

# The Act on Recovery of Trust to Justice in Ukraine

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## I. Introduction

The current problems in the system of the legal proceedings' realization in Ukraine within the last years led to the reduction of citizens' trust to Justice. This was also caused by the downright using of courts by the authorities as an instrument of suppression of the mass protests of citizens within the period from 21 November 2013 to 22 February 2014. The need to take the effective measures directed on the increase of society's trust to the judicial authority was stated by Nils Muižnieks, Council of Europe Commissioner for Human Rights, in the report following his visit to Ukraine from 4 to 10 February 2014, with simultaneous emphasis on needing to introduce the appropriate mechanisms to ensure of the judges' independence from outside influence, especially at trial cases that have the resonance in society. Consultative Council of European Judges Opinion No. 1 (2001) emphasizes that not merely the parties to any particular dispute, but society as a whole must be able to trust the judiciary. A judge must thus not merely be free in fact from any inappropriate connection, bias or influence, he or she must be also appear to a reasonable observer be free therefrom. Otherwise, confidence in the independence of the judiciary may be undermined (paragraph 12).<sup>1</sup>

## II. Lustration of the judges under the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine

On 8 April 2014 Verkhovna Rada of Ukraine adopted the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine<sup>2</sup> to increase the authorities and citizens' trust to the judiciary in Ukraine, the restoration of the legitimacy and justness. The Law entered into force on 11 April 2014. The Law defines the legal and organizational basis for a special scrutiny of judges of the courts of general jurisdiction

1 Opinion No. 1 (2001) of the Consultative Council of European Judges (CCJE) for the Attention of the Committee of Ministers of the Council of Europe on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, available at <<https://wcd.coe.int/ViewDoc.jsp?id=1047753>>, accessed: 26 January 2015.

2 Zakon Ukrainy pro vidnovlennia doviry do sudovoi vlady v Ukraini, dated 8 April 2014, VVR 2014, No. 23, item 870 (hereinafter the Law of Ukraine on the Restoration of Trust in the Judiciary in Ukraine).

as the temporary strengthen action with the use of the existing procedures for dealing with the issues of bringing judges of the courts of general jurisdiction to the disciplinary liability and the dismissal of judges from their offices based on the breaches of oath.

We would like to note that in the numerous reports of mass media the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine is also called “the Law on lustration of judges”, although in the text of the Law, the term “lustration” is not used. According to the authors of this law the application of the word lustration as once-only emergency legal action is possible in the extreme need. The lustration is understood as a procedure for removal from the office the officials of the high grade, which compromised themselves, with the subsequent ban of them, for some time or for the whole life, to hold positions in the public service.<sup>3</sup> The legal dictionary determined lustration as a special procedure for checking people, who hold the appropriate public post, and candidates for these positions, for their cooperation in the past with the state security services.<sup>4</sup> *Onopenko* identifies the following criteria of legality of the lustration procedure: the fault of individual must be proved in each individual case; the suspected individual is guaranteed the right to defense and appeal to the court, with the obligatory compliance of the presumption of innocence; the aim of lustration is not the punishment of the guilty (this is the task of the law enforcement agencies), but protection of young democratic regime.<sup>5</sup>

In the article 1 of the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine states that the screening of judges is aimed at strengthening of the rule of law in society and the legality in activity of courts; the restoration of trust to the judiciary in Ukraine; ascertain the facts that testify the violation on the breaches of oath of judges, existence of grounds for bringing the judges to disciplinary or criminal liability; strengthening of the principles of independence and impartiality in the judges' work.

Backgrounds for the screening of judges are the acceptance of decisions by the judges of the general jurisdiction alone or in a panel with other judges:

- 3 The Explanatory Note to the Draft of the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine, available at <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=50133](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=50133)>, accessed: 26 January 2015.
- 4 *Iurii S. Shemshuchenko* (ed.), *Velykyi entsyklopedychnyi iurydychnyi slovnyk* (Great Encyclopedic Dictionary of Law), Kyiv 2007, 432.
- 5 *Mariia Oprenko*, *Vaktsyna vid liustratsii, abo Chomu vrakhuvannia inozemnogo dosvidu pry ochyshchenni derzhavnoi vlady e zhytlyvo neobkhdnym dla Ukrainy?* (The Vaccine Against Lustration, or why Consideration of the International Experience in Cleaning of the Public Authority is Vital to the Ukraine?), *Zakon i Biznes* (Law and Business) 2014, No. 38, 1180, available at <<http://www.vru.gov.ua/mass-media/467>>, accessed: 26 January 2015.

- 1) on restrictions of the rights of citizens to hold the meetings, rallies, marches, demonstrations in Ukraine in the period from 21 November 2013 to 11 April 2014;
- 2) on constituting of preventive measure in the form of taking into custody, leaving them unchanged, prolongation of the term of taking into custody, verdicts of guilty, judge's decisions appellate and cassation instances on review of verdicts of guilty, the result of which was not their abolition, against persons who was recognized as political prisoners, for actions related to their political and social activities;
- 3) on constituting of preventive measure in the form of taking into custody, leaving them unchanged, prolongation of the term of taking into custody, verdicts of guilty against persons who were participants of the mass protests within the period from 21 November 2013 to 11 April 2014;
- 4) on imposition of the administrative punishments against persons who were participants of the mass protests within the period from 21 November 2013 to 11 April 2014, involving the deprivation of the right to drive vehicles based on art. 122–2 Code of Ukraine on Administrative Offences,<sup>6</sup> for failure of drivers demands of the officers to stop the vehicle and on leaving these decisions without changes by an appeal court within the period from 21 November 2013 to 11 April 2014;
- 5) on imposition of the administrative punishments against persons who were participants of the mass protests within the period from 21 November 2013 to 11 April 2014, based on art. 185 Code of Ukraine on Administrative Offences for gross disobedience to lawful order or to the requirement of police officer, member of a public building of protecting public order and the state border, serviceman and on leaving these decisions without changes by an appeal court within the period from 21 November 2013 to 11 April 2014;
- 6) on imposition of administrative punishments against persons who were participants of the mass protests within the period from 21 November 2013 to 11 April 2014, based on art. 185–1 Code of Ukraine on Administrative Offences for breaking the order of the organization and conduct of the meetings, rallies, street marches and demonstrations on leaving these decisions without changes by an appeal court within the period from 21 November 2013 to 11 April 2014;
- 7) on imposition of administrative punishments based on art. 185–2 Code of Ukraine on Administrative Offences against the persons who were the participants of the mass protests within the period from 21 November 2013 to 11 April 2014, through creating the conditions for organization and conduct with violation of the established order of the meetings, rallies, street marches and demon-

