

# THE CONFLICT OF INTERESTS AND TEACHING ACTIVITY OF A JUDGE

**Kurylo Volodymyr, National University of Life and Environmental  
Sciences of Ukraine**

**Kurylo Inna, National University of Life and Environmental Sciences of  
Ukraine**

**Mashevskaya Oksana, National University of Life and Environmental  
Sciences of Ukraine**

**Gulac Olena, National University of Life and Environmental Sciences of  
Ukraine**

**Iarmolenko Iuliia, Bila Tserkva National Agrarian University**

## ABSTRACT

*The article examines the legally permitted paid activity of a judge outside the field of justice like teaching in the form of lectures to lawyers and other target audience on issues related to law, administration of justice or other similar issues. As such activity is generally not carried out by judges on a permanent basis, the latter is investigated in terms of the likely impact on the independence (objectivity) of the judge's position in deciding a particular case with the direct participation of listeners of such lectures. It is about a possible factor of the emergence of a potential conflict of interests. The main goal of the research is to establish whether a judge has a conflict of interests during giving lectures to lawyers and other target audience, on issues related to law or justice administration, if such activities are paid, not carried out on a permanent basis and in general, whether such activity is teaching. It was disclosed that according to the legislation the conflict of interests was identified as a corruption risk. As a result of scientific research, the need to amend the legislation was identified. It was proposed to supplement the decision of the Council of Judges of Ukraine 'On granting a clarification for teaching, scientific or creative work of the judge' (2018) with the provision which defines judges teaching like act that doesn't create a potential conflict of interest.*

**Keywords:** Judge, The Conflict of Interests, Corruption Risks in the Judiciary System, Corruption-Related offenses, Teaching of a Judge, Law Lectures, Legal Regulation, Precondition for Corruption.

## INTRODUCTION

There is a well-established position in the scientific community that judges, as bearers of judicial power are subjects of corrupt practices, and that the preconditions (conditions) that indicate the presence or likelihood of corruption are, in particular, the conflicts of interests (Petrova, 2016).

According to foreign judicial reform expert of the reform of the Ukrainian judiciary, three documents are required to identify the conflicts of interest of judges, which Ukrainian judges are required to submit by filling in electronic forms on the NACP (National Agency on Corruption Bureau) and HQCJ (High Qualification Council of Judges) website: annual property declaration, declaration of family ties of a judge and declaration of judicial integrity (Jenett, 2017). Such declarations, in their opinion, should ensure the effective functioning of the system for tracking conflicts of interests in the activities of judges and how honest they are.

According to Article 1 of the Law of Ukraine "On the Prevention of Corruption", a corruption offence is 1) an act that contains features of corruption committed by persons, who

are the subjects, and to whom the Law applies criminal, disciplinary and/or civil-legal liability; 2) corruption-related offence is an act that does not contain features of corruption, however it violates the requirements, restrictions, and prohibitions established by the Law, which have been committed by persons who are the subjects of the law, and to whom the Law applies criminal, disciplinary and/or civil-legal liability. The objects of the declaration include: real estate, objects of construction in progress, securities and other corporate rights, intangible assets. Valuable movable property is subject to declaration if its value exceeds 100 subsistence minimums, income received in case of exceeding 5 subsistence minimums (Kurylo et al., 2020).

Bringing to legal (administrative) responsibility for actions or decisions, accepted in a situation of real conflict of interest most of all according to domestic statistics applies to residents of small towns and villages. At present, they are mostly united territorial communities; because they have private interests (any property or non-property interests persons, including those caused by personal, family, friendly or other extracurricular activities relations) often contradict the official because all the inhabitants of the community are well known each other. In particular, some aspects of this issue are explored in the article `Legal Grounds for Social Work Organization in Rural Communities of Ukraine` (Vasiuk et al., 2020).

At the same time, in the activities of judges may arise situations that are not covered by the declaration system, but the possibility of a conflict of interests is possible.

