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Principle of application of the judge's internal beliefs under the conditions of international rules of evidence and corruption factors

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Abstract

Using an interpretative methodology, the objective of the research was to analyze the most complex and subjective principles of justice: the principle of the judge's internal beliefs at the time of decision making under a system of democratic checks and balances. Definitely, the judiciary is an important element in ensuring the protection of human rights and the legitimacy of the supremacy of the law. The rusting of the judiciary inevitably leads to the gradation of basic constitutional provisions on the essence of the rule of law, as well as fundamental rights and freedoms. The principles of justice play a fundamental role in the administration of justice. The correct construction of the given principles is the key to proper and application of the law in accordance with legal and ethical standards. In this sense, it is concluded that the internal beliefs of the judge as a person authorized to execute justice, must be impartial, objective, consistent and independent. At the same time, the formulation of his "internal beliefs" still allows for subjectivity, since the criteria for the evaluation of evidence by the Court are described without detailing or standardizing the requirements of the judicial process.

Keywords: principles of justice; evidence; judge's internal beliefs; corruption factors; international rules.

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Principio de aplicación de las convicciones internas del juez en las condiciones de las reglas internacionales de la prueba y de los factores de corrupción

Resumen

Mediante una metodología interpretativa, el objetivo de la investigación consistió en analizar los principios de justicia más complejos y subjetivos: el principio de las creencias internas del juez en el momento de la adopción de la decisión bajo un sistema de pesos y contrapesos democrático. Definitivamente, el poder judicial es un elemento importante para garantizar la protección de los derechos humanos y la legitimidad de la supremacía de la ley. La oxidación del poder judicial conduce inevitablemente a la gradación de las disposiciones constitucionales básicas sobre la esencia del Estado de derecho, así como de los derechos y libertades fundamentales. Los principios de justicia juegan un papel fundamental en la administración de justicia. La construcción correcta de los principios dados es la clave para una adecuada y aplicación de la ley de acuerdo con las normas legales y **éticas**. En este sentido, se concluye que las creencias internas del juez como persona autorizada para ejecutar justicia, deben ser imparciales, objetivas, coherentes e independientes. Al mismo tiempo, la formulación de sus "creencias internas" sigue permitiendo la subjetividad, ya que los criterios de evaluación de las pruebas por parte del Tribunal se describen sin detallar ni estandarizar los requisitos del proceso judicial.

Palabras clave: principios de justicia; prueba; creencias internas del juez; factores de corrupción; reglas internacionales

Introduction

Upon condition check and balance system is valid, the judiciary is essential in ensuring the protection of human and civil rights, legitimacy, and the supremacy of law. The primary function of the courts is even-handed enforcement of the law to many disputes. This function is closely connected to the stability and legitimacy of judicial power and the constitutional system (Hedling, 2011).

Law enforcement, criminal investigation and prosecution are essential components of an approach guided by the ideals of the supremacy of law (Sanjay, Mishra, 2020). When the judicial authorities order equitable decisions, those decisions establish an insightful precedent for the future settlement of disputes between individuals or between the state and individuals. On this basis, the at-trial procedure ensures effective law enforcement and protection of the rights of individuals and groups and sets the standard for further equitable law enforcement.

Consequently, human rights are effectively protected in the courts (Fahed, 2002). It is worth pointing out that the rust of judicial power inevitably leads to the grading of the introductory constitutional provisions on the essence of our state. Namely, Art. 1 of the Constitution of Ukraine proclaims Ukraine a sovereign and independent, democratic, social, and legal state, as well as fundamental rights and freedoms of man and citizen. For example, all people are free and equal in their dignity and rights, human rights and freedoms are inalienable and inviolable (Art. 21 of the Constitution of Ukraine), and citizens have equal constitutional rights and freedoms and are equal before the law.

Furthermore, there shall be no privileges or restrictions based on race, the colour of skin, political, religious, and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics (Art. 24 of the Constitution of Ukraine) (Constitution of Ukraine, 1996).

The principles of justice play a vital role in the administration of justice. These are the fundamental guiding ideas and regulations that every judge should follow in administering justice. Most of these principles are outlined in international conventions, the Constitution of Ukraine and other normative documents. At the same time, detailed and clear explanations of the principles of justice, unfortunately, are only provided for some of them. Incredibly ambiguous is the principle of the judge's inner beliefs on the legal content of which, the peculiarities of implementation in Ukraine and the factors that may level it, the authors propose to focus on.

