

INSTITUTE FOR EVALUATING JUDGES AS AN ELEMENT OF THE STATE JUDICIAL SYSTEM

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ABSTRACT

The article is devoted to the study of the specifics of the institute for evaluating as an element of the state judicial system. It is clarified the purpose of evaluating judges and the importance of the institute for maintaining the image of the judicial authorities in the state as a whole. It is established that states are cautiously concerned about the institution for evaluating judges in view of the contradiction and to the judges' independence principle, so the main task of each state that introduces such an institution is to ensure a balance between the legal goals of evaluating judges and observing the principle of judges' independence. It is determined that another essential condition for evaluating judges is the availability of objective, clear and transparent evaluation criteria. There are considered the criteria for evaluating judges in Italy, the Netherlands and Ukraine. It is noted that it is important to develop a standard for evaluating judges in the European Union states, which would make it possible to eliminate the disparate treatment of judges in different states. There are highlighted the directions of improving the evaluation of judges in Ukraine, namely, fixing transparent procedures for checking the results of judges' evaluation and attracting citizens to evaluate judges on a paid basis.

Keywords: Judicial System, Judicial Authorities, Judges, Judges' Evaluation, Judges' Independence, Evaluation Criteria, Competence, Virtue, Professional Ethics.

INTRODUCTION

Creating a judicial branch of authority that operates in accordance with the law is an important task for any state. Independent and impartial justice at the same time, carried out by professional, independent judges, is a precondition for the existence of a democratic state. Indeed, the functioning of the judicial system in the state depends on the state development and the ability to protect the violated civil rights and liberties, legal entities, and the state as a whole. The preconditions for effective justice at the same time are the use of a modern system of information-telecommunication technologies, system for training judges and judges' staff, monitoring and evaluating the judges' activity, and the use of inquiries to determine the satisfaction of participants in judicial cases with the administration of justice. The situation in different EU member states significantly differs at the same time, but many member states also

make special efforts in these spheres to improve the efficiency of justice or to support the quality of judicial systems (European Union, 2016).

Given the importance of ensuring effective justice in European States, it is a priority to find instruments for monitoring the status of judges' performance of the legal duties and resolving career issues. One of these instruments is the individual evaluation of judges. However, there is currently no single mechanism for conducting such an evaluation, which puts the task of developing and implementing a mechanism for individual evaluation of judges before states.

LITERATURE REVIEW

A. Bannon draws attention to the fact that the main task of the judge is the fair application of law in order to protect violated rights and impartial attitude when considering the case in the competence of the parties (Bannon, 2018).

Riedel believes that evaluation of judges is a personnel management instrument. Such instruments are actively used by all enterprises, organizations, and institutions that have to manage a large number of personnel. They are used both for initial personnel selection and for making further career decisions. Accordingly, the purpose of evaluating judges is to determine who the best candidate for this position is. In conclusion, the purpose of this institute is to provide the enterprise, institution, organization with qualified personnel and thus guarantee the effectiveness of the enterprise, institute, organization activity (Riedel, 2014).

The process of evaluating judges on the basis of objective, clear and transparent criteria has a great importance for the consolidation of the judicial authority, since it is only based on the results carried out the transfer and promotion of judges (Malaj, 2015).

Asghar Ali Salarzai notes that the unsatisfactory performance of individual judges can affect the image of the judicial authority in the state. Accordingly, in order to evaluate judges, the Supreme Court should determine efficiency indicators, develop a questionnaire, pilot check the questionnaire, and then evaluate the results of judges' work. The evaluation of judges at the same time should focus on the professional development of judges and the results cannot be used to impose disciplinary punishments on judges (Salarzai, 2017).

Taking into account the above, it is obvious that at the doctrinal level, due attention has been paid to the issue of evaluating judges by scientists because of the importance for ensuring the effectiveness of the state judicial system as a whole.

METHODOLOGY

The methodological basis of the research of the Institute for evaluating judges as an element of the state judicial system are various methods of scientific knowledge, in particular, logical-semantic, comparative-legal, and critical analysis method. Using the logical-semantic method, it is revealed the content of judges' evaluation. Using a comparative-legal method, it was made a comparison of the judges' evaluation in Ukraine and foreign countries. The method of critical analysis helped to identify disadvantages in evaluating judges in accordance with the legislation of Ukraine and the practice of foreign countries.

