regarding the legal responsibility of judges, scholars they traditionally distinguish disciplinary, liability. At the same time, given the subject of our research, it should be noted that judges bear disciplinary and criminal liability for violating the principle of internal independence.

O. Honcharenko notes that special attention is paid to the issue of the effectiveness of the mechanism for ensuring the responsibility of judges for violations of the law since this has a positive impact on public trust in the judiciary and ensures the proper functioning of the judicial system.¹⁰

A. Shevchenko notes that although disciplinary measures (or the possibility of their application) are not the only way to combat violations of discipline by judges, they are still an effective method.¹¹

P. Lutsyuk is convinced that the quality of justice is related to the level of professionalism and responsibility of judges, adherence to ethical norms, and fulfillment of professional requirements.¹²

Under Article 106 of the Law of Ukraine "On the Judiciary and the Status of Judges," the grounds for disciplinary responsibility of a judge for violation of the principle of

7 Olena Ovcharenko, "The institution of judicial liability in the judicial law system," in *Current issues of judicial law: Proceedings of the international scientific and practical conference dedicated to the memory of Professor I. Ye. Marochkin*, ed. L. M. Moskyv (Kharkiv: Pravo, 2015): 76–79, 78 (In Ukrainian).

8 Henry Indraguna and Faisal Santiago, "Independence of the Single Judge in Making Justice Decisions," *Utopía y Praxis Latinoamericana* 26 no. 1. (2021), 59, <https://www.redalyc.org/articulo.oa?id=27966119006>.

9 "Judge", Encyclopedia Britannica, 2025, <https://www.britannica.com/topic/judge-law>.

10 Oleksandr Honcharenko, "Actual issues of bringing judges to responsibility," *Bulletin of the High Council of Justice* 1, no. 5 (2011): 77–95, at 80. (in Ukrainian).

11 Anna Shevchenko, *Disciplinary responsibility of judges in Ukraine* (Kyiv: Dakor, 2014), 137 (In Ukrainian).

12 Pavlo Lutsyuk, Peculiarities of judicial responsibility. (n.d.), 78, <http://surl.li/gtkrj>.

internal independence are: failure to report interference in the administration of justice within the established period, interference in the administration of justice by other judges, abuse of the status of a judge to obtain undue benefit, as well as committing a corruption offense.¹³ Additionally, violating the norms of judicial ethics established by the Code of Judicial Ethics is grounds for subjecting a judge to disciplinary action.

4. INDICATOR OF VIOLATION OF INTERNAL INDEPENDENCE OF JUDGES OF ADMINISTRATIVE COURTS: ASSESSMENT SYSTEM AND APPLICATION PRACTICE

Having examined the theoretical foundations of the judges' legal responsibility as a guarantee of their internal independence, the authors draw attention to the practical mechanisms for detecting violations of this principle. A key role in this is played by a system of indicators that allows identifying cases of violation of internal independence and creates grounds for holding judges responsible. Such indicators are a kind of "bridge" between abstract legal norms on responsibility and specific manifestations of improper behavior of judges that violate their internal independence. Detecting these violations through a system of indicators becomes a legal basis for applying legal responsibility mechanisms, ensuring their inevitability and effectiveness. In 2019, the Public Integrity Council approved indicators to determine the compliance of judges (and candidates for the position of judge) with the criteria of integrity and professional ethics.¹⁴

These indicators were developed based on best international practices, such as the Bangalore Principles of Judicial Conduct, comments and recommendations of the Committee of Ministers of the Council of Europe, conclusions of the Venice Commission and the Consultative Council of European Judges, as well as the Code of Judicial Ethics and the Recommendations of the Public Council of International Experts. The indicators were developed taking into account the previous practice of the Public Integrity Council and following the results of coordination with the High Qualification Commission of Judges of Ukraine.¹⁵ These indicators are not an exhaustive list but rather an indicative one that may be expanded during the work of the Public Integrity Council, based on the practice of the Public Council of International Experts, the conclusions of experts from the Council of Europe and the European Union, as well as the USAID "New Justice Program".¹⁶

13 Law of Ukraine "On the judiciary and the status of judges" on June 2, 2016, No. 1402-VIII. Vidomosti Verkhovnoi Rady Ukrainy (VVR), 2016, No. 31, Art. 545.2021<<https://zakon.rada.gov.ua/laws/show/1402> (in Ukrainian).