1. Results and Discussion

1.1. Principle of Judge's Inner Beliefs in Accordance with International Standards of Proof

Rendering the decision by a judge based on one's own beliefs is critically essential. The judge's inner beliefs are not an unconscious impression, a feeling that cannot be controlled, but confidence in the correctness of his conclusions, which form the basis of the cognition. Inner beliefs are an element of mental activity for the study and evaluation of evidence and express the actual situation of the legal relationship established in the case. The judge's inner beliefs are a subjective part of his activity, which is described in the objectively adopted decisions when the Court investigates the circumstances of the case. Consequently, a judge cannot incur liability for their in a case, but only an issue lawful, ex delicto option in the administration of the law of evidence (Marchak, 2013).

On the other hand, according to Chinn Stuart, the judge's inner beliefs cannot be absolute because a certain degree of impartiality is inevitable in the judicial role; judicial impartiality is best understood as a sign of consistent, fair interaction with the claims and interests of those outside social groups (Chinn, 2020). Such an ambiguous perception and attitude to this principle of justice necessitates its detailed analysis.

1.2. Legislative Consolidation of the Principle of Judge's Inner Beliefs

In Ukrainian law, the principle of decision rendering based on one's beliefs is not enshrined at the constitutional level or even in the relevant law "On the Judiciary and the Status of Judges". Instead, for unknown reasons, it is duplicated in all procedural codes. Identical interpretations of this principle are contained in Part 1 of Art. 86 of the Code of Commercial Procedure of Ukraine, Part 1 of Art. 89 of the Civil Procedure Code of Ukraine, and Part 1 of Art. 90 of the Code of Administrative Judicial Procedure of Ukraine.

According to these articles, the essence of decision rendering based on one's own beliefs is revealed as the need for the Court to weigh the evidence according to its inner beliefs based on a comprehensive, complete, objective, and direct examination of the evidence in the case. A more detailed explanation is contained in Part 1 of Art. 94 of the Criminal Procedure Code of Ukraine because it interprets the judge's decision based on his own beliefs, as an assessment of the evidence based on a comprehensive, complete and impartial examination of all circumstances of criminal proceedings, guided by law, evaluate each piece of evidence in terms of relevance, admissibility, reliability, and the set of evidence collected - in terms of sufficienc and relationship for the relevant procedural decision (Criminal Procedure Code of Ukraine, 2013).

Unfortunately, the legislator, disclosing the essence of a judge's decision based on his own beliefs, does not disclose the procedure for considering and agreeing on the inner beliefs of several judges in the case of legal investigation collegially. Therefore, the place of this principle in the process of knowing the truth is unclear.

In our opinion, it is inadvisable and illegal to evener this principle during the legal investigation by the panel of judges. At the same time, it raises the question as to whether judges should reach four all founders in their inner beliefs. That is why there is a need to provide a generalisation or ruling of the Supreme Court of Ukraine. The absence of these documents necessitates recourse to scientific doctrine

1.3. Doctrinal interpretation of the inner beliefs as to the evidence and the circumstances they support

Regarding the scientific interpretation of the principle of rendering a decision by a judge based on their own beliefs, scholars are primarily unanimous about the legal content of this principle but choose relatively different forms of presentation of its conceptual and categorical essence. For example, V. Marchak believes that forming a judge's inner beliefs relates to eliminating doubts that arise during the legal investigation.

The judge's inner beliefs are influenced by all the evidentiary information that is examined following the general rules of the at-trial procedure – directly, orally and continuously, chaired by the presiding judge and with equal rights of the participants in the process. In the psychological aspect, it is essential to form the judge's inner beliefs and the growth of doubt (because of probable knowledge) in the judge's beliefs (Marchak, 2013).

Yu. Groshevoy believes that a judge's inner beliefs are a conscious need of a judge, his use of his thoughts, views and knowledge. It is related to the legal consciousness of the judge, a form of social consciousness that combines a system of opinions, ideas, perceptions, theories, feelings, emotions, and experiences.

They characterise the perception of people and social groups (including through actual behaviour) of the existing and desired legal system. In the structure of legal consciousness, there are worldviews (views, ideas, theories), psychological (feelings, emotions, experiences) and behavioural (lawful behaviour, behaviour, etc.), which characterise the actual human reaction to the functioning of elements of the legal system. its development) parties (Groshevoy, 1975).