Today, the highest body of judicial self-government - the Council of Judges of Ukraine, pays the greatest attention to the issue of resolving the conflicts of interests in the activities of judges, and in general their prevention by making a number of decisions and recommendations. In early October 2018, the Council of Judges of Ukraine and the National Agency on Corruption Prevention signed a Memorandum of Cooperation and Information Exchange to develop joint proposals to improve the monitoring and control of compliance with the law on resolving the conflict of interests in the activities of judges, the Chairman and members of the High Qualification Commission of Judges of Ukraine, the Chairman of the State Judicial Administration of Ukraine and his deputies (Council of Judges of Ukraine, 2018).

At the same time, further research from the point of view of administrative law requires certain issues of the presence or absence of the conflict of interests in the extrajudicial activities of a judge, if such is paid by law. In this research, the emphasis is on the teaching activities of a judge.

## **RESEARCH BACKGROUND**

Corruption in the bodies of state power of Ukraine and, in particular, in the judicial system in its various manifestations remains an actual direction of scientific researches in recent years, as evidenced by the works of Vynogradova, Garashchuk, Kamlyk, Loboyko, Melnyk, Petrova. Before establishing the preconditions (factors) that determine the corruption component in the activities of people authorized to perform state functions, including holders of judicial power, the following representatives of domestic scientific opinion referred to in their works: Andrushko, Goncharenko, Kurylo, Zakharova, Didyk, Podkopaeva, Fedorovich and others.

## **METODOLOGY**

The research methodological method is a set of general scientific and special methods of cognition. Their using is due to a systematic approach. The main conclusions and provisions of the research are substantiated using the formal legal method and the method of systematic analysis of national legislation, as well as international legal documents and the practice of their application. The dialectical method was used in the analysis of the concept of conflict of interests of judges and causes and conditions that contribute to the existence of this phenomenon. The system-structural method was used in the analysis of the features of teaching judges in terms of conflicts of interest.

The main goal of the research is to establish whether a judge has a conflict of interests during giving lectures to lawyers and other target audience, on issues related to law or justice administration, if such activities are paid, not carried out on a permanent basis and in general, whether such activity is teaching.

## RESULTS

Investigating corruption risks in the judicial system Petrova draws attention to the fact that the legislator's separation of the conflict of interests into an independent corruption risk suggests the lack of an unambiguous clear view of the integrity of the judge, and since this concept is evaluative and contains a significant number of components, the latter may differ in its interpretation by different bodies in the future (Petrova, 2017).

The specific nature of a judge's activities as a subject of conflict of interests (Decision of the Council of Judges of Ukraine, 2016) and the need to maintain the dignity of position and protection from all forms of pressure, mean that a judge must behave in such a way, as to avoid the conflict of interests, including refraining from any kind of professional activities, which can distract him from performing professional duties or lead only to partial implementation of his/her functions (Petrova, 2017). Some problematic issues of academic honesty principles are presented in the source `Problems of the introduction of the academic honesty principles in domestic institutions of higher education` (Kulish et al., 2020).

The European Charter on the Statute for Judges (clause 4.2) stipulates that judges who are engaged in activities other than their judicial duties, other than literary or artistic, if they are remunerated, must be pre-authorized to the conditions laid down by law (European Charter on the Statute for judges, 1998). As it is recognized that there is an increased risk that extrajudicial activities will be given more attention by the judge if there is a possibility of receiving remuneration (Opinion no.3, 2002).

Incompatible with the duties of a judge types of professional or paid activities are clearly defined in Article 52 of the Law of Ukraine "On the Judiciary and the Status of Judges" (hereinafter - the Law № 1402-VIII) (Laws, 2016). Exceptions are teaching, research or creative work. Part-time job is not considered to be a business trip to the High Council of Justice, the High Qualification Commission of Judges of Ukraine, the National School of Judges of Ukraine, the Council of Judges of Ukraine.

The Supreme Court of Ukraine has once raised the issue of the right of a judge to combine his/her main activity with the opportunity to teach in educational institutions or carry out scientific and creative activities, including during working hours in the context of current anti-corruption legislation (Decision on the Constitutional Court of Ukraine, 2010).

