

PROFESSIONALISM OF JUDGES AS THE BASIS OF THE STAFFING IN THE COURTS

Oleg Reznik, Sumy State University
Andrii Borko, Admiral Makarov National University of Shipbuilding
Mykola Inshyn, Taras Shevchenko National University of Kyiv
Tetiana Kobzieva, Sumy State University, Sumy, Ukraine
Irina Kislitsyna, National University Odessa Law Academy

ABSTRACT

The article deals with the problem of judges' professionalism as a basis for the staffing in the courts. It has been found that the quality of judicial administration of the courts depends on the professionalism of the judges, and has been noted that it is therefore advisable to exercise proper judicial personnel management. The attention has been paid to the experience of assessing the professionalism of judges as a basis for proper court staffing in the Republic of Latvia, the Netherlands and Ukraine. It has been found that the determination of the professionalism of judges is carried out through the initial evaluation of candidates for the position of judges and the systematic evaluation of judges. It has been noted that in the Republic of Latvia and the Netherlands it is advisable to pay attention to ensuring the independence of the entities that are involved in the process of evaluation, because the current situation may transform the procedure of appointing and examining the professional qualities of judges in order to ensure quality justice to the instrument of pressure on judges and the spreading of corruption in the courts. It has been concluded that in Ukraine the procedure of evaluating judges is also imperfect, but the problem of paramount importance is the minimization of the risks of abuse in the judges' professionalism evaluation.

Keyword: Judge, Court, Professionalism, Staffing, Personnel Management, Evaluation Of Judges.

INTRODUCTION

An effective justice system is one of the hallmarks of a democratic and governed by the rule of law country. Each country is interested in the existence of such system, because the country itself has a duty to ensure a practical realization of the fundamental right for judicial protection for its citizens. The justice is exercised by specially authorized bodies-courts with the prohibition of delegation of such powers to other bodies. However, the leading role in meting out the effective justice belongs primarily to judges. The status of judges presupposes the competence, the independence and the impartiality. Every person legitimately expects such qualities from the courts and from every judge entrusted with the protection of his rights. Accordingly, the persons selected for judicial posts should have high moral qualities and abilities, as well as the legal qualifications appropriate to the requirements.

The problem of high quality staffing in the judicial corps is always present, but it has become especially urgent for the countries in the present conditions, when the socio-economic

relations have significantly changed, the process of building the rule of law with changes in the current legislation is taking place. Under these conditions, one of the key areas of personnel policy should be the development and implementation of new approaches to the selection and staff deployment of the judges.

LITERATURE REVIEW

Oliveira et al. during their researches have noticed that there is an interplay between the court staff and the work of the court. Accordingly, the scholars have refuted the existing hypotheses, in particular that the number of judges does not affect the efficiency of the court, and that the number of judges' assistants does not affect the performance of the court. At the same time, scientists have concluded that there is a link between the number of court cases, court staff and court performance. The above demonstrates the obvious need of careful and proper management of personnel of the courts, which is a strategic task (Oliveira et al., 2018; Klochko et al., 2016).

Rusanova and Yurevich have even singled out the term of judicial personnel management, in which scientists offer to understand the process of identifying, studying and evaluating of the professionally important qualities and abilities, professional training of both candidates for the posts of judges and already appointed judges or court administration. The purpose of judicial personnel management is to ensure the most rational and effective use of personal capacity in solving the tasks of the court as a whole. The system of recruitment for judicial institutions is a complex mechanism, the components of which concern both the constitutional regulation of power relations and internal regulators of the judicial system construction (Rusanova & Yurevich, 2016; Reznik et al., 2017).

The need of paying proper attention to the professionalism of judges is also justified by Mindaugas Šimonis, who has noted that a high level of professional qualification of a judge is a prerequisite for the proper realization of the right of legal proceedings. At the same time, the high level of professionalism of the judge and the effective work of the judicial administration require the preservation of both types of independence, because the judges and the court staff are the first to be mentioned when speaking of the independence and the impartiality of courts and judges (Šimonis, 2019; Reznik et al., 2020) insidering the need to ensure the professionalism of the judges, the other scholars, like Alicia Bannon, have noted that the assignment of judges to their position always provokes a conflict between the independence of judges and their accountability. In addition, the assignment of the judges' further influences on the quality of judgments verdicts, the trust of public to the court and other equally important indicators like the independence and the accountability.