6 Кодекс України про адміністративні правопорушення, dated 7 December 1984, VVR 1984, No. 51, item 1122, with subsequent amendments (hereinafter Code of Ukraine on Administrative Offences).

strations on leaving of these decisions without changes by an appeal court within the period from 21 November 2013 to 11 April 2014;

8) in cases related to the elections to Verkhovna Rada of Ukraine of the seventh convocation, the cancellation of their results or by deprivation of status of People's Deputies of Ukraine persons who were chosen as the people's deputies of Ukraine to Verkhovna Rada of Ukraine of the seventh convocation (screening of judges conducted upon the application of the persons' rights or interests which have been affected directly);

9) on granting of permission to conduct the investigation and secret investigation concerning the persons who were the participants of the mass protests within the period from 21 November 2013 to 11 April 2014, in connection with their participation in such actions.

The screening of judges is also conducted if they alone or in a panel with other judges investigated or adjudicated the decision with breaching of the Convention for Protection of Human Rights and Fundamental Freedoms as stated by the European Court of Human Rights in its judgments.

The powers of screening of judges granted the Special Ad Hoc Commission on the Screening of Judges of the courts of general jurisdiction. The Commission consists of 15 members, 5 of them shall be appointed by the Plenum of the Supreme Court of Ukraine from among of judges in retirement which for the past five years were holding the position of judge not embraced by the administrative positions in courts and were not the members of any political party; other 10 members shall be the civil society representatives with law degree appointed by the Government Commissioner for Anti-Corruption Policy and Verkhovna Rada of Ukraine. It should be noted, that the Law does not determine the additional qualification requirements, besides the presence of the law degree, to the members of the civil society representatives, and also does not set the necessity of political neutrality for them. And therefore it will be legitimate to appoint the lawyer as a member of the Commission who just graduated from university and has no experience, but is a member of a political party. This, in turn, as noted in the literature "creates a risk that the appointment of members of the Commission may be due to the political rather than legal factors, and the likelihood of such prejudice may level the work of commission",<sup>7</sup> "affect the objectivity and impartiality of screening".<sup>8</sup>

7 Vasylii Kolyshnyi, Novyi proekt so starymi iz"ianami (The New Project with Old Flaws), *Zakon i Biznes* (Law and Business) 2014, No. 14, 1156, available at <[http://zib.com.ua/ru/80112-cho\\_timenno\\_se\\_ne\\_ponravilos\\_v\\_proekte\\_o\\_lyustracii\\_sud\\_ey.html](http://zib.com.ua/ru/80112-cho_timenno_se_ne_ponravilos_v_proekte_o_lyustracii_sud_ey.html)>, accessed: 26 January 2015.

8 *Kristina Vengryniak*, Chto dumaiut o liustratsii rukovoditeli sudebnoi sistemy? (What do the Leaders of the Judiciary Think About the Lustration?), *Iurliuga* (The Juridical

The approach to the formation of the Special Ad Hoc Commission should take into account the European recommendations. Thus, in accordance with the provisions of Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, the members of a Council for the Judiciary, whether judges or not, must be selected on the basis of their competence, experience, understanding of judicial life, capacity for discussion and culture of independence. The non-judge members may be selected among other outstanding jurists, university professors, with a certain length of professional service, or citizens of the acknowledged status. The prospective members of the Council for the Judiciary, whether judges or non judges, should not be the active politicians, members of parliament, the executives or the members of administrations.<sup>9</sup> The same recommendations are included into the Joint Opinion of the European Commission for Democracy through Law (Venice Commission) and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe on the Law on the Judicial System and the Status of Judges by 18 October 2010 No. 588/2010.<sup>10</sup>

Rendered by the Law powers of Verkhovna Rada of Ukraine towards the appointment of 5 members of the Commission calls into the question of its constitutionality, because all powers of Verkhovna Rada of Ukraine are defined in the art. 85 of the Constitution of Ukraine,<sup>11</sup> and among them is the missing of the competence on the formation of the Special Ad Hoc Commission. Having adopted the Law Verkhovna Rada of Ukraine provided with itself the plenary powers, which were not attributing to her competence by the Constitution of Ukraine. The Constitutional Court of Ukraine repeatedly stated that the powers of Verkhovna Rada of Ukraine are exhaustively defined by the Constitution of Ukraine and can not be extended by

League) 2014, available at <<http://jurliga.ligazakon.ua/news/2014/3/20/107459.htm>>, accessed: 26 January 2015.

9 Opinion No. 10 (2007) of the Consultative Council of European Judges (CCJE) to the Attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the Service of Society, Strasbourg, 23 November 2007, available at <[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/CCJE-opinion-10-2007_EN.pdf)>, accessed: 26 January 2015.

10 Joint Opinion by the European Commission for Democracy Through Law (Venice Commission) and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe on the Law On the Judicial System and the Status of Judges, Strasbourg, 18 October 2010, available at <<http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29026-e>>, accessed: 26 January 2015.

11 Konstytuitsiia Ukrainy, dated 28 June 1996, VVR 1996, No. 30, item 141, with subsequent amendments (hereinafter the Constitution of Ukraine).

Law. Verkhovna Rada of Ukraine adopting the Laws is not entitled to allow the inconsistencies concerning the any provisions in the Constitution of Ukraine; redistribution of the constitutional competence by adopting the Law is possible only through the amendments to the Constitution of Ukraine.<sup>12</sup> The scientists also point out that the Plenum of the Supreme Court of Ukraine, authorized to appoint five members, do not represent the judiciary, and is only one form of activity of the Supreme Court of Ukraine. It would be more appropriate if such appointments are derived from the Congress of Judges of Ukraine or the Council of Judges of Ukraine.