14 The Public Integrity Council is an independent public body that, since 2016, based on Article 87 of the Law of Ukraine "On the Judiciary and the Status of Judges", assists the Higher Qualifications Commission of Judges (HCJC) in evaluating current judges and selecting candidates for the positions of judges. The Public Integrity Council consists of twenty members who have been elected for two years.

15 Permanent body in the judicial system of Ukraine, responsible for the selection and qualification assessment of judges in Ukraine.

16 Indicators for determining non-compliance of judges (candidates for the position of a judge) with the criteria of integrity and professional ethics): Decision of the Public Integrity Council from 11 January 2019, https://grd.gov.ua/wp-content/uploads/data/files/docs/indikatory_%2011.01.2019.pdf.

Ten key indicators of violations of the principle of judicial independence have been identified. These indicators encompass the following manifestations of undermining judicial independence: (1) political affiliation affecting decision-making and professional trajectory; (2) illegitimate receipt of state awards during the exercise of powers, except in cases of personal courage; (3) public support for illegal actions; (4) decision-making under external pressure; (5) visits to an aggressor state or occupied territories; (6) use of informal connections for career advancement and preferential treatment; (7) interference in automated case allocation; (8) making politically motivated decisions; (9) abuse of administrative leverage; (10) demonstrated inability to maintain independence in decision-making.¹⁷

A key indicator of compromised judicial independence is when judges make unlawful decisions under the influence or interference of other judges, court chairpersons, or staff. Internal independence requires judges to decide cases solely on the basis of law and professional judgment, without any external pressure. Such interference undermines public trust and judicial authority, and threatens the equal rights of citizens under the law.

An example of this type of violation is the high-profile case involving the Kyiv District Administrative Court. Thus, in 2020, the National Anti-Corruption Bureau of Ukraine notified the Chair of the Kyiv District Administrative Court, his deputy, five judges, and the head of the State Judicial Administration of suspicion. According to the National Anti-Corruption Bureau of Ukraine, a total of 12 people are involved in the case, who, according to the investigation, were part of a criminal organization led by the Chair of the Kyiv District Administrative Court and aimed at seizing state power by establishing control over the High Qualification Commission of Judges of Ukraine and the High Council of Justice and creating artificial obstacles to their work. The Bureau claims this organization made tailored decisions favoring itself, politicians, and business representatives. The Chair of the Kyiv District Administrative Court gave appropriate instructions to subordinate judges in exchange for undue benefits, such as money, intangible benefits, or political influence. If the judges did not obey, the court's chair pressured them, threatened them, and could even send a complaint against the judge to the High Council of Justice through proxy persons or arrange an audit of the judge's declaration by the National Agency for the Prevention of Corruption.¹⁸

The second indicator, which in the conditions of the full-scale armed aggression of the Russian Federation has acquired new meaning, is when a judge (a candidate for the position of judge or a family member or close relative) exhibits behavior that indicates support for aggressive actions of other states against Ukraine, cooperation with representatives of such states, the occupation administration and their accomplices (for example, visiting the Russian Federation or the temporarily occupied territories, without the urgent need to do so).

Indeed, trips to the Russian Federation, the Autonomous Republic of Crimea, and other occupied territories, as well as close relatives' need to resolve property issues

17 Indicators for determining non-compliance of judges (candidates for the position of a judge) with the criteria of integrity and professional ethics]: Decision of the Public Integrity Council from 11 January 2019, https://grd.gov.ua/wp-content/uploads/data/files/docs/indikatory_%2011.01.2019.pdf.