Considering recent scientific studies on the professionalism of judges as a basis for the proper staffing of the courts. The relationship between the quality of justice administration and the professionalism of judges is evident. The same thing is with the importance of proper staffing in the courts to identify, study and evaluate their professionally significant qualities and abilities, professional training of both candidates for judges and already appointed judges. Finally, the future quality of justice administration also depends from the qualitative selection of candidates for judges.

METHODOLOGY

The study of the issue of judges' professionalism as a basis for proper staffing of courts has been conducted using dialectical, comparative and formal legal methods. The dialectical method has been used to determine the relationship between the professionalism of the judges and the quality of justice. The peculiarities of analyzing the professionalism of candidates for the posts of judges and of already appointed judges in Ukraine and foreign countries were marked out by the means of the comparative legal method. Formal-legal method has allowed interpreting the rules of law that describe the organizational and legal foundations of staffing courts.

FINDINGS AND DISCUSSIONS

The search of procedures for identifying, studying and evaluating of the professionalism of candidates for the posts of judges and of already appointed judges always involves the studying of the positive practices of foreign countries. Considering this, we propose to pay attention to the experience of the countries of Europe including Ukraine in the case of assessing the professionalism of judges.

As for the Republic of Latvia, an individual evaluation of a judge is usually carried out for the first time after the first three years in office. Further evaluation is carried out every five years by the Judicial Qualification Committee of the Republic of Latvia. The tasks of the mentioned above Judicial Qualification Committee of the Republic of Latvia are noted in Section 94 of the law "*On Judicial Power*", which defines the purpose of the evaluation and the criteria for formal evaluation. When it comes to evaluating subjects, the Judicial Qualifications Committee cannot handle oneself the all the amount of information about a particular judge that is collected, summarized and analyzed during the evaluation process, so the president of the Court in which the judge under evaluation is working is also involved and in some cases with a representative of a higher court (a regional court or the Supreme Court, as the case may be). The evaluation procedure includes the submission of the document on self-assessment of the professional achievements in a typical form from the judge under evaluation, the subjects of evaluation also have the right to receive the texts of the judgements of this judge, the records of proceedings headed by the judge, to oblige the administration of the court where the judge is working to provide feedback from judges and court staff on the work of the judge, and even to interview the parties of the case headed by the judge.

Speaking of Ukraine, the individual evaluation of judges is a procedure for reviewing the compliance of the judges with their job requirements based on the criteria defined by law. The text of Article 69 of the Law of Ukraine "*On Judiciary and Status of Judges*" stipulates that a citizens of Ukraine, not younger than thirty and not older than sixty-five, who has higher legal education and professional experience in the field of law, who is competent, virtue and speaks the state language may be appointed as a judge (The Law of Ukraine, 2016).

Regarding to the existing evaluation criteria of judges Stawa et al. believe that particular attention should be paid to the virtue of judges, because of the fact that the legislator separates virtue and professional ethics, despite the fact that on the point of view of etymology, the former is an element of the latter. Accordingly, there is a need to clarify the criterion of virtue to separate it from professional ethics. At the same time, the scholars note that the high importance of virtue is given in the light of the specific purpose of qualifying assessment, which is aimed on purifying of the judiciary power from the corrupt judges. This approach is quite acceptable and

applicable in the current situation, but it requires the clarification of the content of the term virtue (Stawa et al., 2018).

In 2016, the High Qualifications Commission of Judges of Ukraine has approved the Regulations on the Procedure and Methodology of Qualification Assessment, the indicators of compliance with the criteria for qualification assessment and the means of their determination, according to which the virtue of the candidates for the position of judge should be evaluated. In the context of this Regulation, “*the virtue*” is interpreted as the correspondence of the lifestyle with the capital declared by the candidate to the position of a judge and members of his or her family. There are several Articles describing this criterion. Thus, the Article 10.3 (The information about a judge's misconduct or offenses that is indicative of his/her dishonesty as well as facts of his/her prosecution) has an evaluation criterion, according to which the candidate should provide the clarification. The Article 10.6 (Applicant's adherence to the legislation governing his professional activity), implies being in statutory compliance and does not imply the investigation of the actions outside the profession and law (Law, 2016).