Thus, taking into consideration the international standards in the field of justice, we consider that the law should accurately define and narrow the qualifications for persons who are appointed as members of the Commission in order that the majority were professional judges, who should provide the representative of judges in the Commission the courts of all jurisdictions and levels of the judiciary in Ukraine.

The Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine established the term of screening of judges by the Special Ad Hoc Commission throughout one year since inception of the Commission. The appeals to initiate a screening of a judge has to be submitted by the persons or legal entities in writing within six months from the date of publication, notification of creation of the Commission in the newspaper "Golos Ukrainy". We should be noted that the Special Ad Hoc Commission on the Screening of Judges started activity in July 2014 when it was appointed for working in a minimum number of the Commission's members – nine persons. The members were not appointed then by Verkhovna Rada of Ukraine. The appeals to initiate a screening of a judge were accepted by the Commission till 12 December 2014, and it will work till 12 June 2015. However, the announced meeting of the Commission on 12 December 2014 did not take place, through those 2 members of the Commission leaved her and now the Commission is not competent. According to the official reports of the Special Ad Hoc Commission from the beginning of its activity till 10 November 2014 1280 appeals to initiate

12 Rishennia Konstytutsiinogo Sudu Ukrainy u spravi za konstytutsiinym podanniam Prezidenta Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti Zakonu Ukrainy pro Rakhunkovu palatu Verkhovnoi Rady Ukrainy (sprava pro Pakhunkovu palatu) (The Decision of the Constitutional Court of Ukraine in the Constitutional Provision of the President of Ukraine on the Conformity of the Law of Ukraine On the Accounting Chamber of Ukraine to the Constitution of Ukraine (the Case of the Accounting Chamber)), dated 23 December 1997, available at <<http://zakon2.rada.gov.ua/laws/show/v007p710-97>>, accessed: 26 January 2015.

13 Roman *Kuibida/Oksana Syroid*, Zakon Ukrainy pro vidnovlennia doviry do sudovoi vlady v Ukraini: evropeiskii standarty i vyklyky zastosuvannia (The Law of Ukraine On the Restoration of Trust in the Judiciary in Ukraine: European Standards and Implementation Challenges), Kyiv 2014, available at <[http://pravo.org.ua/files/Sud/Opi\\_nion\\_Law\\_On\\_Restoration\\_of\\_Trust\\_RK\\_OS\\_UKR\\_final.pdf](http://pravo.org.ua/files/Sud/Opi_nion_Law_On_Restoration_of_Trust_RK_OS_UKR_final.pdf)>, accessed: 26 January 2015).

a screening of a judge came to its address, 754 of which returned due to a mismatch with the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine. The Commission initiated 88 screening of judges. The results of eight screening examined at the commission meeting. In respect of one judges the conclusion about the absence of his actions violations was accepted, in respect to the two judges the materials were sent to the High Qualification Commission of Judges of Ukraine for solving the issue of bringing to the disciplinary liability. In respect of eight judges the conclusions on the breaches of oath were accepted and directed to the High Council of Justice.<sup>14</sup>

According to the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine the Special Ad Hoc Commission operates at the High Council of Justice however not accountable and not controlled by the High Council of Justice, but the obligation of technical, information and organizational support of work the Commission charge on apparatus to the High Council of Justice. The above indicated is inconsistent with the art. 131 of the Constitution of Ukraine which does not provide for the establishment of the High Council of Justice by any authorities (including the temporary special commissions).

Having established in the Law that the Commission carries out the activity under the Law and the Rules of the Special Ad Hoc Commission the legislator has not determined the order and sources of funding for its activities. One of the key elements of the rule of law is the principle of the legal certainty of rule which should be precise, clear and unambiguous and should be directional at ensuring of the predictability of the legal relationships. On the need to observe the principle of rule of law the Constitutional Court of Ukraine has repeatedly drawn the attention.<sup>15</sup>

14 Shchomisiachni zvity Tymchasovoi spetsialnoi komisii z perevirky suddiv zagalnoi iurysdyksii (Monthly reports of the Special Ad Hoc Commission on the Screening of Judges of the courts of general jurisdiction), available at <[http://www.vru.gov.ua/add\\_text/61](http://www.vru.gov.ua/add_text/61)>, accessed: 26 January 2015.

15 Rishennia Konstytutsiinogo Sudu Ukrainy u spravi za konstytutsiinym podanniam 51 narodnogo deputata shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti polozheni statti 92, punktu 6 rozdlu X perekhidni polozhennia Zemelno kodeksu Ukrainy (sprava pro postime korystuvannia zemelnymy diliankamy) (The Decision of the Constitutional Court of Ukraine in the Constitutional Provision of the 51 People's Deputies on the Conformity of the art. 92 and the chapter X Transitional provisions of the The Land Code of Ukraine to the Constitution of Ukraine (the case of permanent land use)), dated 22 September 2005, available at <<http://zakon1.rada.gov.ua/laws/show/v005p710-05>>, accessed: 26 January 2015; Rishennia Konstytutsiinogo Sudu Ukrainy u spravi za konstytutsiinym podanniam Upovnovazhenogo Verkhovnoi Rady Ukrainy z prav liudyny shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) abzatsu vos'mogo punktu 5 chastynei pershoi statii 11 Zakonu Ukrainy pro militsiiu (The Decision of the Constitutional Court of Ukraine in the Constitutional Provision of the Human Rights Commissioner of the Verkhovna Rada of Ukraine on

According to the results of screening of judges the Special Ad Hoc Commission shall adopt the motivated opinion and shall publish it on the official website of the High Council of Justice. The opinion on the breaches of oath of judges with the documents of screening forwarded to the High Council of Justice for consideration and acceptance by her decisions. The opinion is mandatory for the consideration by the High Council of Justice. Exactly this authority should have adopted the final decision and submit it to Verkhovna Rada of Ukraine. Further the opinion should pass the committee and vote at the plenary session. Thus, the final result of screening of a judge may be a statement of the fact of breaches of oath that is grounds for the dismissal it from the post. Simultaneously the High Council of Justice is informed to the end now and not functioning. Accordingly the materials submitting by the Special Ad Hoc Commission to the High Council of Justice stayed without consideration. The judges, breaches of oath, which established of the Commission, further "coursing of justice".<sup>16</sup>

If by the results of screening the Commission has established of the facts of breaches of oath of judge and only discovered the grounds for bringing a judge to disciplinary liability, the materials of screening are submitting by the Special Ad Hoc Commission to the High Council of Justice or the High Qualification Commission of Judges of Ukraine. The materials of screening that indicating the presence in the actions of the judge the signs of a criminal offense are submitting by the Special Ad Hoc Commission to the Prosecutor General's Office of Ukraine for screening the actions of the judge on availability in them the signs of a criminal offense.