According to A. Belkin, although the category of inner beliefs is subjective, it has objective principles that constitute a system that contains such elements as professional qualities, facts, characteristics and properties of objects to be studied by the judge; the circumstances of the case, which indicate the origin and real conditions of existed actual of the objects to be studied; things process of research, its conditions, intermediate requirements results, their evaluation in terms of completeness, logical and scientific validity, reliability as exceptionally possible in specific conditions (Belkin, 1969).

Analysis of the positions of scientists allows us to conclude that the category of inner beliefs is subjective and depends on the characteristics of education, worldview, and life experience if it can be read out objectively and independently. At the same time, this can be deformed by the influence of external factors. Can be circumstances, it is impossible to hope for a complete coincidence of judges' beliefs, and therefore the inner beliefs are essentially even erred and transformed into consensus and coherence.

1.4. Judges' opinions of the different legal systems on the essence of decision rendering based on inner beliefs

According to a judge of the Supreme Court of Canada, McDowell (F.H. v. Mcdouga, 2008), in a situation where the evidence is on the verge of sailing close to the wind, there are no clear rules as to when a judge may have an inner belief as to the incorrectness or inadmissibility of the evidence. Therefore, the judge hearing the case should consider the evidence in collaboration with the simultaneous assessment of any doubts about their reliability and credibility. The position of the judge of the Constitutional Court of Ukraine, N. Shaptala, is of particular interest.

The judge is a bet that the formation of the judge's inner beliefs in the constitutional proceedings is influenced by objective (to establish the facts established in Court) and subjective (traits of character, consciousness, professionalism, legal awareness, justice of each judge) factors. Therefore, the inner beliefs of one individual judge from all eighteen judges of the Constitutional Court of Ukraine cannot be a standard of objective truth (Shaptala, 2019).

1.5. Explanation of inner beliefs concerning case law

The desire to find the essence of the principle of the judge's inner beliefs, caused by its inadequacy and imperfection of legislative presentation, necessitates recourse to case law. Since 2006, the phrase "The court has critically weighed the evidence" has been increasingly used in court decisions of Ukrainian judges. At the same time, no explanation is given as to why the Court rejected or assessed the evidence.

The task of the Court is to establish whether the fact took place. Establishing the presence or absence of points, the Court must motivate its actions and consider that following Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms; everyone has the right to a fair trial, including an independent and unbiased court. According to legal procedure, everyone charged with a criminal offence shall be presumed innocent until proven guilty (European Convention on Human Rights, 1950).

Therefore, the Court cannot assume that a particular circumstance has been proved. The fact either happened or it did not exist. If the Court still has doubts, the rules on the distribution of the burden of proof should be applied. If the party on whom the obligation is imposed does not fulfil it, the fact is unproven, and vice versa (Tomarov, 2019).

2. The concept of the standard of proof: compliance by courts with standards of human rights and justice

In terms of proof, it is vital to maintain a certain standard. The category of the standard of proof has only relatively recently begun to be applied in the domestic doctrine of procedural law and case law. The term standard of proof denotes the level of probability to which a circumstance must be proved by evidence to be considered valid derives from the doctrine of standard law legal systems, from which it was borrowed from the theory and practice of proof (Pilkov, 2016).

At the same time, until recently, this category was often opposed to the principle of the Court's assessment of the evidence based on inner beliefs and was even criticised as an attempt to establish an artificial framework for applying this principle. It can now be argued that the debate over whether the category of the standard of proof is artificial, uncharacteristic of Ukrainian procedural branches of law, and even devoid of practical significance has gradually lost its relevanc (Pilkov, 2019).

2.1. Standard of proof in civil and commercial disputes: the practice of customary and continental law states

Common law countries use the term "standard of proof", which intrinsically allows uncertainty in establishing the facts. This notion emphasises that to recognise facts as proven, one does not need to be one hundred per cent convinced of a particular fact.

The standard of proof is the degree of credibility of the evidence provided by a party. The Court must recognise the burden of proof removed and the factual circumstance - proven. It is an issue of a sufficien level of admissible doubt at which the burden of proof is considered fulfilled

British courts use the standard of a balance of probabilities in civil cases: it must be proved that the fact was rather than not; subjective confidence can be measured as 51% or higher.