It should be noted that the evaluation of judges in Ukraine provides for:

1. The evaluation of the qualification of candidates for the position of judge;
2. Regular evaluation of the qualification of judges to meet their job requirements;
3. The qualification of judges for the transfer to the position of judge in a higher court.

The evaluation of qualification of judges is conducted by the High Qualification Commission of Judges of Ukraine in three stages:

1. Examination;
2. Review of the file;
3. Interview (Kuibida & Sereda, 2019).

It is important to distinguish that the examination, as a stage of evaluation of the judges, includes testing and solving practical tasks, meanwhile only the overall score for this stage is reported to judges who have passed the evaluation. This situation, in fact, indicates the capability of existence of a number of opportunities for abuse in the course of assessment and negates the importance of the examination as an element of determining the professional qualities of judges. In addition, this fact is also confirmed by statistics.

In particular, as at April 1, 2019, more than 2,000 judges successfully passed the qualification assessment, 3% of judges failed the qualification due to lack of professional qualifications, another 3% failed the qualification due the overall evaluation of all criteria and only 15 judges were dismissed by the High Council of Justice of Ukraine because of the negative evaluation results (Kuibida & Sereda, 2019).

When referring to the professional competence of judges in the Netherlands as a criterion for evaluation of their performance, we should mention that it includes the following:

1. Professional qualifications: knowledge of the law and ability to apply it in practice; ability to apply information technologies;
2. Understanding their role as a judge: immediacy; willingness to take responsibility for the judgements;
3. The ability to reason their opinions and decisions;
4. The ability to hold court hearings: preparation for litigation case; structuring the proceedings; respect for the interests of the parties;
5. Research activities (Riedel, 2014).

Several tools are used to determine the professionalism of judges, including the expert review of judges' professional activity, the generalization of information on the judge's continuing education, and the participation of judges in scientific activities. The expert review includes obtaining and analyzing of the feedback from colleagues regarding the work of a judge. As for the continuing education of judges, the Judicial Council requires each judge to spend 30 hours a year for personal education or 90 hours for three years. Each court monitors the continuing education of judges. Typically, the continuing education includes legal content courses, conferences, and trainings. Besides the continuing education of judges, the judiciary system requires to participate in scientific activities in centers of expertise on the problems of fraud, cybercrime, financial law, environmental and medical law, insurance and fiscal law from the judges. Consideration is also given to the assistance of the judge of one court in a case that is pending by another court, particularly if the one is complicated (Dijkstra et al., 2017).

It should be underlined that judges in the Netherlands are selected according to pre-established selection criteria, under the responsibility of the Judicial Council by the means of a national commission (Landelijke selectiecommissie rechters) that selects new judges. The National Judicial Selection Commission consists mainly of judges, lawyers and some scholars. The selection process for initial judicial training takes about three months, and the candidates can apply for registration for a year ahead (Riedel, 2014).

If we are speaking not about the initial evaluation of judges which is held before their appointment, but about the evaluation of judges who already hold their positions, the subjects of such evaluation are the president of a regional court or a high regional court. They are by law the heads of all judges in the respective judicial districts. Accordingly, the process of the evaluation of judges is the personal responsibility of the president of the Court, which means that this function cannot be delegated to others (except the vice president) (Riedel, 2014). In general, the evaluation mechanism in the Netherlands separates the initial evaluation of candidates for the position of a judge which is processed by a specially created national commission and the systematic evaluation of judges, the function of executing of which is vested on the president of a regional court. However, the procedure of evaluation of the judges by the president of a regional court, who actually controls the activity of all judges in the respective judicial district, in our opinion, creates the conditions for abuse of the authority and pressure on judges, since the subject of evaluation is of the direct interest.