If by the results of screening the Commission has not established of the facts of breaches of oath of judge, the availability of the grounds for bringing a judge to the

the Conformity of the art. 11 (1(5(8))) of the Law of Ukraine On Police to the Constitution of Ukraine), dated 29 June 2010, available at <<http://zakon4.rada.gov.ua/laws/show/v017p710-10>>, accessed: 26 January 2015; Rishennia Konstytutsiinogo Sudu Ukrainy u spravi za konstytutsiinym podanniam 50 narodnykh deputativ Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) okremykh polozhen' statti 263 Kodeksu Ukrainy pro administrativni pravoporushennia ta punktu 5 chastyi pershoi statti 11 Zakonu Ukrainy pro militsiiu (The Decision of the Constitutional Court of Ukraine in the Constitutional Provision of the 50 People's Deputies of Ukraine on the Conformity of the art. 263 of the Code of Ukraine on Administrative Offences and art. 11 (1(5)) of the Law of Ukraine On Police to the Constitution of Ukraine), dated 11 October 2011, available at <<http://zakon4.rada.gov.ua/laws/show/v010p710-11>>, accessed: 26 January 2015.

16 *Markiiian Galabala*, suddi, iaki sudyly maidanivitsiv, "paliat spravy" i tysnut na TSK (The Judges who Judged maydanivitsiv "burn case" and put pressure on the Special Ad Hoc Commission on the Screening of Judges of the courts of general jurisdiction), available at <<http://www.radiosvoboda.org/content/article/26628385.html>>, accessed: 26 January 2015.

disciplinary or criminal liability, the Commission adopts the opinion of this by the majority vote makes a decision on the termination of screening of such judge. The materials of screening with opinion and decision of the Special Ad Hoc Commission forwarded to the High Council of Justice or the High Qualification Commission of Judges of Ukraine.

Thereby, established in the Law the conclusion of the Special Ad Hoc Commission on the breaches of oath of judge with materials of screening to the High Council of Justice for consideration and acceptance by her decisions, the legislator substantially has not made anything new in the legal regulation of relationships of bringing a judge to the disciplinary liability. After all, as to the adoption of the Law, and after the adoption of the Law, those powers belong to the High Council of Justice, which casts doubt on importance of the creation and existence of the Commission. It should be noted that according to the Constitution of Ukraine and the Law of Ukraine<sup>17</sup> only the High Council of Justice and the High Qualification Commission of Judges of Ukraine have powers to exercise the disciplinary proceedings against judges, including considering a question on the breaches of oath of judge.

The Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine also introduces the changes to the Laws on the Judicial System and the Status of Judges, on the High Council of Justice concerning the procedure for the appointment of judicial administrative position, extension of the reasons termination of powers of the members of the High Qualification Commission of Judges of Ukraine, the High Council of Justice, order the election of judges delegated in the Congress of Judges of Ukraine. Accordingly, in the transitional provisions of the Law it is provided that after the Law came into effect the mandates for the members of the High Council of Justice are terminated except *ex officio* members, and the members of the High Qualification Commission of Judges of Ukraine, for the delegates of the Congress of Judges and Conferences of Judges elected under the rules that functioned before this Law became effective. Practically, it can be viewed as expressed of Verkhovna Rada of Ukraine distrust for the High Council of Justice or the High Qualification Commission of Judges of Ukraine through confession of their work such as conflicts with interests of society.

It should be noted that until the adoption of the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine the mandates for the members of the High Qualification Commission of Judges of Ukraine could be terminated only in the

17 Zakon Ukrainy pro sudoustrii i status suddiv, dated 7 July 2010, VVR 2010, No. 41-42, No. 43, No. 44, No. 45, item 529, with subsequent amendments (hereinafter: The Law of Ukraine On the Judicial System and the Status of Judges); Zakon Ukrainy pro Vysshchu radu iustytisii, dated 15 January 1998, VVR 1998, No. 25, item 146, with subsequent amendments (hereinafter: The Law of Ukraine On the High Council of Justice).

form of adoption of the relevant decision by this commission. The decision towards the terminated mandates for the member of the High Council of Justice should be adopted only by the authority that appointed him or the High Council of Justice. Considering the facts that the competence of Verkhovna Rada of Ukraine is not included terminated mandates for the members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine, adoption of the reduced norm reflecting the expansion by parliament of own powers. In addition, factual terminated mandates for the members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine makes consideration of the complaints regarding the disciplinary liability of judges impossible.

In The Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine the restrictions of membership in the High Council of Justice or the High Qualification Commission of Judges of Ukraine who were their members before the Law came into effect were also established. Thus, the mentioned rule extends to all ex-members of such authorities, without dependence from the presence in their actions of offence, which in fact allows of the collective responsibility for the improper performance of the functions of such authorities. We share the position of the regard researchers and the Council of Europe experts, which in this case should be restricted to exclusion of the members in respect of whom the criminal or disciplinary liability has been established.<sup>18</sup> In the constitutional petition regarding the conformity of the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine to the Constitution of Ukraine (constitutionality)<sup>19</sup>, which appealed to the Constitutional Court of Ukraine 76 People's Deputies of Ukraine, indicates that this approach is the discriminatory restriction of the rights of persons in the exercise of their professional activities. Equality and inadmissibility of discrimination against individuals are not only the constitutional principles of the national legal system of Ukraine, but also the fundamental values of the international community, on which the international legal instruments on the protection of the rights and freedoms of person and citizen were stressed.

