



Research Article

ENSURING THE INDEPENDENCE AND IMPARTIALITY OF JUDGES IN ASSESSING THE EFFECTIVENESS OF THEIR ACTIVITIES: INTERNATIONAL STANDARDS AND NATIONAL EXPERIENCE

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ABSTRACT

The qualifications, competence and diligence of judges play a very important role in the administration of justice, since these features of judges determine the effectiveness of the trial and the attitude of others towards the judge as a whole. Therefore, in almost all courts of the world, in one form or another, the activities of judges are studied and evaluated to determine their compliance with the above requirements.

KEYWORDS

The judiciary, their training, judicial ethics and evaluation of the activities of judges.

INTRODUCTION

There are a number of international documents directly addressing the issues of the independence of the judiciary, their training, judicial ethics and evaluation of the activities of judges. In this article, the analyze of some international standards regulating the

issues of evaluating the activities of judges will be provided.

In particular, the international documents relating to the issue consideration include:



- UN Basic Principles on the Independence of the Judiciary ;
- Recommendation of the Committee of Ministers to member states on the independence, effectiveness and role of judges ;
- Bangalore principles of judicial conduct ;
- Opinions of the Consultative Council of European Judges .

These documents contain a wide variety of principles, but all of them provide, on the one hand, the primacy of observing the principle of independence of judges, on the other hand, ensuring the quality of the administration of justice, and accordingly, requirements for evaluating the judicial conduct.

The opinions of the Consultative Council of European Judges play the greatest influence in European states.

The Consultative Council of European Judges (CCJE) was established in 2001 by the Committee of Ministers of the Council of Europe with the aim of increasing the confidence of citizens of the member states of the Council of Europe in the justice system. The main task of the CCJE is to provide opinions on the status of judges and the exercise of their functions by judges for the Committee of Ministers of the Council of Europe with a view of their subsequent implementation in the legislative acts of the member states of the Council of Europe.

The ten-years result of the work of the CCJE was the adoption of the Magna Carta of Judges, which combined the most significant recommendations of the CCJE adopted before 2010.

In accordance with the conclusion of the CCJE No. 17 on the assessment of judicial work, the quality of

justice and respect for judicial independence, the concept of individual assessment of judges refers to each judge individually, being more precise, to their professional activities and abilities.

The task is to ensure that the individual assessment of judges can improve the quality of justice without violating the principle of judicial independence.

The purpose of evaluating judges is to determine the level of their abilities, the qualitative and quantitative indicators that they have achieved in their work. Evaluation is also needed for feedback to determine the need for professional training and retraining and to make decisions on promotion.

Any evaluation should be aimed at maintaining and improving the quality of the work of judges, and therefore the judiciary in general, as well as ensuring “full respect for judicial independence”.

When conducting an assessment, the general working conditions of a judge must be taken into account, so that inadequate working conditions, which are beyond the control of the judges themselves, do not adversely affect the results of the assessment.

The subjects responsible for evaluating the activities of a judge are, first of all, judicial self-government bodies, including judges.

But it should be borne in mind that the assessment of the activities of judges should improve the quality of justice without violating the principle of independence of judges, and the purpose of the assessment should be aimed at determining the level of abilities, qualitative and quantitative indicators that they have achieved in their professional activities.

For example, the Consultative Council of European Judges has developed recommendations for states

that allow assessing the professional activities of judges. These requirements include the level of qualifications, conscientiousness in work, organizational and analytical abilities, and the effectiveness of professional activities.

The Kyiv Recommendations on Judicial Independence state that where professional evaluations of judges are performed, they must not be used to harm independent adjudication. The evaluation of judges' performance shall be primarily qualitative and focus upon their skills, including professional competence (knowledge of law, ability to conduct trials, capacity to write reasoned decisions), personal competence (ability to cope with the work load, ability to decide, openness to new technologies), social competence (ability to mediate, respect for the parties). These same skills should be cultivated in judicial training programs.

An analysis of the experience of foreign countries has shown that in many countries there are different practices of evaluating the performance of judges.

In particular, the Organic Law of Georgia "On General Courts" provides that the activities of a judge are evaluated according to two main criteria - good faith and competence .

In accordance with the Law , the criteria for good faith shall be:

- a) personal honesty and professional integrity;
- b) independence, impartiality and fairness;
- c) personal and professional conduct;
- d) personal and professional reputation;
- e) financial obligations.

Competence criteria shall be:

- a) knowledge of legal norms;
- b) ability and competence to provide legal arguments;
- c) writing skills;
- d) oral communication skills;
- e) professional qualities, including conduct in a courtroom;
- f) academic achievements and professional training;
- g) professional activities.

In accordance with the legislation of the Republic of Kazakhstan , the professional activity of a judge is evaluated according to the following groups of criteria:

- 1) professional knowledge and ability to apply it in the administration of justice;
- 2) results of judicial activity;
- 3) business qualities;
- 4) moral qualities for compliance with the requirements of the Code of Judicial Ethics.

Some States have established a specific frequency of evaluation. The period between evaluation procedures can be quite short (2 years in Australia, Austria, Portugal, Colombia, etc.), medium (5 years in Germany) or long (10 years in Lithuania).

In recent years, more technological models for evaluating the work of judges have become widespread. For example, the Australian Administrative Appeals Tribunal has introduced a "Marking Scheme" to assess the competencies of judges according to the following key dimensions - law and procedure, fair and equal treatment, communication, hearing procedures, examination of



evidence, decision making and case management. The “assessment scheme” is aimed at identifying the current competence of the current judge and developing a self-development plan to improve its performance.

