



## Research Article

### LEGAL ISSUES OF EVALUATING THE THE EFFICIENCY OF THE ACTIVITIES OF COURTS AND JUDGES

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#### ABSTRACT

We should highlight, before proceeding to disclose the main content of this article, that the development of law enforcement activities raises the issue of comprehensive control over the efficiency of justice. Effectiveness (lat. effectivus) in general refers to the ratio between the result achieved and the resources used .

#### KEYWORDS

Additionally, in the general scientific concept, efficiency (or effectiveness) means goals (tasks), a system of actions aimed at achieving them, information regarding the level of achievement of goals (performance results).

#### INTRODUCTION

The criteria for efficiency of justice determine what should be accomplished. At the same time, its indicators (costs, workload and timing) provide an

answer to the question of how, at what cost this is achieved.



The efficiency of individual courts or the entire judicial system as a whole is evaluated using a pre-established set of indicators to determine the level of justice. At the same time, the management of the judicial system is also very important in the evaluation of efficiency as the result achieved depend on the funds spent, expenses.

The specificity of evaluation of judicial activity depends on the detailing of the factors influencing the efficiency of justice.

The efficiency of justice is revealed in four aspects:

- regulatory (quality of legislation);
- procedural (quality of court rulings, promptness, openness of justice);
- organizational (material, technical and human resources);
- communicative (culture of interaction between a judge and participants in legal proceedings). Although they are not equally important, there is no question about their interconnectedness.

The level of efficiency of justice is influenced by the environment in which it is administered as well as the law enforcement personnel themselves, whose professionalism and ethics significantly affect the evaluation of legal proceedings by the participants in the process.

The factor of expediency, i.e. the correctness of the choice of action (decision) within the framework of the law, must be taken into consideration while evaluating the efficiency of justice. The expediency, as well as the fairness of the procedural activities of the judge, should be evaluated not only in relation to the correctness of the resolution of the case, but also in

terms of the relationship of the judge with other participants in the process. This pertains, for example, the expediency of applying measures of influence to violators of order in the courtroom, allowing participants in the process to testify while sitting, if necessary, etc.

The procedural, communicative and organizational aspects of the efficiency of judicial activities should definitely be subject to an ethical and legal evaluation focused on the personality of the judge. This kind of evaluation cannot be rigorously formalized; cannot be expressed in specific figures, since it is based on subjective perception (opinion, impression).

A rating (based on points) evaluation with an interpretation accompanied by a scientific basis is acceptable (legal, sociological, psychological). In addition, the conclusions of the qualification boards include the official evaluation of each judge's performance. The consequence of a negative evaluation in this case is the bringing of judges to disciplinary responsibility.

Given that justice is a multifaceted social system, it must be broken down into component parts (decomposition) and studied separately (if possible). Decomposition is necessary, after receiving differentiated evaluation of each component of the efficiency of justice, in order to derive a single integral evaluation.

The efficiency (quality) of judicial activity is not subject to any official standards. However, in reality, such a standard is formed by procedural legislation, international legal acts, and corporate acts of the judiciary authorities. The development of theoretical foundations for the efficiency of justice naturally leads to the production of practically applicable quality



models, comprising a set of criteria and performance indicators.

The presence of evaluation system allows to identify “critical points”, “dysfunctions of justice”. Evaluation of the efficiency of judicial activity is necessary both for the internal management of the judicial system (self-government) and external oversight (legislative regulation). The importance of performance evaluations also stems from the fact that they serve as a motivator for responsible law enforcement personnel to correct their behavior and professional improvement.

In a narrow sense the efficiency of justice is expressed in qualitative and quantitative indicators of the activity of judges, in a border sense it is associated with the contribution that justice makes to the achievement of national goals: maintaining law and order, increasing trust in the judiciary, etc. .

Further, we will move on to the next issue and will examine which international agreements and laws of the Republic of Uzbekistan contain standards for measuring the efficiency of judges.

Paragraph 42 of the Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities provides that “With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities”.