Considering the fact that the Congress of Judges of Ukraine has a direct impact on the formation of the High Council of Justice, the High Qualification Commission of Judges of Ukraine, the Constitutional Court of Ukraine, and the legislator determined the new rules for election of its delegates. According to the Law the 1 del-

18 *Kutibida/Syrold*, op. cit. (note 13); *Vasylii Kolyshnyi*, op. cit. (note 7).

19 Konstyutsiine podannia shehodo vidpovidnosti Konstytutsii Ukrainy (konstyutsiynosti) Zakonu Ukrainy pro vidnovlennia doviry do sudovoi vlady v Ukraini (The Constitutional Petition Regarding the Conformity of the Law of Ukraine On the Restoration of Trust in the Judiciary in the Ukraine to the Constitution of Ukraine (Constitutionality)), dated 14 May 2014, available at <<http://www.vru.gov.ua/mass-media/438>>, accessed: 26 January 2015.

egate will represent 20 judges at the Congress of Judges of Ukraine (the Congress will constitute 400 delegates instead of 96 as it used to be). The delegates elected by the conferences of judges of general courts, conferences of judges of administrative and commercial courts in each region, in Autonomous Republic of Crimea, in Kyiv and Sevastopol. From each the High Specialized Court and the Supreme Court of Ukraine in the general meeting of these courts elected 1 delegate who will represent 20 judges from among the judges of these courts. The judges holding administrative positions in the courts and the judges of the members of the High Council of Justice or the High Qualification Commission of Judges of Ukraine cannot be elected to the Council of Judges of Ukraine. The judges from the members of the High Council of Justice or the High Qualification Commission of Judges of Ukraine can be presented on the Council of Judges of Ukraine in an advisory capacity.

On 25 – 26 September 2014 under the new rules XII extraordinary the Council of Judges of Ukraine was held, on which the judiciary was represented a huge number of judges, democratically elected by their colleagues. The delegates elected by the judges' quota of new members of the High Council of Justice and the High Qualification Commission of Judges of Ukraine. The selected judges did not only receive the support of the most of the presented colleagues on Council but not caused remarks from the public.

In the transitional provisions of the Law of Ukraine on the Restoration of Trust to the Judiciary in Ukraine it was established that after the Law came into effect it deemed to be determined of the judicial administrative position of Presidents of the High Specialized Courts, their deputy, Presidents of the Appeal Courts, their deputy, Presidents of the Local Courts and their deputy, secretaries of court chambers of the High Specialized Courts, their deputy and secretaries of court chambers of the Appeal Courts. The Law established also a new procedure for the appointment of judicial administrative position. The court president and his deputies shall be elected to their positions for the term of one year by a secret ballot from among the judges of the corresponding court, but not the exceeding a term of the powers of judge. The judge appointed of the judicial administrative position can not embrace one of the judicial administrative positions of the corresponding court more than two consecutive terms. The judges of the court can terminate the administrative position of a judge by a secret ballot, by a majority of at least two thirds of the total number of judges working in the corresponding court. In respect of the reduced we would like to note the following. At first, the collective determine of judicial administrative position is the manifestation levelling for the general principles of the presumption of innocence person, which in practice may result in the adoption of the European Court of Human Rights tough decisions against Ukraine, as, for example, was in the case of Oleksandr Volkov, former judge of the Supreme Court of

Ukraine.<sup>20</sup> We consider that such determine shall not be carried out automatically, and only after establishing of the circumstances under which a judge can not continue to take appropriate judicial administrative position in the court. Because among of all determine of judicial administrative positions are just respectable, which staying in positions of courts presidents, showed themselves as a professional organizers, made many important things for the judicial system of Ukraine, do not blunder their dignity and reputation, but were also suffered as a result of the illegal actions of other judges.<sup>21</sup> In addition such dismissal is a direct interference into the activity of the courts, which should independently resolve of the issues of the internal activity of the court.<sup>22</sup> Secondly, the expected results of the developers of the Law were not given. Because, the 80% determine of the courts presidents were re-elected to their posts under the new order.<sup>23</sup> According to the media for maintenance of positions the former presidents of the courts and their deputy often used dirty technologies as bribery, spoiling of ballots, and pressure on judges. In many courts the alternative candidates are not pulled out because the judges feared of the negative consequences in the event of losing of the former president of the court. In

20 Rishennia Evropeiskogo sudu z prav liudyny, sprava "Oleksandr Volkov proty Ukrainy" (The Judgment of the European Court of Human Rights, Case Alexander Volkov against Ukraine), dated 9 January 2013, available at <[http://zakon2.rada.gov.ua/laws/show/974\\_947](http://zakon2.rada.gov.ua/laws/show/974_947)>, accessed: 26 January 2015; Mykola Melnyk, "Oleksandr Volkov proty Ukrainy": dolenosne rishennia i nekvaplyve vykonannia ("Oleksandr Volkov proty Ukrainy": the fateful decision and unhurried execution), *Dzerkala tyzhnia* (Mirror of the Week) 2013, available at <[http://razumkov.org.ua/ukr/article.php?news\\_id=1068](http://razumkov.org.ua/ukr/article.php?news_id=1068)>, accessed: 26 January 2015; *Artur Emel'ianov*, *Zvernennia suddiv systemy gospodarskykh sudiv Ukrainy do kerivnytstva derzhavy stosovno zakonoproektu "pro vidnovlennia doviry do sudovoi vlady v Ukraini"* (Appeal of the Judges of the Commercial Courts System of Ukraine to the State Leadership of Ukraine Concerning of the Draft of Law On the Restoration of Trust in the Judiciary in the Ukraine), available at <<http://vgsu.arbitr.gov.ua/news/1432/>>, accessed: 26 January 2015.

21 Pryiniato Zakon "Pro vidnovlennia doviry do sudovoi vlady Ukrainy", analogiv iakomu ne bulo v novitnij istorii nashoi derzhavy (Adopted the Law "On the Restoration of Trust in the Judiciary of Ukraine", which had no Analogues in the Modern History of our State), *Zakon i Biznes* (Law and Business) 2014, available at <[http://zib.com.ua/ua/84480-priinyato\\_zakon\\_pro\\_vidnovlennya\\_doviry\\_do\\_sudovoi\\_vlady\\_ukr.html](http://zib.com.ua/ua/84480-priinyato_zakon_pro_vidnovlennya_doviry_do_sudovoi_vlady_ukr.html)>, accessed: 26 January 2015.