The balance of probabilities is estimated in absolute terms, so in a situation where the evidence is estimated as 50*50 (plaintiff/defendant), the dispute wins for the defendant (Rhesa Shipping Co SA v Edmonds 1, 1985).

A score of decisions can be found in the case law of the European Court of Human Rights, where the Court refers to the "balance of probabilities" to weigh the evidence of the case. For example, in the decision of Benderskiy v. Ukraine on November 15, 2007, the Court applied a "balance of probability".

The decision of J.K. and others v. Sweden on July 23, 2016, of the European Court of Human Rights notes that this standard is inherent in civil

cases (Tomarov, 2019). Regarding the resort to this concept in domestic law enforcement, the authors would like to note the decision of the Supreme Court of Ukraine on June 14, 2017, in case № 923/2075/15, where the latter criticised the Court of Appeal for refusing to recover lucrum cessans on the sole grounds that its size cannot be established with a reasonable degree of credibility.

Thus, the fact of proof occurs in the case when, after analysing all the evidence and circumstances, the judge, based on inner beliefs, is inclined to believe that the fact instead took place. Although, in our opinion, the very possibility of the existence of "probability" in the process of judicial evidence is unacceptable. After all, any doubts must be interpreted in favour of the person, but the opposite happens.

2.2. Beyond a reasonable doubt - for the criminal process: the practice of the European Court of Human Rights

There is another known standard of proof – beyond a reasonable doubt. Mention of him can be found in several European Court of Human Rights decisions. Thus, judge Bonello, in his personal opinion on the case Sevtap Veznedaroğlu v. Turkey, pointed out that: "Proof beyond a reasonable doubt" reflects the maximum standard relevant to the issues to be addressed in the determination of criminal liability. No one shall be deprived of his freedom or subjected to any other punishment by a court decision unless the guilt of such person has been proved "beyond a reasonable doubt".

In spades, the authors consider the rigidity of this standard to be justified. However, in other areas of legal regulation, the standard of proof must be proportionate to the aim pursued: it must have the highest degree of certainty in criminal cases and a working degree of probability. In considering opposing versions of events, the Court is obliged to establish: 1) to whom the law places the burden of proof, 2) whether the statutory assumptions are in favour of one of the parties, and 3) the "balance of probabilities", which in the presence of versions contrary to the statements of the opposing party, seems more acceptable and credible. In our view, the standard of proof "beyond a reasonable doubt" is incorrectly applied in the "civil" proceedings in the cases before the Court.

As far as the authors know, the Court is the only Court in Europe that requires evidence "beyond a reasonable doubt" in non-criminal cases (Rhesa shipping company v. Edmunds, 1985). For example, in Kobets v. Ukraine, the Court reiterates that, per its case law, it is guided by the reference point of proof "beyond a reasonable doubt" (Avshar v. Turkey). Such proof should follow from a set of signs or irrefutable presumptions, sufficientl weighty, clear, and consistent with each other (Sevtap Veznedaroğlu v. Turkey, 2000).

The European Court of Human Rights subsequently recognised that this standard should indeed be higher in criminal cases than in civil cases (§ 38 of the judgment on February 11, 2003, in Ringvold v. Norway, Kobets v. Ukraine, 2008). It could be said that from this position, it logically follows that in civil (commercial) cases, the standard of proof should be lower than in criminal ones.

The authors hope that, based on the ruling of the European Court of Human Rights, the Supreme Court of Ukraine will also lift the veil of secrecy over the words "inner beliefs" and explain that the standard "balance of probabilities" (or "reasonable degree of reliability") should be applied in civil and commercial matters. Instead, it is essential to use a higher standard "beyond a reasonable doubt" in criminal proceedings. Perhaps the most acute is the unjustifiably high standard of proof of damages in civil and commercial cases (Tomarov, 2019).

3. Factors that may affect the judge's inner beliefs and measures to eliminate them: an example of Ukraine as one of the former states of the Soviet Union

The authors are convinced that no matter what standard of proof a judge is guided by, adherence to the principle of inner beliefs must be mandatory. At the same time, unfortunately, Ukraine's judicial system is exceptionally corruption-ridden. The problem of corruption in the judiciary is a typical phenomenon in developing countries.