Resolving this issue under the Law of Ukraine `On the Judiciary and the Status of Judges` (July 7, 2010) and the Law of Ukraine `On Principles of Prevention and Combating Corruption` (June 11, 2009) and the Law of Ukraine `On Principles of Prevention and Counteraction to Corruption` (June 11, 2009), the Constitutional Court of Ukraine pointed out the absence of any legislative restrictions on judges' teaching, research and creative activities both during working and non-working hours.

At the same time, it should be emphasized that the body of constitutional jurisdiction did not interpret the meaning of the concept of teaching according to the norms of educational legislation and did not answer the question whether such activity is taken into consideration if it is performed by judges not in educational institutions for law students but for other target audience.

It is known that in 2018 the Council of Judges of Ukraine, with reference to the decision of the Constitutional Court of October 6 2010, drew the attention of local and appellate courts to the fact that judges' scientific, teaching or creative work is not legally limited, but should not harm the interests of justice (The decision of the Council of judges of Ukraine, 2018).

In the same decision of October 6, 2010, the Constitutional Court of Ukraine drew attention to the fact that in the Civil Convention against Corruption of 1999, the Criminal Convention against Corruption of 1999, and the United Nations Convention against Corruption

of 2003, ratified by Ukraine, corruption activity is directly related to selfish actions (inaction) of an official in the performance of his/her duties. These provisions make it impossible for the legislator to recognize corrupt actions as a purely scientific or teaching activity, if it is a source of legal and rationally justified income, not related to selfish actions (inaction) of a person in the direct implementation of official duties.

International experts, recognizing the current legal regulation of the prevention and settlement of conflicts of interest in Ukraine as meeting international standards, stressed that the permitted paid activities can still create a conflict of interest, so they should be regulated only in accordance with applicable law (The conclusions and recommendations, 2018).

Thus, in neighboring Poland, where judicial reform is also under way, judges' lectures to lawyers, prosecutors, and other groups of legal professions in the legal community are a matter of conflict of interests. There is an explanation for the low salary of judges, as the main factor that determines their part-time job (Sladkowski, 2014).

According to the Polish scholar, restricting a judge's ability to obtain additional work is one of the most significant guarantees of a judge's independence. In modern realities, one can often observe the phenomenon of "penetration" of the business world into the environment of various professional groups, so the author emphasizes with special caution that it is necessary to approach the topic of hiring a judge out of court. In his conclusions, the scholar writes that a rational legislator should know that the true independence of a judge can be built only if, in addition to limiting the possibilities of extrajudicial work, there will be a further increase in judges' salaries so that they correspond to actual dignity (Sedletska & Yegoshina, 2017).

Despite the rationality of such conclusions, the author still shares the opinion of the Chief Judge of Australia, Gerard Brennan, that a judge will not be able to get rich for the remuneration he/she will receive, despite working harder and longer than most of his friends in other professions (Brennan, 1996). Instead, he believes, the need for extrajudicial work for a judge in the vast majority is not due to monetary incentives, but the ability to share their own legal knowledge with a professional audience. However, the judge's receipt of "limited fees, not compensation" for teaching, it is not considered to be a "profit position" (Lanzinger, 1993).

It is known that the Federal Judge Mark Wolf, who is one of the ideologues of the concept of the International Anti-Corruption Court, not only gives lectures on international anti-corruption struggle at Harvard University (Sedletska & Yegoshina, 2017), but there are also feature films based on his sentences - "Black Mass" with Johnny Depp and "Apostates" by Martin Scorsese. In 2018, a judge provided consultations in Ukraine on standards and requirements for candidates for judges of anti-corruption courts, etc. (Shabaev, 2018). It is unlikely that an outside observer has objective doubts about his independence and objectivity in the administration of justice.

Ralph K. Winter, senior district judge of the United States Court of Appeals, also believes that there is no harm to judges in attending seminars and lectures, and that such contact is of great benefit to all involved, including judges.

For example, the Ukrainian Helsinki Human Rights Union (UHHRU) conducted a study and found that 12 of the 22 cases won in the European Court in 2015 were prepared either by human rights organizations or lawyers trained in human rights organizations, and that the UHHRU and the Network human rights institutions conduct a free distance course "Application of international human rights standards at the national level" for those wishing to become an expert in the field of appeals to the European Court and apply its practice in national courts (Ukrainian Helsinki Human Rights Union, 2015).