Paragraph 58 provides the following: “Where judicial authorities establish systems for the evaluation of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges

to express their view on their own activities and on the evaluation of these activities, as well as to challenge assessment before an independent authority or a court”.

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

The Consultative Council of European Judges (hereinafter referred to as the CCJE) was established in 2001 by the Committee of Ministers of the Council of Europe with the aim of increasing the trust of the 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 by judges of their functions for the Committee of Ministers of the Council of Europe with a view to their subsequent implementation in the legislative acts of the member states of the Council of Europe.

The ten-year result of the work of the CCJE was the adoption of the Magna Carta of Judges (Fundamental Principles), which combined the most significant recommendations of the CCJE adopted before 2010.

In accordance with the opinion No. 17 of the CCJE on the evaluation of judicial work, the quality of justice and respect for the independence of judges, the individual evaluation of judges refers to each judge individually, their professional activities and abilities.

The task is to make sure that judge evaluations on an individual basis can enhance the quality of justice without compromising judicial independence.

The independence of judges, however, does not mean that judges are not accountable for their work. This procedure must be carried out in the public interest.



There is a risk that judges will determine cases in favor of appealing the “assessors” (or evaluators) rather than using an objective interpretation of the facts and the law.

Judges are evaluated in order to ascertain their degree of proficiency as well as the qualitative and quantitative outcomes of their job. Evaluation is also necessary for receiving feedback, identifying areas that require professional development and retraining, and identifying prospects for promotion.

There is no single approach to evaluating the work of judges: such an evaluation can be considered a prerequisite for judicial independence in some countries, and absolutely incompatible with the independence of judges in others. Depending on the characteristics of how the judicial system is formed in a particular country, several evaluation methodologies are employed in those nations where the performance of judges is evaluated.

“Evaluation” can refer to both more informal ways for gathering information on a judge's performance as well as formal and structural evaluation systems employing predetermined criteria. Formal evaluation entails a purpose, evaluation standards, evaluation body structure and methods, as well as potential legal and/or practical implications. Informal collection of information about the work of a judge can also be considered as one of the types of evaluation. This is done to promote him in his position.

Any evaluation should be aimed at maintaining and improving the quality of work of judges, and therefore the judiciary in general, as well as ensuring “full respect for judicial independence”. Thus, the evaluation of the work of judges “should be considered as a tool for police supervision of judges, but, on the contrary, as a

means of stimulating judges to improve the quality of their work, which will affect the system as a whole”.

The general working conditions of a judge must be taken into consideration when performing an assessment so that inadequate working conditions, which are outside of the judges' control, cannot negatively impact the outcome of the evaluation.

The evaluation must be based on objective criteria published by the competent judicial authority. In addition to excluding the possibility of political influence, objective criteria are required for the following reasons as well: in particular, in order to avoid the risk of giving the impression of elements of favoritism, conservatism and patronage, which exists when the appointment of judges and / or evaluation of the quality of their work is carried out in an unstructured manner or on the basis of personal recommendations. These criteria “should be based on the qualities of judges, taking into account their qualifications, moral standards, abilities and productivity”.

Evaluation criteria may not be exclusively quantitative. Thus, the Recommendations of the Kyiv Conference provide that “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) and, for possible promotion to an administrative position, competence to lead. These same skills should be cultivated in judicial training programs, as well as on the job”.

Among the member countries of the Council of Europe, 24 countries use relatively formal systems for



evaluating judges (Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Estonia, France, Georgia, Germany, Greece, Hungary, Italy, Moldova, Monaco, the Netherlands, Poland, Romania, Slovenia, Spain, Macedonia, Turkey, Ukraine). In these countries, evaluation is carried out on a regular basis.

Countries such as Czech Republic, Denmark, Finland, Iceland, Luxembourg, Norway, Sweden, Switzerland, UK do not use formal assessment. However, Sweden uses certain assessment tools to differentiate the remuneration of judges, while Finland and Sweden use them when discussing professional development programs. In the UK, informal evaluation is used in relation to the question of promotion of judges.

The goals that the above countries set for the evaluation of judges:

- quality of justice;
- career advancement;
- remuneration;
- discipline.