For them, such corruption is more damaging than any other, as even the presumption of corruption in the judiciary raises broad doubts about the success of anti-corruption activities and the effectiv ness of judicial remedies (Moskvich, 2015). Currently, the influence of the judge is perceived as an everyday phenomenon. For example, the escalation of distrust in the judiciary in 2020 was caused by the Constitutional Court of Ukraine, which effectively dismantled an essential element of Ukraine's anti-corruption infrastructure. He provided that those who supplied false information in the declarations of a person authorised to perform state and local self-government functions would no longer be subject to criminal liability.

The Court stripped the National Agency for the Prevention of Corruption of almost all powers and removed the system of property declarations from public control. These steps were against the law. The decision was not justified. The Court exceeded the scope of the constitutional submission and even repealed some anti-corruption norms, which it did not ask to consider (Zhernakov, 2020).

The possibility of such situations is due to several factors that adversely affect the Court's impartiality, independence, and impartiality. Therefore the decision-making process is not based on the inner conviction of the judge but under the influence of corruption factors

4. Corruption during the selection process of judges

Today, although the process is formally complex and overly bureaucratic, consisting of fifteen stages, it still leaves options for corruption. It is as if the central place is given to the High Judicial Qualifications Commission of Ukraine, then the High Judicial Council, which considers the recommendations and directly analyses the candidate's identity, and the President of Ukraine benches for the first time. The possibility of tampering with the High Judicial Qualifications Commission of Ukraine and the High Judicial Council is significant

In addition, the reforms of these institutions need to be improved. Analysis of the Transparency International recommendation for Ukraine testifies to a downward course of annual non-fulfilment of one condition – forming an independent and professional judicial power. According to Transparency International experts, this recommendation is an extremely high priority. In addition, no changes have occurred over the years of judicial reform. During 2019, the President and the Verkhovna Rada of Ukraine tried several times to initiate a painful change process. Even though people's deputies adopted the first law of the President in 2019, the Constitutional Court of Ukraine declared the main provisions of this law unconstitutional.

The next attempt to implement the reform was also initiated by the President of Ukraine through bill draft No. 3711 on Amendments to the Law of Ukraine, "On the Judiciary and the Status of Judges" and some laws of Ukraine on the activities of the Supreme Court and judicial authorities. However, it has been criticised by the Venice Commission and the expert community and is awaiting a conclusion and a second reading.

The virtuous composition of the High Judicial Council, elected with the participation of the international community and public experts, remains a valid requirement of the International Monetary Fund, a recommendation of the Venice Commission and the public. However, this did not affect the steps to restart this body. The composition of the High Judicial Qualifications Commission of Ukraine is also awaiting renewal. Still, it is unknown when such reformatting will finally occur and whether the experience of independent competition procedures will be considered (Corruption Perceptions Index, 2020).

In general, the critical issues in judicial reform are:

1. low trust in the judicial power mainly due to corruption, dishonesty of many judges, dependence and patronage;
2. inefficienc of activity and even boycott of reforms by the High Judicial Council;
3. failure to restart the High Judicial Council and the High Judicial Qualifications Commission of Ukraine to clean up and renew the judicial power;
4. chaos in the restructuring of local and appellate courts, filling positions not through competitions but by transferring current judges to new courts;
5. poor access to justice due to a shortage of staff in the courts, a heavy workload on judges and delays in the trial;
6. lack of motivation and orientation of judges to meet the needs of parties that are users of justice services;
7. weak development of electronic services and digital Court;
8. lack of proper jury instruction;
9. the lack of procedural consolidation of the procedure for implementing the principles of justice and their detailed normative interpretation (Successful judicial reform is impossible without the involvement of all stakeholders – politicians and experts, 2020).

All these conditions necessitate a change in Ukraine's approach to forming judicial power. Three main judicial selection models are currently used: assignment, by-election and so-called "hybrid" selection systems. (Berkson, 1980). All plans require a high level of legal culture, objectivity and impartiality. At the same time, when selecting the judge, he must have unquestionable authority and trust among the population.

In addition, tampering when making a selection is also complicated. Citizens tend to be guided not only by the candidate's professional qualities but also to consider his personality. At the same time, such guidelines can allow the sending of fairer but less professional candidates. In these circumstances, it only makes sense that judges are motivated to collect dues and seek voters' approval. While such steps may seem harmless, they can lead to campaigns and interest groups involved in dirty cases and sometimes teach a judge to make decisions based on political beliefs (Odland, 2016).