18 Creation of a criminal organization – NABU informs judges of OASK about the essence of suspicion. Radio Svoboda: Website. May 2, 2024, <https://www.radiosvoboda.org/a/news-nabu-pidozra-oask/30733756.html> (in Ukrainian).

there clearly indicate the presence of this indicator. It is important to note that such conduct is now a crime under the Criminal Code of Ukraine (Art. 111-1).

For example, in 2019, the Conclusion of the Public Integrity Council established that the Donetsk District Administrative Court judge, Andrii Zelenov, did not meet the integrity and professional ethics criteria. According to the information in the judge's dossier, the judge frequently made trips with extended stays in temporarily occupied territories. Between October 4, 2014, and July 8, 2018, the judge made more than 76 trips through the following checkpoints: Novooleksiyevka – toward the Autonomous Republic of Crimea, Melitopol – toward the Autonomous Republic of Crimea, Mayorsk – direction toward Donetsk, Novotroitske – toward Donetsk, Chongar – toward the Autonomous Republic of Crimea. Traveling repeatedly to the temporarily occupied territory is risky for the judge unless coordinated with Russian occupation authorities. In the opinion of the Public Integrity Council, there is reasonable doubt about the judge's independence. This conclusion and the materials confirming it were subsequently transferred to the High Qualification Commission of Judges.¹⁹

The High Qualification Commission of Judges, having reviewed these materials and conducted a qualification assessment of the judge of the Donetsk District Administrative Court, Andrii Zelenov, for his suitability for the position held, established that he did not administer justice in the period from December 2014 to October 2017 due to the expiration of the five-year term of appointment to the position of judge. Starting in November 2017, trips to territories temporarily not controlled by the Ukrainian authorities decreased, and if there were any, then only in cases of urgent need and when he was on vacation. When crossing the relevant "checkpoints" regarding the purpose of the trip and place of work, he provided a certificate of a senior lecturer at Donetsk National University (where he worked part-time) and documents regarding correspondence studies in postgraduate studies and obtaining the scientific degree of Candidate of Law (PhD). Currently, these trips have ceased. Therefore, the finding of the Public Integrity Council that he allowed behavior that indicates support for aggressive actions of other states against Ukraine, collaboration with representatives of such states, the occupation administration, or their accomplices was not upheld.²⁰

The third indicator is that the judge (or candidate for the position) used family, friendship and other informal connections for career advancement or obtaining unjustified preferences. Using informal connections to obtain preferences or career advancement constitutes a manifestation of corruption and unprofessionalism in judicial activities. Judges should serve for the good of society and should not depend on external influences to ensure independence and impartiality in resolving judicial matters. In contrast, judges hired through personal connections – with the support of friends or family in government – are more prone to corruption for personal, rather than political, gain.²¹

19 Conclusion of the Public Integrity Council on Non-compliance of Judge Zelenov Andrii Serhiiovych of Donetsk District Administrative Court with the Criteria of Integrity and Professional Ethics, https://grd.gov.ua/wp-content/uploads/data/files/conclusions/Kvalifikatsiine%20otsiniuvania%202019/2019_08_01/zelenovas_vysn.pdf (in Ukrainian).

20 On the Results of Qualification Assessment of Judge Zelenov Andrii Serhiiovych of Donetsk District Administrative Court for Compliance with the Position Held: Decision of the High Qualification Commission of Judges № 875/ko-19 of September 30, 2019, <https://new.vkksu.gov.ua/doc/pro-rezultaty-kvalifikaciynogo-ocinyuvannya-suddi-doneckogo-okruzhnogo-administratyvno-sudu-17>. (in Ukrainian).

21 Adam Harris, Jan-Henrik Meyer-Sahling, Kim Mikkelsen, Christian Schuster, Brigitte Seim, Rachel Sigman, Varieties of connections, varieties of corruption: Evidence from bureaucrats in five countries," *Governance* 36, no. 3 (2023): 953–972, 968.