The process of evaluating the activities of judges is carried out on the basis of 2 possible models:

1. Discussion model. It is carried out in the form of a discussion in which the judge delivers his work during a discussion in which the evaluation committee evaluates the progress of the judge in professional development (Belgium, Finland, France, Monaco, Romania). The judge can receive feedback during the discussion that can help improve his work (Switzerland). Additionally, the discussion can take place informally (like in Finland or Switzerland) or formally and conclude with a rating (Belgium, France, Monaco, Romania). In rare instances, a judge may self-

evaluate as the first phase in the evaluation process (France, Romania).

2. Reporting model. In most countries, particularly in young democracies, a group of officials collect relevant information about the judge and prepare a draft evaluation report (Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Germany, Greece, Hungary, Italy, Moldova, Poland, Slovenia, Spain, Macedonia, Turkey). Only after the draft report is ready can the judge comment on it. Only in Cyprus and Georgia the judge is not involved in the evaluation process.

There are three models in terms of subjects responsible for assessing the activities of a judge:

1) The model of court chairs. In some countries, evaluation functions are carried out by one official. Commonly this is the chief/chair of the court in which the judge performs his duties (Germany, Hungary, the Netherlands). This person collects relevant information about the work of the judge, including familiarization with the decisions made by him, attending court hearings and interviewing the judge and his colleagues. The official makes the final decision after giving the judge the opportunity to comment on the preliminary draft (Germany, Hungary, the Netherlands).

2) Council model. In some countries, particularly in young democracies, special councils or subgroups of the council (Albania, Austria, Bulgaria, Croatia, Estonia, Italy, Macedonia, Moldova, Slovenia, Spain, Turkey) perform the functions of evaluating the performance of judges.

3) Inspection model. In Poland, evaluation is carried out during regular judicial inspections carried out by judges of other courts.



If we consider the consequences of evaluating the performance of judges, a variety of options are presented in different countries.

In most countries such as Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, France, Georgia, Germany, Greece, Hungary, Italy, Monaco, Netherlands, Poland, Romania, Slovenia, Macedonia, Turkey, UK the results of the assessment play the most important role when decisions are made on the promotion of judges.

In Romania and Italy, only judges with the highest score (Romania) or at least a positive score (Italy) can qualify for promotion.

In the jurisdictions like Bulgaria, Estonia, Georgia, Germany, Greece, Ukraine newly appointed judges may be dismissed before receiving a guarantee for a lifetime pension based on the results of the evaluation.

The jurisdictions of Austria, Estonia, Greece, Hungary, Italy, Moldova, Poland, Romania, Slovenia, Macedonia allow the dismissal of sitting judges based on poor evaluation results. In Austria, Italy, Moldova and Romania, for example, you need to get two unsatisfactory grades in order to be fired. The initiation of disciplinary proceedings may be a consequence of a low assessment (Belgium, Croatia, Bulgaria, Cyprus, Greece, Hungary, Poland, Slovenia).

In Italy and Romania, a judge who has received a low score must undergo a special training course.

In Belgium, Bulgaria, Spain, Sweden, and Turkey the results of the assessment may also affect the remuneration of judges.

In Finland and Switzerland, the evaluation has no specific consequences, only for the purpose of providing feedback to the judges.

The Law of the Republic of Uzbekistan “On Courts” does not provide for norms on evaluating the efficiency of the activity of judges.

In accordance with Clause 7, Article 6 of the Law of the Republic of Uzbekistan “On the Supreme Judicial Council of the Republic of Uzbekistan” judges must undergo professional training and advanced training, and their impartiality and transparency must be upheld when evaluating the efficacy of their actions through the introduction of modern information technologies.

The Council has been given the power to undertake this duty by deciding on the standards for assessing judges' performance using an open and transparent electronic rating system.

According to Part 3 of Article 25, measures to improve the skills of judges are organized based on the results of studying and evaluating the activities of judges, taking into account the systemic shortcomings found in the administration of justice.