If the authors talk about Ukrainian society, the legal consciousness of citizens is just beginning to take shape, so it is too early to talk about their readiness to elect the judiciary. That is why it is now advisable to adhere

to the existing system of assignment of judges, improving it through mandatory interviews with candidates.

It is appropriate to involve representatives of public anti-corruption organisations in this interview, which can provide comprehensive financial monitoring of the applicants' lifestyle and check their social networks for illegal enrichment or hidden wealth. In addition, it is essential to conduct a polygraph examination to prevent persons prone to committing corruption offences from accessing judicial powe (Kulish *et al.,* 2020).

5. Corrupt influence on judges

The second probable corruption factor that can level decisions based on inner beliefs is the possibility of influencing judges. Ensuring the complete independence of the judiciary in the format that exists in most European countries is quite problematic. In the absence of state regulation of this problem, full integration of Ukraine into European national structures, especially accession to the EU, is impossible (Grinyuk, 2004). Judicial corruption is specific because, in the case of receiving an illegal benefit in exchange for the use of his powers, the judge makes a decision or sentence on behalf of the state.

Hence, the rule of law covers the corruptor. Another feature of corruption in judicial power is its latent nature. The situation is practically excluded when the judge personally hints at the need to offer him some illegal benefit, and even more so, personally receives it from the person directly interested. Another feature of judicial corruption is its corporatism, which can be explained by the absence of criminal cases initiated on corruption in the courts (Gladiy, 2014).

Illegal corruption influence can be both external and administrative. External influence is the influence of some politicians, government officials businesses and criminal elements to obtain the desired outcome of the case. Thus the judge can be interested in such corrupt relations, and on the contrary. At the same time, fear for one's work, and in some cases for one's safety and the safety of one's relatives, encourages corruption. The subject of such corrupt practices does not always have the form of money or property. After all, the essence of corruption is much broader and therefore includes other so-called soft forms of corruption.

In particular, the indicators of non-political ties in the judicial power indicate their transformation into family businesses (Matsievsky and Matsievsky, 2014). Patronage is support, encouragement, privileges, and the possibility of financial incentives provided by a person or organisation. Patronage is manifested in the misuse of state resources to promote the interests of a particular individual or collective actors (Babkina, 2011).

Counteraction to such corruption factors is possible by:

1. ensuring the unity of judicial practice by the more active and detailed implementation of generalisations of judicial approach and decisions of the plenum of the Supreme Court of Ukraine;
2. strengthening public control by creating specialised public organisations that will specialise in disclosing corruption risks in the judiciary;
3. equipping courtrooms with video cameras and microphones capable of recording the behaviour of all present.

As for the administrative pressure on a judge, which distorts the inner conviction, it is manifested in undue pressure from the chairman of the Court or influential groups within the judicial system. For example, in 2020, the National Anti-Corruption Bureau of Ukraine released cassettes allegedly recorded in the offic of the head of the Kyiv District Administrative Court, P. Vovk.

These records seem to capture P. Vovk and other judges who plan to influence different courts and judicial authorities while boasting that they "own two courts - the district and the constitutional". Despite public outcry and further criminal investigation, the High Judicial Council unanimously refused to remove these judges. The people involved in the case (Zhernakov, 2020) constantly delay the pre-trial investigation of these acts. To eliminate this corruption factor, it is essential to:

1) ensure the unity of judicial practice through the more active and detailed implementation of generalisations of judicial practice and resolutions of the plenum of the Supreme Court of Ukraine;
2) provide appropriate funding for the independent operation of the judiciary;
3) expand guarantees of support for the independence of judges and take measures to prevent actual dependence of judges on higher courts.

6. Lack of an effective mechanism for bringing a judge to responsibility

Another negative factor that allows judges to make decisions during the distortion of inner beliefs is the lack of an effective mechanism for bringing a judge to justice. One of the elements of a judge's punishment for the administration of justice is that judges, due to their special status, belong to specific subjects of criminal responsibility. In particular, a separate Law of Ukraine, "On the Judiciary and the Status of Judges determines their legal

nature. Only those persons who comply with the legislation requirements are admitted to the position of a judge; most of the measures to ensure criminal proceedings cannot be applied to them.