Such actions violate the principles of ethics and professional conduct of judges and may raise doubts about the objectivity and independence of their decisions. In addition, informal connections may violate the principle of equality before the law since other persons may be restricted in access to the court or issuance of a fair decision due to the influence of judicial relationships or connections.

In some cases, judges' relatives have participated in voting on the judge's appointment or indefinite tenure. For instance, Judge A. Sekirska was recommended for appointment by the High Council of Justice during a voting session in which A. Portnov participated. According to the judge's declaration of family ties, she has family ties with a person who is the sister of the judge's husband and the wife of A. Portnov, who was at that time Deputy Head of the Administration of the President of Ukraine V. Yanukovych and a member of the High Council of Justice.²²

The fourth indicator provides that the judge (candidate for the position of judge) commits actions or omissions that lead to the administration of justice violating the principle of randomness when using an automated system or otherwise impede the automated allocation of cases. According to the Bangalore Principles of Judicial Conduct, objectivity is a necessary condition for the proper performance of judges' duties, and it should be manifested not only in the content of the decision adopted but also in all procedural actions accompanying its adoption. B. Vito argues that the concept of objectivity of the judicial process is the cornerstone of modern legal systems. Therefore, it can be concluded that violations of the rules of automated allocation jeopardize the objectivity of the entire subsequent process.²³

The automated court document management system, established by the Council of Judges' Decision No. 25 (April 2, 2015), comprises computer programs and hardware that manage court documentation, inter-court communication, and data security. Case distribution follows a three-step algorithm: identifying eligible judges, calculating workload coefficients, and randomly selecting a judge according to established procedural rules and document flow principles.²⁴

In Ukraine, random case allocation is fundamental to judicial independence and objectivity, requiring cases to be assigned to judges automatically through a specialized electronic system. Violations occur when judges interfere with this system by manipulating case assignments, refusing certain cases for personal benefit, or attempting to obtain specific cases of interest. Such actions undermine the integrity of the judiciary and can include manipulating how cases are assigned, selectively managing certain cases, or rescheduling hearings to achieve preferred results. These actions directly contradict the principles of judicial impartiality and threaten the foundational aspects of judicial independence.

The fifth indicator of a violation of internal independence involves a judge's actions, omissions, or decision-making driven by corporate solidarity, manipulation of circumstances or legislation, or economic, corrupt, or other personal interests in securing or preventing a particular outcome.

²² Maksym Sereda, Generalization of the Public Integrity Council Practice in 2019 (Kyiv, 2020), 32, 21 (in Ukrainian).

²³ See 20.

²⁴ Council of Judges of Ukraine, On the approval of the Regulation on the automated court document circulation system (2015), <https://zakon.rada.gov.ua/rada/show/v0025414-15#Text> (in Ukrainian).

Adherence to high ethical and professional standards by judges is essential to ensure public confidence in the judicial system and to guarantee the right to a fair trial. Judges must be independent, objective, and impartial in making decisions based only on the evidence presented at the hearing. Violations of ethical and professional standards of conduct by judges, such as corporate solidarity, manipulation of circumstances, and the law for personal gain, may be considered unethical conduct. Detecting such violations is the most challenging task, as corruption can be covert in nature. Therefore, relying only on detected cases of corruption as a means of analysis is a limited method that may yield a distorted picture of the extent and type of corruption.²⁵ Judicial decisions influenced by corporate solidarity, personal gain, or corruption undermine judicial ethics by distorting evidence and obstructing fair justice.

The sixth indicator of a violation of a judge's internal independence is the improper use of administrative powers to influence judicial decisions. This is manifested through direct directives, the use of administrative pressure mechanisms, the creation of a manipulative atmosphere, or incitement to unlawful actions. Particularly critical is the interference of the court president in the decision-making process, which contradicts the fundamental principles of judicial independence and the rule of law since judges should be guided exclusively by the law and the evidence before them, without external influence from court administration.