The Presidential Decree “On measures to ensure the true independence of judges and increase the effectiveness of preventing corruption in the judiciary” dated December 7, 2020, it was noted that modern information and communication technologies have not been introduced into the processes of selection and appointment to positions in the judicial system of worthy personnel with the necessary knowledge and life experience, as well as an objective assessment of the activities of judges, which is the reason for insufficient transparency of work in this direction.

In accordance with the Decree, a mechanism must be created that ensure effective protection of the professional activities of judges in the administration of justice from external influences in any manifestations; that ensures objectivity and



transparency in the selection, training and appointment of judges, as well as assessing the performance of judges, the consistent introduction of modern information technologies in these processes are the main directions of state policy to ensure the independence of judges and prevent corruption in the judiciary.

Thus, the proposal of the Supreme Judicial Council and the Supreme Court was adopted. According to it, starting from February 1, 2021, in the field of preventing manifestations of corruption in the judicial system, ensuring openness and transparency in the activities of the Council and the judicial system, the followings must be implemented:

organization of online coverage via the Internet (website) of examination processes in the selection of candidates for appointment for the first time to the position of a judge;

development and implementation of an electronic program that assists in assessing the suitability of the profession of candidates for the position of a judge and judges according to their psychological profile;

development and implementation in practice of specific criteria that provide an open and transparent assessment of the effectiveness of judges through electronic rating.

Further. In accordance with the above-mentioned Law of the Republic of Uzbekistan “On the Supreme Judicial Council of the Republic of Uzbekistan” and the Decree of the President of the Republic of Uzbekistan “On measures to ensure the true independence of judges and increase the effectiveness of preventing corruption in the judiciary”, a decision was made by the Supreme Judicial Council (dated December 6, 2021), which approved the Regulations “On the procedure

for evaluating the efficiency of judges through electronic rating”.

In accordance with the Regulation:

The evaluation of the performance of judges is conducted based on main and additional criteria.

The main evaluation criteria are:

- the quality of decisions;
- the responsibility of the judge and his observance of ethical standards;
- activities related to legal propaganda;
- knowledge of foreign languages.

Additional evaluation criteria are:

- judge's workload,
- activity on the online forum of the Club of Judges,
- availability of a scientific degree and professional development.

Based on the criteria defined by the Regulation, the effectiveness of the activities of the following is evaluated:

- judges of the Supreme Court of the Republic of Uzbekistan;
- judges of the Military Court of the Republic of Uzbekistan, court of the Republic of Karakalpakstan, regional and Tashkent city courts, administrative court of the Republic of Karakalpakstan, administrative courts of regions and the city of Tashkent;
- chairpersons, deputy chairpersons and judges of inter-district, district (city) courts;



- chairpersons, deputy chairpersons and judges of inter-district administrative courts.

The performance of the chairman and deputy chairman of the Supreme Court of the Republic of Uzbekistan, the Military Court of the Republic of Uzbekistan, the court of the Republic of Karakalpakstan, regional and Tashkent city courts, the chairman and deputy chairman of the administrative courts of the Republic of Karakalpakstan, the administrative courts of the regions and the city of Tashkent is assessed based on the average sum of rating points of judges, working in the courts of the respective territories and specializations.

### CONCLUSION

In conclusion, it should be noted that Uzbekistan has implemented a system for assessing the effectiveness of judges through an electronic rating. At the same time, the recommendations of international organizations, the experience of other countries in the implementation of this activity were taken into account.

It seems that in this issue for each country it is important to maintain a balance between “assessment of the efficiency of a judge” and “independence of a judge”. Thus, we highlight that Article 5-3 of the World Charter of Judges provides that in countries where judges are evaluated, the evaluation should be primarily qualitative and based on merit, as well as on professional, personal and social referee skills; as regards career advancement with managerial capacity, the assessment should be based on the judge's managerial skills. The evaluation will be based on objective standards that have already been established.

The evaluation process calls for the engagement of the relevant judge, who must be given the opportunity to challenge the decision before an independent body.

Judges cannot ever be evaluated based on the outcomes of their cases.

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