At the same time, there are certain peculiarities characteristic of criminal cases in which judges are suspects. Criminal and ethical offences related to violating the principle of the judge's independent beliefs negatively affect the image of the judicial power, reduce public confidence in the judiciary, and create public distrust in the ability to protect violated rights by a fair, independent and fair court. That is why, in our opinion, it is necessary to abolish the inviolability of the judiciary as an archaism, an attribute of the privileged status of judges, compared to other citizens, and hence the distorted application of Art. 21 of the Constitution of Ukraine, which insists on the equality of all citizens.

Conclusions

Summarising the above, the authors emphasise that the judge's inner beliefs as a person authorised to execute justice must be impartial, objective, fair and independent. At the same time, the formulation of "internal beliefs" still allows for subjectivity, as the criteria for evaluating evidence by the Court are described without detailing and standardised requirements for such a process.

Moreover, it has been established that inner beliefs depend on the type of proceedings and the standard of proof. It was found that especially harmful factors that can affect the process of evaluating evidence by a judge and distort his inner beliefs include corruption factors: the imperfection of the process of selection for the position of a judge, illegal corruption influence on a judge (internal and external) and the lack of an effective mechanism for bringing a judge to justice. These factors can distort a judge's inner beliefs (legal and ethical guidelines). Emphasis is placed on the need to take narrowly oriented measures to eliminate these corruption factors.

Bibliographic References

BABKINA, Olha. 2011. "Patronage" In: Political encyclopedia. Parliamentary Publishing House, pp. 546-547. Kyiv. Ukraine.

BELKIN, Raphael. 1969. Forensics and proof. Methodological problems: monograph. Yur. Lit. Moscow, Russia.

BERKSON, Laeora. 1980. "Judicial selection in the United States: A Special Report" In: Judicature. Vol. 64, No. 04, pp.176-193.

CHINN, Stuart. 2020. "The Meaning of Judicial Impartiality: An Examination of Supreme Court Confirmation Debates and Supreme Court Rulings on Racial Equality" In: Utah Law Review. Vol. 2019, No. 05, pp. 915-971.

CONSTITUTION OF UKRAINE. 1996. The Verkhovna Rada of Ukraine. Pravo. 82 p. Kharkiv, Ukraine.

Corruption Perceptions Index. 2020. Transparency International Ukraine. Available online. In: http://cpi.ti-ukraine.org/#/. Date of consultation: 09/11/22.

Council of Europe. 1950. European Convention on Human Rights. 1950. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols. No. 11 and No. 14. Available online. In: https://rm.coe.int/1680063765. Date of consultation: 11/11/22.

COUNCIL OF EUROPE. 2020. Sevtap veznedaroğlu v. Turkey, judgement. Available online. In: https://swarb.co.uk/sevtap-veznedaroglu-v-turkey-echr-11-apr-2000/.Date of consultation: 11/11/22.

CRIMINAL PROCEDURE CODE OF UKRAINE. 2013. Law No. 4651-VI. Information of the Verkhovna Rada of Ukraine. Available online. In: https://zakon.rada.gov.ua/laws/show/4651-17. Date of consultation: 11/11/22.

F.H. v. MCDOUGA. 2008. Supreme Court of Canada. Available online. In: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6211/index.do. Date of consultation: 21/11/22.

FAHED, Abul-Ethem. 2002. "The Role of the Judiciary in the Protection of Human Rights and Development: A Middle Eastern Perspective' In: Fordham International Law Journal. Vol. 26, No. 03, pp. 761-770. Available online. In: https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1883&context=ilj. Date of consultation: 21/11/22.

GLADIY, Serhii. 2014. "The Issue Prevent Corruption in the Judiciary" In: Scientific Bulletin of Uzhhorod National University. Vol. 03, No. 28, pp. 147-150.

GRINYUK, Volodymyr. 2004. The principle of independence of judges and their submission only to the law in the criminal process of Ukraine. National University Taras Shevchenko. Kyiv, Ukraine.

GROSHEVOY, Yurii. 1975. Problems of formation of judicial conviction in criminal proceedings: Higher school. Publishing house near Kharkiv. State un-te. Kharkiv, Ukraine.

HEDLING, Nora. 2011. "A Practical Guide to Constitution Building: The Design of the Judicial Branch" In: International IDEA. Chapter 3. International IDEA resources on Constitution Building. Available online. In: https://www.corteidh.or.cr/tablas/28322.pdf. Date of consultation: 21/11/22.