FINDINGS AND DISCUSSIONS

Considering the Institute of judges' evaluation, it should be noted that the purpose of judges' evaluation is:

1. Self-improvement, obtained results of judges' evaluation are aimed at improving the efficiency activity and the professionalism of judges;
2. Increasing the level of citizens confidence;
3. Solving career issues in the judicial authority. However, any goal of evaluating judges is not exclusive; in addition, all of these can be combined.

It should be noted that the evaluation of judges is still a debatable issue despite the risks associated with the existence. International standards on judicial independence require that judicial positions be protected from external influence in order to ensure the fairness and impartiality of judicial decisions. There is also a risk of using the institute of judges' evaluation as a means of dismissing "*inconvenient*" judges. Therefore, when introducing the institute of judges' evaluation, it is necessary to take into account international standards of judicial independence and establish a balance the legal goals of judges' evaluation and protecting the judge independence (Organization for Security and Co-operation in Europe, 2014).

The independence of the judicial authority and judges is one of the most important democratic foundations of society, the implementation of which is an important condition for building a legal state. As noted in the Decree of the President of Ukraine On the strategy for sustainable development Ukraine-2020, the goal of judicial reform is to reform the judicial system, judicial proceedings and related legal institutes for the practical implementation of the principles of the law rule and ensure everyone's right to a fair trial by an independent and impartial court. The reform should ensure the functioning of the judicial authority, which meets public expectations for an independent and fair court, the European system of values and standards for the protection of human rights (European Union, 2015).

The European Council Network of judicial authority issues has developed a system for evaluating the independence of the European Union judicial systems, which is based on the relationship between independence and accountability, since accountability of judicial authority is also a necessary precondition for the latter's independence. Accordingly, the judicial authority, which does not want to answer to the public for the activity, will not win the public confidence which threatens the independence in the short or long term. Therefore, Frans van Dijke, Frank van Tulder, Ymkje Lugten believe that there should be a transparent and objective mechanism for judicial authority accountability that protects judges from pressure (Dijka et al., 2016).

Among European States the independence of judges in the country is usually evaluated on a 10-point scale and on average this indicator is from 6.5 to 10 in each state. According to 2017 data, only five Eastern European countries have points from 6.5 to 7. While in the UK, Ireland, the Netherlands, and the Scandinavian countries (except Sweden) this indicator is from 9 to 10 points. These results are consistent with the fact that the vast majority of judges in Europe still do not feel pressure. In particular, the inquiry results show that 24% of judges in Albania report improper pressure on judges, in Croatia-12%, in Lithuania-12%, in Latvia-11%, in Spain-10%. In other countries, the percentages are much lower, for example, in Denmark and Finland, the lowest is 2%. In addition, there are empirical data that confirm the sources of improper pressure on judges:

1. The President of the court (25%);
2. The participants in the case and the representatives (24%);
3. Mass media (16%).

The results of researches in Ukraine at the same time by the Center for political-legal reforms conducted in 2019 show that the key problems are related to non-compliance and dependence of judges. Thus, 62% of citizens point to the prevalence of corruption among judges, 50 % to the dependence of judges on magnates, 49 % to the dependence of judges on politicians, 38 % to making paid-for decisions. On the other hand, in the context of overcoming corruption, it should be noted that according to the all-Ukrainian inquiry, judges execute justice in a society where every fifth citizen is ready to give illegal benefit to officials for solving personal problems, and a third part of the legal profession representatives involved in court proceedings believe that corruption is common practice in court. (Legislation, 2018).

Most member-countries use qualitative and quantitative criteria for evaluating judges. The quantitative criteria include the number of cases decided by the judge who is being evaluated, the time spent on each case, and the average time to complete the decision. As “qualitative” criteria it is important the quality of the judge’s decision on the case and the way in which complex cases are considered. In some states, the number or percentages of decisions made by a judge that have been overturned on appeal are factors that affect the evaluation of a judge’s performance. But there are states where this indicator is not taken into account due to the contradiction of the principle of judges’ independence. But the judge’s ability to mediate between the parties, draw up clear, understandable judicial decisions, cooperate with colleagues, and participate in court events is the basis for evaluating the judge. Violation of ethical rules as a criterion is the least controversial and is found in almost all states where it is carried out (Law, 2014).