The case of the Kyiv Administrative Court (No. 640/11563/21, September 30, 2021) illustrates indicators of compromised judicial independence. It involved challenging the Public Integrity Council's conclusion about a judge's non-compliance with integrity standards, particularly regarding the judge's inability to resist influence and lack of independence. The judge was initially appointed for five years in 2008 by Presidential Decree No. 901/2008 and later received an indefinite appointment in 2013 through Parliamentary Resolution No. 451-VII. The case highlighted issues with the process of evaluating judicial independence and the right of judges to participate in proceedings regarding their integrity assessments.

On December 15, 2020, the Public Integrity Council concluded that a Kyiv Administrative Court judge failed to meet integrity standards by improperly restricting peaceful assembly rights through indefinite restrictions, making politically motivated decisions, and demonstrating insufficient independence. The Council based its assessment on specific indicators, including the judge's handling of assembly cases and ability to resist external influence. However, on September 30, 2021, the Kyiv Administrative Court overturned this conclusion in case No. 640/11563/21, determining that numerous claims were founded on assumptions lacking adequate supporting evidence.

The system of indicators of violations of internal independence of judges of administrative courts demonstrates a multifaceted assessment toolkit based on international standards and national practice. The implementation of this system in the activities of specialized judicial bodies confirms its effectiveness while revealing the need for an adequate evidence base. The dynamic nature of the system of indicators is reflected in its adaptation to modern challenges, particularly in conditions of armed aggression. The application of these evaluation tools strengthen the objectivity of accountability mechanisms.

25 Stratos Papis, "Corruption in Our Courts: What It Looks Like and Where It Is Hidden," *The Yale Law Journal* 118, no 8 (2009): 1584–1954, 1631.

5. CRIMINAL LIABILITY OF JUDGES AS A GUARANTEE OF COMPLIANCE WITH THE PRINCIPLE OF INTERNAL INDEPENDENCE

Judges who commit acts that qualify as criminal offenses cannot enjoy immunity from ordinary criminal prosecution. There are circumstances in which actions taken by judges, even when motivated by good intentions, may constitute criminal offenses. Judges in Sweden and Austria can be punished for criminal negligence, for example, for keeping someone in prison for too long. However, the introduction of full criminal liability for unintentional breaches of duty is not acceptable, according to the Consultative Council of European Judges. A dissatisfied party can initiate criminal proceedings against a judge, but the Consultative Council of European Judges advocates for a mechanism to prevent or terminate such proceedings if there are insufficient grounds for criminal liability.²⁶

In Ukraine, judges are criminally liable on general grounds, but their special status makes sentencing difficult. Judicial immunity makes it difficult to hold judges criminally liable for acts of corruption due to the inability to promptly take procedural measures.²⁷ Penalties for such violations can include imprisonment based on crime severity and proportionality. Strict sanctions against corrupt judges serve an important deterrent and preventive function.

As already noted, in accordance with Article 49 of the Law of Ukraine “On the Judiciary and the Status of Judges”, a judge is inviolable. Without the consent of the High Council of Justice, a judge may not be detained or held in custody or under arrest until a court verdict of conviction is passed, except for the detention of a judge during or immediately after the commission of a grave or especially grave crime.²⁸

There are various mechanisms for holding judges responsible for violating the principle of internal independence. Given Ukraine’s European integration aspirations, the experience of the European Union is particularly relevant. Judges’ criminal liability in the EU depends on each Member State’s laws and procedures, which can differ significantly. In the EU Member States, judges enjoy functional immunity, which protects them from unfounded claims in the performance of their duties. For example, under French law (Article 11-1 of Decree No. 58-1270), judges are liable only for personal misconduct.²⁹

Despite immunity, judges are subject to criminal liability for serious crimes and gross negligence. For example, in Spain, the Organic Law on the Judiciary (Ley Orgánica 6/1985) provides for the responsibility of judges for bribery (Articles 419–422).³⁰ The criminal liability of judges in the EU is regulated by national and European law. The

26 European and International Standards in the Field of Justice. Kyiv. (2015): 142 (in Ukrainian).

27 Siuzanna Baregamian, Andriy Dobros, “Certain Aspects of Criminal Liability of Judges for Corruption Offenses in Ukraine,” *Legal Scientific Electronic Journal* 8, (2020): 352–355, 354 (in Ukrainian).