22 *Emel'ianov*, op. cit. (note 20).

23 *Mykhailo Riabets*, *Diia abo "bezdiialnist"* revoliutsiinogo zakonodavstva: vitchyzniani dosvid (The Action or "Inaction" of the Revolutionary Legislation: the National Experience), Informatsiyniy portal "Ukraina bez koruptsiy" (Information Portal "Ukraine Without Corruption") 2014, available at <<http://www.corruption.net/novini/item/9347-diia-abo-bezdiialnist-revoliutsiinoho-zakonodavstva-vitchyznian-yi-dosvid>>, accessed: 26 January 2015.

some courts the former presidents have used of the inertness of the judicial collective, in others – the fact that much of the judges owe their positions in this court to the president. Many judges on further perceived administrative positions take responsibility to the collective of judges and opportunity to defend their interests and independence, but as the transmission link in the chain of corruption or political influence. That perception makes administrative positions unattractive for many of honest judges, having a sense of dignity and respect among colleagues.<sup>24</sup> Thirdly, the positive fact is the initiative of electivity of presidents of courts by the judges themselves. That will allow enhancing the trust of the judges to their leader and will reduce the risk of the political influence on the formation of administrative positions. However, providing the term of staying on the judicial administrative positions during one year with a ban for one judge embrace one of the judicial administrative positions of the corresponding court more than two consecutive terms seems too short for the effective management of court.

### III. Yet another Law of lustration – the Law of Ukraine on power cleaning

On 16 September 2014 the Law of Ukraine on power cleaning<sup>25</sup> (the so-called the Law on general lustration) was accepted. The Law entered into force on 11 April 2014. The Law determines the legal and organizational basis of carrying out cleaning of the power (lustrations), including the judiciary, for protection and approval of the democratic values, the rule of law and the human rights in Ukraine. Thus, today in Ukraine there are two laws that determine the legal mechanisms of the judges' lustration. The European Commission for Democracy through Law expressed the recommendation to merge those two documents. Presumably, the specialized law on the judicial system will be canceled, and its provisions will be integrated into the Law on general lustration. The first working meeting on this matter of the experts of the Venice Commission and the representatives of Ukrainian authorities will be held by the end of January 2015, and till March a new law on lustration should be prepared.

One of the key differences in the approach to the procedure of the judges' lustration that is foreseen in the Laws of Ukraine on the Restoration of Trust to the Judiciary in Ukraine and on power cleaning is the question of establishing of guilt of the judge. The Laws of Ukraine on the Restoration of Trust to the Judiciary in

24 *Roman Kuibida*, *Gotovy li sud'i k nezavisimosti: pervye uroki novogo zakona*, *LigaBiznesInform* 2014, available at <[http://www.liga.net/opinion/184896\\_gotovy-li-sud-i-k-nezavisimosti-pervye-uroki-novogo-zakona.htm](http://www.liga.net/opinion/184896_gotovy-li-sud-i-k-nezavisimosti-pervye-uroki-novogo-zakona.htm)>, accessed: 26 January 2015.

25 *Zakon Ukrainy pro ochyshchennia vlady*, dated 16 September 2014, VVR 2014, No. 44, item 2041 (hereinafter The Law of Ukraine On cleaning power).

Ukraine provides the guilty conduct of the judge for its application, in particular the judge is determined a position from the position in the event of his guilt and the breaches of oath. Simultaneously the Law of Ukraine on cleaning of the power does not require to prove the guilt and envisages the determine of the judge for the fact that he held the post and passed the decisions, listed in the Law, regardless of whether they are abolished or not. In particular, these are decisions in respect of persons, to which the individual amnesty was applied, and concretely to the persons recognized as political prisoners. It should be noted that almost all verdicts in respect of such persons take effect. Behind these verdicts persons were convicted, as a rule, for the crimes of violence, including the premeditated murder. There are victims, citizens of Ukraine, which caused the harm and pretending to undo the damage, waiting for the legal protection from the state. Therefore probably is the question of application concerning judges of lustration procedures through of their participation in the review of these cases.<sup>26</sup> That is, despite the fact that in the art. 1 (2) of the Law of Ukraine On cleaning of the power is guaranteed in the implementation of cleaning of the power compliance of the principle of individual responsibility and the presumption of innocence, however, analysis of norms of this Law leads to the conclusion, that currently the law establishes a presumption of guilt, instead of innocence, and collective, rather than individual, responsibility of the impersonal number of officials of different levels, effectively establishing that they all without exception only by the fact of staying in positions or executing of official duties in certain period of time contributed or carried out measures aimed at usurpation of the power of Yanukovych, undermined foundations of the National Security and Defense of Ukraine or unlawfully violated of the human rights and freedoms. The indicated norm is contrary to the principle of individual approach in the event of legal liability envisaged in the art. 61 (2) of the Constitution of Ukraine. Absolutely, the judge who adjudicated specified in the Law intentionally unjust judgments should be punished and not worthy to occupy the judicial position. But, it is possible only on condition proved of his guilt through, involvement in the usurpation of power, crimes against of the State and against human rights in the legal procedure.

On the need to retain the principle of justice punishment and individualization of guilt stresses the judge of the Supreme Court of Ukraine, the President of the Congress of Judges of Ukraine *Simonenko*. In fact, after the proclamation of amnesty

26 Судді Висшого спеціалізованого суду України взяли участь в обговоренні питань удосконалення процедури ілюстрації в Україні з урахуванням європейської практики (The Judges of the High Specialized Court of Ukraine was Attended in the Discussion of the Questions of Improvement of the Procedures of Lustration in the Ukraine with Considering of the European Standards), available at <[http://sc.gov.ua/ua/golovna\\_storinka/suddi\\_vssu\\_vzjali\\_uchast\\_v\\_obgovorenni\\_pitan\\_udoskonalenija\\_proceduri\\_ilustracii\\_v\\_ukrajini\\_z\\_urahu.html](http://sc.gov.ua/ua/golovna_storinka/suddi_vssu_vzjali_uchast_v_obgovorenni_pitan_udoskonalenija_proceduri_ilustracii_v_ukrajini_z_urahu.html)>, accessed: 26 January 2015.