In Italy, the evaluation of judges is considered positive only when the judge has received a positive evaluation on all criteria, in particular:

1. The competence criterion, which is evaluated taking into account training, training course of judge, skills in reasoning judicial decisions, conducting court hearings and the behavior of the presiding judge, coordination of the assistants work, cooperation with assistants, other judges;
2. The productivity criterion, which covers the number and quality of considered judicial cases;
3. The performance criterion focuses on the judge’s commitment to the duties of performing administrative activity within the court, meeting deadlines;
4. The “*engagement*” criterion, which is evaluated by taking into account the participation of judges in measures within the court and outside (Malaj, 2015).

In the Netherlands judges are evaluated according to pre-established criteria such as:

1. Professional competence;
2. Personal competence;
3. Social competence.

Regular evaluation of judges at the same time is the responsibility of the President of the regional court or the Supreme regional court. Although the decision according to the results of judge’s evaluation is the personal responsibility, he has the right to involve other persons to study judicial decisions made by the judge, review statistics on the number of cases considered

by the judge, the percentage of appealed and overturned decisions and collect other information (for example, from lawyers, other judges, especially those who worked in the same structure as the judge) (Riedel, 2014).

In turn, in Ukraine, the evaluation of judges is the procedure for checking all judges for compliance with the official requirements based on the three criteria: competence, integrity and professional ethics. Kuibida & Sereda note that as of April 1, 2019 2533 active judges have successfully passed evaluation based on various procedures, which is about 37 % of the total number of judicial bodies in Ukraine. 156 judges were not able to confirm compliance with the requirements of the position based on the evaluation results. Half of the judges (76 judges) failed the exam, and other half (75 judges) failed to get the minimum point after the interview. Thus, 3 % of judges failed the evaluation due to insufficient professional level, and another 3 % failed the general evaluation of compliance with the criteria. On April 1, 2019 15 judges were dismissed by the Supreme Council of justice of Ukraine through the evaluation results at the same time (Kuibida & Sereda, 2019; Kuibida, 2019). However, it should be supported by scientists that the evaluation of judges, which takes place in Ukraine, is not an effective mechanism for clearing the judicial authority. Since the majority of judges successfully passed the qualification evaluation only 1% were dismissed based on the evaluation results. The disadvantage of evaluating judges in Ukraine is that the results of evaluating judges can not be properly verified, which brings them closer to previous procedures, which were found to be non-transparent and corrupt, which does not create conditions for a qualitative renewal of the judicial authority.

But we should agree with Stawa et al. that involving the Public Council in the virtue of evaluating judges is a unique opportunity for civil society to participate in the creation of a completely new judicial authority. This is the most notable example of the institutionalization of the civil society role in evaluating judges, which makes it more open, transparent and increases the confidence of citizens in the judicial authority (Stawa et al., 2018).

Indeed, the Public Council of virtue was entrusted with the functions of assisting with the higher qualification Commission of judges of Ukraine in determining whether a judge (or candidate) meets the criteria for the purposes of qualification evaluation. It should be emphasized that citizens are involved in evaluating judges on voluntary bases at the same time. Therefore, the question arises about the motivation of members of the Public Council of virtue to perform an extraordinary amount of work to establish the compliance of judges (candidates for the position of judge) with the criteria of professional ethics and virtue. Given that this is a complex process that requires perseverance and responsibility, we believe it is important to introduce paid involvement of the public representatives in evaluating judges.

RECCOMENDATIONS

The importance of evaluating judges for the effective functioning of the judicial system is obvious, but today there is no standard for conducting such procedure at the regional level of the European Union states that would eliminate the disparate treatment of judges in different states. In addition, in the context of Ukraine integration into the European space in the sphere of judges' evaluation should be paid attention to the absence of a transparent mechanism for checking the results of judges' evaluation, which leads to abuse at each stage of evaluation and involving

citizens in the evaluation of judges on a free basis, which reduces the motivation to properly perform the tasks.

CONCLUSIONS

Today, judges are evaluated in order to improve the professionalism, to resolve the issue of promotion or demotion on the position, and to maintain the confidence of citizens in judges whose task is to execute justice. Summarizing the provisions of scientific doctrine at the same time, international acts and recommendations, the experience of European and Ukrainian States allows to conclude that the evaluation of judges should be based on the following principles: respect for the independence of judges; systematic evaluation of judges; consolidation of objective and clear criteria for evaluating judges at the legislative level; transparent evaluation of judges and verification of the results; involvement of the public in the process of evaluating judges on a paid basis.

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