RECOMMENDATIONS

The learning of the experience of assessing the professional quality of judges in the Republic of Latvia, the Netherlands and Ukraine is a significant step towards the ensuring the proper administration of justice in the country. Instead, it would be advisable in the Republic of Latvia and the Netherlands to pay attention to ensuring the independence of the entities conducting the evaluation. Thus, the Judicial Qualification Committee of the Republic of Latvia involves other subjects like the president of the Court, where the judge under evaluation holds the position, to the process of evaluation, and in the Netherlands, the president of the Court oneself evaluates the judges who hold positions in it. The above gives place to the risks of the unbiased evaluation of judges and the use of such evaluation as a tool to dismiss judges who are not subject to undue influence by the administration. The failure of resolving such problem can transform a procedure aimed on the identification and examining of the professional qualities of judges, providing quality justice to the instrument of pressure on judges and spreading corruption

in the courts. As for Ukraine, it is advisable to divide the exam as a stage of evaluating judges separately into testing and practical tasks with the announcement of judges' scores at each stage, which will minimize the risk of abuse when assessing the professionalism of judges.

CONCLUSIONS

Thus, the professionalism of judges is a prerequisite for the proper administration of justice by the court that is why special attention is paid to the identification of the professional qualities of state judges. The experience of the Republic of Latvia and the Netherlands shows that the evaluation procedure is divided into two forms: the primary, which is used for the selection of candidates for judicial office and the secondary, which is held systematically to check the professional quality of judges. In Ukraine, there is another type of evaluation, which is applied when transferring a judge from one court to another. At the same time, one of the common problems for the Republic of Latvia and the Netherlands is the assurance of independent subjects for the evaluation procedure; meanwhile for Ukraine it is urgent to minimize the risks of abuse when assessing the professionalism of judges.

REFERENCES

- Dijkstra, R.I., Langbroek, P.M., Bozorg, Z.K., & Türk, Z. (2017). *The evaluation and development of the quality of justice in The Netherlands*. Retrieved from <https://research.tilburguniversity.edu/en/publications/the-evaluation-and-development-of-the-quality-of-justice-in-the-netherlands>
- Klochko, A.N., Kulish, A.N., & Reznik, O.N. (2016). The social basis of criminal law protection of banking in Ukraine. *Russian journal of criminology*, 10(4), 790-800.
- Kuibida, R., & Sereda, M. (2019). *Qualification assessment of judges: Summary of interim results*. Retrieved from https://pravo.org.ua/img/books/files/1554972804qualification_report_short_version_eng.pdf
- Law. (2016). *Decision of the high qualifications commission of judges of Ukraine: On approval of the regulations on the procedure and methodology of qualification assessment, indicators of compliance with qualification assessment criteria and means of establishing them*. Retrieved from <https://vkksu.gov.ua/userfiles/doc/polozhennia.pdf>
- Oliveira, G.A., Aquino, G.T., & Akutsu, L. (2018). The relationship between judicial staff and court performance: Evidence from Brazilian state courts. *International Journal for court administration*, 8(1), 1-12.
- Reznik, O., Getmanets, O., Kovalchuk, A., Nastyuk, V., & Andriichenko, N. (2020). Financial security of the state. *Journal of Security and Sustainability Issues*, 9(3), 843-852.
- Reznik, O.M., Klochko, A.M., Pakhomov, V.V., & Kosytsia, O.O. (2017). International aspect of legal regulation of corruption offences commission on the example of law enforcement agencies and banking system of Ukraine. *Journal of Advanced Research in Law and Economics*, 8(1), 169-177.
- Riedel, J. (2014). Individual evaluation of judges in Germany. *Oñati Socio-legal Series*, 4(5), 974-992.
- Rusanova, I.O., & Yurevich, I.V. (2016). Some issues of judicial personnel management. *Forum of the law*, 4(1), 277-282.
- Simonis, M. (2019). Effective court administration and professionalism of judges as necessary factors safeguarding the mother of justice-The right to a fair trial. *International Journal for court administration*, 10(1), 47-56.
- Stawa, G., Van Benthem, W., & Moliene, R. (2018). *Selection and evaluation of judges in Ukraine*. Retrieved from <https://www.pravojustice.eu/storage/app/uploads/public/5c0fcd/a31/5c0fcd3162ea473697034.pdf>
- The Law of Ukraine. (2016). *On judiciary and status of judges*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1402-19>