Judge of the European Court of Justice from Ukraine Hanna Yudkivska, who is a guest expert of the course, notes: "Court practice is constantly evolving. And in order to have enough of it, you need to sit on the website of the European Court of Justice, read cases (I also advise lawyers who specialize in this) to do so or, of course, to attend lectures by various experts who specialize in conventions and help to make right statements. And from this point of view, the educational programs of the Ukrainian Helsinki Human Rights Union are very useful, and I definitely advise their lawyers if they have the opportunity to attend them" (Ukrainian Helsinki Human Rights Union, 2015).

It is known that judges of the European Court give open lectures to participants of such events free of charge and in contactless to the listeners, so any risks of influencing their independence and objectivity during the consideration of specific cases are excluded. Recently, judges of the Grand Chamber of the Supreme Court have also switched to remote communication with lawyers through webinars (online seminars) on key issues of jurisprudence, and such communication is remote and free (Supreme Court, 2020).

Undoubtedly, scientific and teaching activities are types of intellectual and creative activities aimed at obtaining, disseminating, using new knowledge, professional skills, their practical application.

However, practice shows that giving lectures by judges to lawyers and any other people, which is not carried out on a permanent basis for remuneration, is not always perceived as a teaching activity, and is even regarded as a precondition for corruption-related offenses, namely violation of requirements on the prevention of the conflicts of interests (Decision of the Constitutional Court of Ukraine, 2010).

We can only assume that this issue has arisen precisely because of the format of such lectures, where the specifics of interpersonal communication is manifested in direct communication between the judge-lecturer and the recipients of information (person, group of people), for example, during a “coffee break”, which may give an impression of the emergence of certain friendly, personal or other extracurricular relations between them. The issue of documenting and the amount of the judge's fee for participation in such an event for an outside observer in this case is no longer decisive.

Opinion No 1 (2001) of the Advisory Council of European Judges emphasizes that, when making judgments about the parties to a trial, judges must be impartial, free from any ties and attachments that may be perceived as affecting the judge's ability to accept independent decisions in the eyes of a reasonable observer (Opinion, 2001).

Applying the constitutional interpretation (Decision of the Constitutional Court of Ukraine, 2010) to modern forms of teaching by judges, it is advisable to pay attention to its key theses for the research topic: the legality of income and its rationally justified size.

Therefore, it is especially important in this process to maintain a balance between the teaching activities of a judge in the form of lectures, trainings or webinars for prosecutors, lawyers, other legal professionals and maintaining judicial objectivity and independence in their case with their direct participation.

According to the Law of Ukraine “On Education”, teaching activity is an activity that is carried out in the form of, in particular, lectures, trainings, webinars, etc. and is conducted by a pedagogical (scientific and pedagogical) employee, self-employed person (except for persons prohibited by law) or another individual on the basis of the relevant employment or civil contract (Laws, 2017).

Achieving a balance between the teaching activity of a judge and his professional activity can be the presence of a formalized relationship of a judge with a higher educational institution as a pedagogical (scientific and pedagogical) employee. For instance, the norms of the General Courts Act in Poland stipulate the obligation of a judge to obtain a certain permission to teach in a higher school and to take the position of a visiting professor, etc. (Sladkowski, 2014).

## CONCLUSIONS

According to the law “On judicial system and status of judges” the conflict of interests is identified as a corruption risk. The Council of Judges of Ukraine by the Decision, approved the Procedure for monitoring compliance with the law on the conflict of interests in the activities of judges and other members of the judiciary system and its settlement 2016 No. 2 (Opinion, 2001) and the Decision No. 3 (2016) – Regulations on the Committee on Ethics, settlement of the conflict of interests, and the professional development of judges of the Council of Judges of Ukraine.

After analyzing this problem, we can conclude that it is necessary to amend the legislation. One of the fastest and most effective ways is to adopt a clarifying provision. We propose to supplement the decision of the Council of Judges of Ukraine of February 7, 2018 No. 8 `On clarification of teaching, research or creative work of judges` with provisions that lectures of judges to lawyers and any other people, which is not held on a regular basis for remuneration, is a teaching activity of a judge and does not create a potential conflict of interest.