“political prisoners” has not been canceled by any decision regarding bringing them to the criminal liability. It turns out that the judge adjudicating the decision regarding recently amnestied persons falling under influence of the Law on power cleaning. The same time will continue of the proceedings against him in accordance with the Law on the Restoration of Trust to the Judiciary in Ukraine. Under these conditions the judge will make accountable for the dual responsibility. It is contrary to the principles of justice and democracy.<sup>27</sup>

It should be noted that currently to the Constitution Court of Ukraine from the Supreme Court of Ukraine<sup>28</sup> and from 47 People’s Deputies of Ukraine two petition regarding the conformity on of the Law on cleaning of the power to the Constitution of Ukraine<sup>29</sup> were received.

Special attention should be paid to the authorized agency of lustration screening. Unlike the Law on the Restoration of Trust to the Judiciary in Ukraine, the Law on cleaning of the power does not provide the establishment and exercise of the powers of the Special Ad Hoc Commission on Screening of Judges of the courts of general jurisdiction. According to the art. 5 of the Law on cleaning of the power the agency of screening is the Ministry of Justice of Ukraine. Ensuring the public control over the process of lustration is vested in the advisory public agency of lustration at the Ministry of Justice of Ukraine – the Public Council of lustration at the Ministry of Justice of Ukraine (formed in 4 November 2014). The organization of screening of the judges is entrusted upon the president of the court, in which the judge serves, and the members of the High Council of Justice and the High Qual-

27 *Mariia Oprenko*, Podviina strata (The dual execution), Zakon i Biznes (Law and Business) 2014, No. 45–46, available at <[http://www.vru.gov.ua/mass\\_media/515](http://www.vru.gov.ua/mass_media/515)>, accessed: 26 January 2015.

28 Конституційне подання Верховного Суду України шчодо відповідності Конституції України (конституційності) пункту 6 частини першої, пункту 2 частини другої, пункту 13 частини другої, частини трет’ї статті 3 Закону України про очышчення влады (The Constitutional Petition of the Supreme Court of Ukraine on the Regarding the Conformity of the art. 3 (1(6)), art. 3 (2(2)), art. 3 (2(13)), art. 3 (3) of the Law of Ukraine On cleaning power to the Constitution of Ukraine (Constitutionality)), dated 20 November 2014, available at <<http://www.judges.org.ua/dig5578.htm>>, accessed: 26 January 2015.

29 Конституційне подання 47 Народных депутатів України шчодо відповідності Конституції України (конституційності) частини трет’ї та шостої статті 1, частини першої, другої, трет’ї, четвртої та восьмої статті 3, пункту 2 частини п’ятої статті 5, пункту два Прыктысёвкх та перекhidных положен’ Закону України про очышчення влады (The Constitutional Petition of the 47 People’s Deputies of Ukraine on the Regarding the Conformity of the art. 1 (1, 6), art. 3 (1, 2, 3, 4, 8), art. 5 (5(2)), paragraph 2 Transitional provisions of the Law of Ukraine On cleaning power to the Constitution of Ukraine (Constitutionality)), dated 20 January 2015, available at <<http://ccu.gov.ua/doccatalog/document?id=263027>>, accessed: 26 January 2015.



ification Commission of Judges of Ukraine are entrusted upon the head of the authority, which operates a person. In case of establishment of the unauthentic information during the screening of the judge the agency of screening shall transmit a copy of the report on the results of screening to the Ministry of Justice of Ukraine. From the date of receipt of such report the Ministry shall within three days sends it to the High Council of Justice and/or the High Qualification Commission of Judges of Ukraine and submit proposals on receiving submission of release the judge from the position. The Ministry of Justice of Ukraine is the entity of the address for the submission of release of judge from the position.

Consequently, today Ukraine's legislation identifies six agencies taking care of the judges screening: the High Council of Justice, the High Qualification Commission of Judges of Ukraine, the Special Ad Hoc Commission on the Screening of Judges of the courts of general jurisdiction, the tax authorities (were received the right to verify of the declaration of the judges), the Ministry of Justice of Ukraine, the presidents of the courts.

In accordance with established European standards of justice the decision on disciplinary responsibility of the judges must be accepted by the independent of executive or the legislature agency, majority or a significant portion of which being the judges elected by their colleagues<sup>30</sup>. In Ukraine the key role in deciding whether bringing of the judges at all levels of responsibility are played by two agency in the judicial system the High Council of Justice and the High Qualification Commission of Judges of Ukraine seems unacceptable interference of the executive in the activities of the judicial branch.

It should also cite in the art. 1 (7) of the Law on cleaning of the power, according to which the lustration can be avoided by getting under the legislation of the status of participant of the battle actions during the conducting of the antiterrorist operation in the eastern Ukraine. Unfortunately, none of the Laws is not provided of the norms which would regulate the procedure, methods and evaluation criteria, which would be used during the lustration screening of the judges.

Despite the importance of the Law on the Restoration of Trust to the Judiciary in Ukraine, in the literature it is emphasized on its inability of providing a comprehensive update of the judicial system. For example, there are no norms that would determine the grounds for inspection of the property disputes, where corruption is the most widespread. It recreates the Law with the effective means of the fighting with

the corruption to the ordinary political revenge. A similar view is supported by the former Minister of Justice of Ukraine, the former President of the High Council of Justice *Lavrynovych*: "Is not this an ordinary attempt to subjugate the judiciary political leadership?"<sup>31</sup> According to *Antonenko* the accepted Law does not approach on a step to clean the judiciary from the corruption and incompetence; does not propose any new approaches to the selection of judges for professionals.<sup>32</sup> It is not solved the questions of the social and economic guarantees of the judges. The profession of the judge should be socially attractive to the most qualified of the lawyers in the State. Only if in the legislation indicated issues would be resolved, launched in our State the process of the lustration will recover the Trust to Justice in Ukraine and would not turn into ordinary change of the faces and the names.<sup>33</sup>