Undoubtedly, the introduction of electronic and digital technologies in the development of the effectiveness of the judicial system plays a huge role. “e-justice” makes it possible to ensure the openness and accessibility of justice, reduce the burden on the judicial system and reduce the costs associated with the consideration of a case. In different countries, “e-justice” has its own characteristics.

If we consider the experience of foreign countries in the field of e-justice, we should especially note the experience of the European Union. The European Union has a mobile application “e-justice”. The application has the ability to receive information throughout the European Union in 23 languages. In the application, you can use services in the field of Family and Inheritance Law, money claims, get information on court procedures and even find a professional lawyer.

In the legislation of Uzbekistan, the norms determining the procedure for evaluating the efficiency of judges’ activity are first of all defined in the Law “On the Supreme Judicial Council of the Republic of Uzbekistan”, Article 6 of which provides impartiality and transparency in evaluating the effectiveness of judges through the introduction of modern information technologies are recorded as one of the main tasks of the Supreme Judicial Council. In order to implement this task, Article 7 of the Law authorizes the Supreme Judicial Council to take measures to determine the criteria for evaluating judges’ activities based on an open and transparent electronic rating program.

Also, in Article 25 of the Law, it is noted that measures to improve the qualifications of judges will be organized based on the results of studying and evaluating the activities of judges, taking into account the systematic deficiencies identified in the administration of justice.

However, national legislation does not specifically define the criteria for evaluating the effectiveness of judges and the procedure for conducting it. However, according to international standards, all issues related to the independent functioning of judges should be determined by law.

Certain tasks related to the evaluation of the performance of judges are defined in the Decree of the President of the Republic of Uzbekistan “On measures to ensure the true independence of judges and increase the effectiveness of the prevention of corruption in the judicial system” dated December 7, 2020 No. PF-6127, which ensures impartiality and transparency in evaluating the performance of judges, the consistent introduction of modern information technologies to these processes is defined as one of the main directions of the state policy on ensuring the independence of judges and preventing corruption in the judicial system.

Based on this task, from February 1, 2021, the Supreme Judicial Council created an open and transparent evaluation system of the effectiveness of judges through electronic rating. The Regulation “On the procedure for evaluating the efficiency of judges’ performance by electronic rating”, regulating the electronic rating evaluation of the efficiency of judges’ activity was approved.

The Regulation reflects general rules, the procedure for entering information into the Program, criteria for evaluating the quality of court decisions, criteria for



evaluating the judge's responsibility and ethics, legal advocacy work, criteria for evaluating a judge's knowledge of foreign languages, additional evaluation criteria, and evaluation results.

In particular, according to paragraph 2 of the Regulation:

- the quality of court decisions, the judge's responsibility and manners, legal advocacy work, and the judge's knowledge of foreign languages are the main evaluation criteria;
- the size of the judge's workload, his activity in the online forum of the Judges Club, his academic degree and increased professional qualifications are additional evaluation criteria.

Evaluation of the effectiveness of the judges' performance of the Council's information system is carried out automatically based on a special program that automatically calculates the evaluation of the effectiveness of the judges' performance, that is, without the human factor and intervention, by entering the data recorded in the Regulation into the program at the end of each month.

The positive aspect of this Program is that the judge has the opportunity to directly get acquainted with the performance rating and the indicators of the evaluation criteria, and the openness and transparency of the evaluation process is ensured. The presidents of the courts can also familiarize themselves with the rating indicators for evaluating the efficiency of the judges' work in the court and region they are in charge of.

As one of the evaluation criteria, it is appropriate to include the legal advocacy work carried out by the judge in the Regulation. But such a requirement is not officially imposed on the judge in the current

legislation. In particular, in Article 62 of the Law of the Republic of Uzbekistan "On Courts", the list of duties of a judge does not include the implementation of legal advocacy. Only in Articles 37, 41, 52, 56 of this Law, organizing meetings of judges with the population, as well as informing the public about the activities of the court through mass media, is indicated as one of the powers of the court presidents.

Therefore, in our opinion, the law should clearly define the specific duties of judges regarding the implementation of legal promotion work.

It should be noted that entering incorrect information in the electronic rating program or concealing information related to the evaluation criteria will cause to a disciplinary action. Therefore, the judges who provide the relevant information and the secretaries of the qualification boards of the judges who enter this information should check this information in advance.

Another important issue is that although the Regulation is called "On the procedure for evaluating the efficiency of judges' performance by electronic rating", it does not specify the procedure for evaluating the efficiency of judges' performance sufficiently. Therefore, in our opinion, it is appropriate to send questionnaires to all judges in the Republic about how effective it is, to correct its errors and shortcomings, to make changes and additions to it if necessary, and to clearly reflect the procedure for considering complaints filed by judges who are dissatisfied with the results of this evaluation.

In addition, as mentioned above, the procedure for evaluating the effectiveness of judges' activity is only specified in the Regulation approved by the Supreme Judicial Council. However, due to the fact that the evaluation of the effectiveness of the judges' activity and the judge may be subject to appropriate

disciplinary or other liability, which may affect the constitutional rights and immunity of the judges, it is appropriate to determine the procedure for the evaluation of the effectiveness of the judges' activity and taking appropriate measures based on its results.

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