28 Law of Ukraine “On the judiciary and the status of judges” on June 2, 2016, No. 1402-VIII. Vidomosti Verkhovnoi Rady Ukrainy (VVR), 2016, No. 31, Art. 545.2021, <https://zakon.rada.gov.ua/laws/show/1402> (in Ukrainian).

29 Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature. JORF n°0300, 23 décembre 1958, page 11529, <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000339259> (in French).

30 Organic Law 6/1985, of 1 July, of the Judiciary. BOE no. 157, 2 July 1985, Art. BOE-A-1985-12666, <https://www.boe.com/eli/es/lo/1985/07/01/6/con> (in Spanish).

EU Charter of Fundamental Rights strikes a balance between the independence of judges and their responsibility while guaranteeing the rights of the accused. European legal practice thus demonstrates the possibility of a harmonious combination of the principles of legal responsibility and independence of judges.³¹

Delays in the investigation of criminal cases related to corruption are one of the main reasons for the increase in the length of proceedings against judges.³² For this reason, the High Council of Justice, by its decision No. 381/0/15–23, No. 381/0/15–23 of April 18, 2023, provided for the implementation in the High Council of Justice of mechanisms for encouraging and forming a culture of reporting possible corruption or corruption-related offenses.³³

The positive development was the Constitutional Court's June 2020 decision declaring Article 375 of the Criminal Code (on knowingly unjust judicial decisions) unconstitutional as it violated the rule of law, legal certainty, and judicial independence principles. The Court found the article's wording could enable abuse by allowing criminal prosecution of judges simply because investigators or prosecutors subjectively considered their decisions "unjust." This decision strengthened judicial independence by protecting judges from potential pressure through criminal proceedings based on subjective interpretations of their rulings.³⁴

According to Moskalenko and Shvedova, the responsibility of judges should be implemented through the prism of the rule of law and legal certainty, ensuring transparency and predictability of legal norms.³⁵ However, the modern Ukrainian practice of holding judges responsible has transformed from a mechanism for ensuring justice and increasing public trust into an instrument of political influence that subordinates the judiciary to disciplinary bodies and dominant political interests.³⁶

Judges violating internal independence by yielding to pressure undermine judicial integrity and public trust. A lack of accountability may lead to continued biased decision-making. Criminal liability for such violations demonstrates their unacceptability and enforces judicial accountability. After all, when someone acts contrary to the law, they must be held responsible, even if they have general subject matter authority. Otherwise, irresponsible judges can tarnish the perception of the judicial system.³⁷ This helps maintain

31 Frans Van Dijkand and Geoffrey Vos, "A Method for Assessment of the Independence and Accountability of the Judiciary," *International Journal for Court Administration* 9, no. 3 (2018): 1–21, 6, <https://doi.org/10.18352/ijca.276>.

32 Siuzanna Baregamian, Andriy Dobros, "Certain Aspects of Criminal Liability of Judges", 353.

33 High Council of Justice, On the Approval of the Regulation on the Implementation of Whistleblower Incentive Mechanisms and the Formation of a Culture of Reporting Possible Corruption or Corruption-Related Offenses, Other Violations of the Law of Ukraine "On Prevention of Corruption" in the High Council of Justice (Resolution No. 381/0/15–23, April 18, 2023), <https://ips.ligazakon.net/document/MUS38073> (in Ukrainian).

34 Constitutional Court of Ukraine, Decision in the case based on the constitutional submission of 55 Members of Parliament of Ukraine on the compliance of Article 375 of the Criminal Code of Ukraine with the Constitution of Ukraine (constitutionality) (Decision No. 7-p/2020, June 11, 2020), <https://zakon.rada.gov.ua/laws/show/v007p710-20#Text> (in Ukrainian).