Now there is an acute issue of Trust to Justice in Ukraine. During the XII Extraordinary Congress of Judges of Ukraine on 25 September 2014 the President of Ukraine *Poroshenko* stated that by the results of the last sociological polls the level of trust of the citizens to justice in Ukraine is only 7%. In view of this indicator we should not recover the Trust to Justice but construct the Trust to Justice. And this requires not only the efforts of the judges, and yet the agency of the executive and legislative in general and the public servant in particular. We support the position of the President of the Supreme Court of Ukraine *Romaniuk* which is achieved not only by the dismissal of judges according to the Law of Ukraine on cleaning of the power. Conversely, the trust to justice in Ukraine must be restored by the judges distributing the justice. The people would be trust the court investigating quickly and efficiently and rightly resolving the dispute. The judges should understand the profound essence of the rule of law and move away from the narrow confines of the formal application of the law, the result of which is often unfair. People who are turn to the court, in the majority are not the lawyers and can not understand, legal or illegal is the court decision. However, they are very sensitive to the injustice of the court decision. Therefore, the judges must skillfully apply the law and adjudicate such court decision which is simultaneously lawful and fair, adopted within a reasonable time and in an accessible form for the people. The judges must also remember that their status cause the meticulous attention of the people living nearby. The judge must

31 *Vengryniak*, op. cit. (note 8).

32 *Leonid Antonenko*, *Zakon o liustratsii sudei: kak v pravishchei koalitsii nadeiutsia vosstanovit nashe doverie k sud'iam?* (The Law of lustration of the judges: as in the ruling coalition hopes to restore of our trust in judges?), *Iurliuga* (The Juridical League) 2014, available at <<http://jurliuga.ligazakon.ua/news/2014/4/11/108892.htm>>, accessed: 26 January 2015.

33 *Oleg Malinevs'kyi/Anton Kuts/Vitalii Bobryn'ov*, *Sudova praktyka: systemnyi vidkhid* (The Practice of Court: Departure from the System), *Ukrains'kui Iuryst* (Ukrainian's Lawyer) 2014, available at <<http://www.ukrjurist.com/?article/759>>, accessed: 26 January 2015.

30 European Charter on the Statute for Judges, dated 8–10 July 1998, available at <[https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/European-Charter-on-Statute-of-Judges\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/European-Charter-on-Statute-of-Judges_EN.pdf)>, accessed: 26 January 2015; Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities, dated 17 November 2010, available at <<https://wcd.coe.int/ViewDoc.jsp?id=1707137>>, accessed: 26 January 2015.

strictly follow the Code of Judicial Ethics, and outside working hours behave discreetly, soberly, correct and tolerant. In addition, in the activity of the court the unnecessary or unimportant things should be absent; the court is for people, not for judges or court staff. Ensuring the needs of the people, creating comfortable conditions for them remaining in the court, organizing of work should be considered. It should do everything in order to overcome the corruption in the judiciary, because even isolated cases of the corruption quickly bring to nothing all the good, existing in the judicial work. The efficient, accessible and understandable judiciary is impossible in the absence of the legislative provisions, which are determined by the effective levers and mechanisms of influence at ensuring uniform application of the law of the courts.<sup>34</sup>

The courts should establish the dialogue with the society, greater use permitted by the law methods of communication with the public and the civil society organizations. And especially with the organizations, representing the people of the most disappointed in the court system and requires immediate lustration of the judges. This dialogue should be conducted not only through the media, but directly at round tables, meetings, joint press conferences.<sup>35</sup>

#### IV. Conclusions

Adoption of the Laws of Ukraine on the Restoration of Trust to the Judiciary in Ukraine and on cleaning of power was the primary measures in the removal of social tension, meeting the requirements of the citizens of Ukraine on holding the screening of the judges which were adjudicated during holding of the mass events in the process of the political opposition, or if their decisions, actions or inaction were carried out by the measures aimed at usurpation of the power of the President of Ukraine Viktor Yanukovich, undermined foundations of the National Security and Defense of Ukraine or unlawfully violated of the human rights and freedoms. However, the trust to Justice in Ukraine is not recovered for a few months through the implementation of these laws and dismissal of the individual judges. The Justice must conquer against the credibility with its citizens and convince of the society that can and should be trusted of the courts. The recovery of trust in court is the society necessity, because the trust and respect for the judiciary are the guarantees of the efficiency of the justice.

Supporting the idea of the necessity responding of the State on the numerous violations of the human rights of the authorities during the peaceful protests within the period from 21 November 2013 to 22 February 2014 by the adopting of the relevant legislation, nevertheless as a result of the research can be stated in the laws insufficient guaranteed of the presumption of innocence, and individual responsibility of the person, the right against self-incrimination, absence of a single independent agency of the lustration, establishment of the several procedures of the engaging to responsibility for one and the same act, but not determined the priority of their applications, etc.

Ukraine today needs the self-weighted approach of the lustration and recovery of trust to justice. It is necessary to raise the professionalism of judges, ensure the right to a fair trial as guarantee of respect for human rights and fundamental freedoms, allowing each person feeling of trust to justice. Taking into account the principle of power division in Ukraine into legislative, executive and judicial ones, it is necessary to limit the impact of the executive for carry out of the control functions over the activities of judges, and leave this mandate for of the High Council of Justice and the High Qualification Commission of Judges of Ukraine.

34 *Iaroslav Romaniuk*, *Reformuvannia sudovoi vlady v Ukraini (Reforming of the Judiciary in the Ukraine)*, *Pravo Ukrainy (Law of Ukraine) 2014*, No. 11, available at <[http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/7303296cf3d8b349c2257db70049f3ee/\\$FILE/Реформування\\_судової\\_влади\\_в\\_Україні.pdf](http://www.scourt.gov.ua/clients/vsu/vsu.nsf/7864c99c46598282c2257b4c0037c014/7303296cf3d8b349c2257db70049f3ee/$FILE/Реформування_судової_влади_в_Україні.pdf)>, accessed: 26 January 2015.

35 *Kuibida*, *op. cit.* (note 24).