This provision will be able to resolve the issue of a possible conflict of interest.

## REFERENCES

- Committee on the Judiciary. Subcommittee on Separation on Powers (1970). Nonjudicial activities of supreme court justices and other federal judges: Hearings, ninety-first congress. *First Session, on Nonjudicial Activities of Supreme Court Justices and Other Federal Judges*, 325, 1097-2109
- Council of Judges of Ukraine (2018). *Council of Judges of Ukraine and the National Agency on Corruption Prevention signed a memorandum of cooperation*.
- Decision of the Constitutional Court of Ukraine in case on the constitutional representation of the Supreme Court of Ukraine concerning compliance of the Constitution of Ukraine (constitutionality) of provisions of laws of Ukraine `On principles of prevention and combating corruption`, `On responsibility of legal entities for committing corruption offenses`, On amendments to some legislative acts of Ukraine regarding liability for corruption offences` (case on corruption offences and enactment of anti-corruption laws) (2010). *The Bulletin of the Constitutional Court of Ukraine*, 6(7).
- Decision of the Council of Judges of Ukraine (2016). *Procedure for monitoring compliance with the legislation on the conflict of interests in the activities of judges and other representatives of the judicial system and its settlement*, 2.
- European Charter on the Statute for judges (1998).
- Gerard, B. (1996). The role of the judge. *National Judicial Orientation Programme*.
- Jenett, V. (2017). *Corruption risks of the latest reforms in the judicial system of Ukraine*.
- Kulish, A., Gyrenko, I., Kobzar, O., & Pavlenko, B. (2020). Problems of the introduction of the academic honesty principles in domestic institutions of higher education. *Asia Life Sciences*, 21(2).
- Kurylo, V.I., Mushenok, V.V., Kholostenko, A.V., Mashevska, O.P., & Sira, A.V. (2020). Inaccuracy of information about the property of the subject of the declaration as a qualifying feature of a corruption-related offence. *Academic Journal of Interdisciplinary Studies*, 9(5), 282.
- Lanzinger, J.A. (1993). Judges teaching in law school: Who, what, where, and why not? *Journal of Legal Education*, 43(1).
- Law and Business. (2020). *Can it be considered corruption for a judge to give lectures to lawyers?*
- Laws. (2016). Law of Ukraine. *On judicial system and status of judges*.
- Laws. (2017). Law of Ukraine. *On education*.
- Opinion No. 2 (2001). *Of the advisory council of European judges to the committee of ministers of the council of Europe on standards for the independence of the judiciary and the immutability of judges*.
- Opinion no. 3 (2002). *Of the consultative council of European judges to the attention of the committee of ministers of the council of Europe on the principles and rules governing judges` professional conduct, in particular ethics, incompatible behavior and impartiality*.
- Petrova, A.S. (2017). *Organizational and legal principles of anti-corruption in the judicial system of Ukraine*. PhD diss., Yaroslav Mudryi National Law University.
- Sedletska, N., Yegoshina, V. (2017). *International Anti-Corruption Court: Utopian Concept or Real Perspective?*
- Shabaev, G. (2018). *Ukraine is a country where young people are fighting against corruption and deserves the support of his case, a Federal U.S. judge Mark Wolfe*.
- Sladkowski, M. (2014). The judge undertaking additional employment in view of the constitution of the republic of Poland. *Studia Iuridica Lublinensia*, 22.
- Supreme Court (2020). *Judges of the Supreme Court held a webinar on the practice of corporate disputes. The conclusions and recommendations: Managing conflicts of interests and the National Agency for prevention of corruption* (2018).
- The decision of the Council of judges of Ukraine. (2018). On granting a clarification for teaching, scientific or creative work of the judge.
- Ukrainian Helsinki Human Rights Union. (2015). *68% of cases against Ukraine were won by lawyers who practiced in human rights organizations*.
- Vasiuk, O., Gulac, O., Shust, V., Marchenko, S., Halai, A., & Halai, V. (2020). Legal grounds for social work organization in rural communities of Ukraine. *European Journal of Sustainable Development*, 9(3), 503.