KOBETS V. UKRAINE (Application no. 16437/04). 2008. (Eng.). I Available online. In: http://echr.ketse.com/doc/16437.04-en-20080214/view/. Date of consultation: 21/12/22.

KULISH, Anatolii; CHUMAK, Volodymyr; CHERNYSH, Roman; KHAN, Oleksandr; HAVRIK, Roman. 2020. "Measures to combat smuggling and corruption in the customs clearance of commercial goods in Ukraine" In: Amazonia Investiga. Vol. 09, No. 30, pp. 99-110.

MARCHAK, Vitalii. 2013. "Concepts and legal-psychological features formation of the judge's internal conviction" In: Scientific Bulletin of Chernivtsi University. No. 644, pp. 115-119.

MATSIYEVSKY, Yurii; MATSIYEVSKY, Ruslan. 2014. Nepotism in Ukrainian politics during the presidency of Viktor Yanukovych. Available online. In: https://cpr.oa.edu.ua/wp-content/uploads/2015/09/nepotyzm_v_ukr.polityci_za_Yanukovycha.pdf. Date of consultation: 21/11/22.

MOSKVICH, Lidiya. 2015. "Corruption determinants in the judicial system of Ukraine" In: Bulletin of Luhansk State University of Internal Affair named after EA Didorenko. Vol. 03, pp. 153-162.

ODLAND, Steve. 2016. "Why judges should be appointed, not elected" In: CNBS. Available online. In: https://www.cnbc.com/2016/06/16/why-judges-should-be-appointed-not-elected-commentary.html. Date of consultation: 21/11/22.

PILKOV, Konstantin. 2016. "Theory and practice of proof in international commercial arbitration: a monograph" In: Education of Ukraine. Kyiv, Ukraine.

PILKOV, Konstantin. 2019. "The standard of proof as a component of ensuring the right to a fair trial" In: Judiciary of Ukraine. Supreme Court. Available online. In: https://supreme.court.gov.ua/supreme/pres-centr/zmi/816559. Date of consultation: 21/11/22.

RESUSCITATION PACKAGE OF REFORMS. 2020. Successful Judicial Reform Is Impossible Without The Involvement Of All Stakeholders - Politicians

And Experts. Available online. In: https://rpr.org.ua/en/news/successful-judicial-reform-is-impossible-without-the-involvement-of-all-stakeholders-bureaucrats-experts-say/. Date of consultation: 11/11/22.

SANJAY, Jain; SARANYA, Mishra. 2020. "Scandalizing the judiciary: An analysis of the uneven response of the Supreme Court of India to sexual harassment allegations against judges" In: International Journal of Constitutional Law. Vol. 18, No. 02, July 2020, pp. 563-590. Available online. In: https://doi.org/10.1093/icon/moaa029. Date of consultation: 11/11/22.

SHAPTALA, Nataliia. 2019. "The Internal Conviction in the Evaluating Evidence in the Constitutional Judicial Process" In: Scientific Bulletin of the National Academy of Internal Affairs. No. 01 (110), pp. 22-28. Available online. In: https://doi.org/10.33270/01191101.22. Date of consultation: 11/11/22.

TOMAROV, Ilarion. 2019. Standard of proof: inner conviction or balance of probabilities. Legal newspaper. Available online. In: https://yur-gazeta.com/publications/practice/sudova-praktika/standart-dokazuvannya-vnutrishne-perekonannya-chi-balans-virogidnostey.html. Date of consultation: 11/11/22.

UNITED KINGDOM HOUSE OF LORDS DECISIONS.1985. Rhesa shipping company s.a.(respondents) v. Edmunds (appellant) and Rhesa Shipping Company s.a (respondents) v. Fenton insurance company limited (appellants). 1985. (eng.). https://www.bailii.org/uk/cases/UKHL/1985/15.html. Date of consultation: 11/11/22.

Verkhovna Rada of Ukraine. 2003. Ringold v. Norway. 2003. Available online. In: https://zakon.rada.gov.ua/laws/show/980_245#Text. Date of consultation: 11/11/22.

ZHERNAKOV, Mykhailo. 2020. "It's time to start treating Ukraine's corrupt judiciary as a criminal syndicate" In: Atlantic Council. Available online. In: https://www.atlanticcouncil.org/blogs/ukrainealert/its-time-to-start-treating-ukraines-corrupt-judiciary-as-a-criminal-syndicate/. Date of consultation: 11/11/22.

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