35 Maksym Moskalenko, and Hanna Shvedova. "Features of Bringing Judges to Criminal Liability." In *Legal Policy of Ukraine: History and Modernity: Proceedings of the III All-Ukrainian Scientific and Practical Seminar*, 7 October 2022, 194–97. Zhytomyr: Zhytomyr Polytechnic State University, 2022, <https://conf.ztu.edu.ua/wp-content/uploads/2022/11/194.pdf> (in Ukrainian).

36 Ibid.

37 Grace Rowden, "Narrowing judicial immunity: Holding judges accountable for exercising jurisdiction where they are statutorily barred from doing so," *Rockett ex rel. K.R. v. Eighmy*, 71 F.4th 665 (8th Cir. 2023).

the judiciary's internal independence, ensuring the fair and impartial administration of justice. Furthermore, the existence of legal responsibility strengthens public trust in the judicial system, which is essential for the functioning of a democracy. People need to know they can rely on the judicial system to protect their rights and freedoms and to hold accountable those who break the law, regardless of their status or position.

The criminal liability of judges is characterized by duality: it is a mechanism for punishing serious offenses (acts of corruption, abuse of power) while protecting judges from unjustified prosecution through a special procedure for bringing them to justice and judicial immunity.

A key challenge remains ensuring the proper balance between protecting the judges' internal independence and the effectiveness of their criminal liability mechanisms. When laws are ambiguous, a judge must rely on principles of justice and independence to reach a decision³⁸ – but should such reliance be considered a violation of the law? According to established legal doctrines, the principles of law have priority over the norms of legislation since they reflect the fundamental principles of the legal system. The independence of the court and judges are fundamental principles that underlie the democratic and legal functioning of modern states.

In the context of criminal liability of judges, this means that it should arise only in cases of intentional violation of the law and not when the judge, guided by his or her own convictions and internal independence, has decided based on the principles of justice. In this case, the presumption of innocence of the judge applies – sufficient confirmation of the legality of the judge's actions should adequately justify the position set out in the court's decision. Only in the case of an unfounded decision can the question of the existence of a violation and the holding of the judge to legal responsibility be raised. This approach ensures the proper balance between the principle of independence of judges and the mechanisms of their responsibility.

6. CONCLUSIONS

This research has established the relationship between judges' legal responsibility and their internal independence. Analysis of theoretical approaches, regulations, judicial practice, and Public Integrity Council investigations has demonstrated that legal responsibility is not a tool of pressure but a guarantee of independence by protecting against undue influence and enabling decisions based solely on law and inner conviction, as evidenced by the experience of European countries.

The institutional analysis showed that the effectiveness of this relationship is ensured through legal guarantees and safeguards. The research demonstrated that responsibility arises only for intentional violations of the law, with the presumption of innocence and proper justification of court decisions confirming legality.

Comparative analysis of EU Member States revealed effective legal responsibility mechanisms, including immunity protection and clear grounds for establishing violations. The analysis of judicial practice has confirmed that Ukraine's system of indicators for identifying violations of internal independence provides objective criteria for assessment. Thus, the study has shown that properly formulated and fairly applied judicial liability norms are crucial for ensuring judges' internal independence, which is particularly significant for Ukraine's judicial reform and European integration. Nevertheless, several

38 Daniel Harris, "Judges as Agents of the Law," *Mitchell Hamline Law Journal of Public Policy And Practice* 41, no 1 (2020), <https://ssrn.com/abstract=4375687>.

challenges remain unresolved. In particular, further refinement of the criteria framework for assessing violations of internal independence is needed, alongside the development of a more robust methodology for verifying evidentiary standards – issues that were identified throughout this analysis as persistent weaknesses in the current system. Future research should focus on optimizing these assessment tools, examining the long-term impact of criminal liability mechanisms on judicial behavior, and exploring comparative models from EU Member States that have successfully reconciled judicial accountability with robust independence guarantees in post-reform contexts.

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COMPETING INTERESTS

The authors have no competing interests to declare.

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