

REVIEW ARTICLE  
PRACA POGLĄDOWA

## DISEASE AS INTERFERENCE FOR JUDGE'S PROFESSION

DOI: 10.36740/WLek201912218

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### ABSTRACT

**Introduction:** The judge's professional activity determines certain requirements for the health status of the person applying for this position or already performing his professional duties. Due to the specificity of professional activity, it could be cases of diseases that make it's impossible to perform professional functions effectively. It raises the question of the fairness of the dismissal procedure precisely for the health status that would exclude discrimination based on disability.

**The aim:** The purpose of the scientific article is to summarize the leading experience of European countries on the protection and prevention of occupational illnesses of judges in order to substantiate specific proposals for the creation of an optimal procedure for dismissing a judge due to health status.

**Materials and methods:** The subject under discussion has been considered based on the relevant sources (scientific publications, legal acts, decisions of judicial and quasi-judicial institutions), using the method of content analysis, comparative and contrastive, analytical and biblio-semantic methods.

**Conclusions:** An analysis of European practice, including judgments on appealing against violations of the right to work due to unlawful dismissal based on health status allowed us to formulate key elements of a fair procedure for dismissing a judge due to illness, which makes it impossible to perform professional functions. A vision on the list of diseases that may be interference to effective judicial activity is developed by the authors. It is substantiated that such list of diseases should be a legal filter to judges employment and dismissal. Regular medical examination and prevention of the development of occupational illnesses of a judge should become an integral part of the court's labor protection system. In the event of an accident related to performing professional functions, the judge is entitled to compensation.

**KEY WORDS:** judge, health status, somatic illnesses, mental disorders, medical expert commissions, dissimulation, list of diseases

Wiad Lek 2019, 72, 12 cz. II, 2501-2509

### INTRODUCTION

There is no need to prove the fact that the exercise of judge's authority is associated with considerable physical and mental impact. This profession requires a high stress resilience, that is, the ability to withstand psychological stress and overcome negative emotions. Empirical researches have recently paid considerable attention to the issue of judge's profession stress [1,2]. Therefore, it can be said that the specificity of the judicial profession requires a such health status in which the physical, physiological and psycho-emotional characteristics of a person will not interfere with the performance of the duties of a judge. Otherwise, the question of the judge's ability/inability to exercise his/her authority arises. We address the problem of the professional capacity of a person, which means the potential readiness and actual ability of a person to perform a certain type of activity at the required level of efficiency for quite a long time.

Working capacity of a person including a judge naturally depends on his/her physical and mental health, which is variable and depends among other things on working conditions. These conditions for the judge are determined by the specifics of the trial, which involves constant communication with a number of persons, including potentially ill; emotional tension and limiting in emotions expression; the tension of the organs of perception (eyesight and hear-

ing) associated with studying and analysis of case files, the diversity and complexity of the tasks being decided by the judge; physical tension, which is associated with the variability and non-standard situations in conditions of limited time. After all, the judicial profession mainly involves working in a sitting position, which significantly influences the condition of the musculoskeletal system, cardiovascular and gastrointestinal system of the person.

The health status of a person admitted to the judicial profession is not only important to one's personally but also must be considered from an economic and social significance perspective. Failure to perform the duties of judge due to the health status (absence at work for a long time, prematurely dismissal from the judge's position due to the health status) leads to a redistribution of workload to other judges, resulting in their reduced productivity. This in turn leads to inefficient use of time and human resources, which is crucial for the effective judicial protection of the individuals' rights and interests. The factors of: (a) the judge's capacity to evaluate the cases as objectively as possible and to take a fair and lawful decision accordingly; (b) the adequate conduct of the judge, both in and out of court, through the lens of which the public authority of the judiciary is formed; - depend directly on the physical and mental health of the judge, his or her moral and emotional state.

There is limited (and virtually nonexistent in the post-Soviet space) information on medical indicators of the judge's ability to perform one's professional duties that would allow the development and unification of medical standards in the judicial profession. It is extremely difficult to find some empirical data on this, since information about human health in general and judges particularly is confidential and protected by law. However, there is an obvious need for a combination of medical and legal knowledge, which will allow for a discussion on the medical criteria for evaluating potential candidates for a judge, as well as for evaluation of the incumbent judges' health as a prerequisite for the effective exercise of judicial authority.

## THE AIM

The study is aimed at clarifying the medical aspect of a person's suitability for the judicial profession and at determining the critical threshold for exercising of judge's authority according to the health status. The authors' aim is to initiate discussions on the compatibility of the judicial profession with the various pathological conditions of human health and on the ways of interaction between the health care system and the bodies responsible for the personnel policy of the judiciary. In particular, the establishment of a system of health and safety of judge's labor based on systematic interaction between health authorities and the judiciary.

## MATERIALS AND METHODS

Through a sample analysis, we examined and compared legislative acts governing access to a judge's professional activity and regulatory acts of state health regulatory authorities in different countries (Ukraine, Russian Federation, Poland, Turkey, Spain, USA and others). We have used statistical, systemic, structural and analytical methods while analyzing court decisions and decisions of Labor Tribunals regarding disputes related to dismissal for health reasons. Content-analysis and biblio-semantic methods have been used in the systematization of scientific publications on occupational diseases and diseases as interferences to access to the judicial profession.

## REVIEW AND DISCUSSION

An analysis of the existing rules in the legislation of different countries has shown that the medical indicators of health and the profession of judge overlap in the following cases: (a) while formulating requirements for judges candidates; (b) while referring to the grounds for the dismissal of a judge; (c) while referring to health care as a social guarantee. The latter concerns the issue of the proper organization and access to health care for judges in countries where it is guaranteed. This brings it outside of our study. At the same time, the first two cases require the identification and assessment of illness states for their effect on the specialist's ability to effectively perform the

duties of a judge without endangering themselves and the health of others.

In most cases, a medical evaluation of an employee's ability to work without risks for one's own health or for others is defined as an assessment of suitability for a work [3]. To do this, one must have medical knowledge and an understanding of the judge's working conditions. As both "health" and "working conditions" are variable categories, suitability for work is a dynamic concept [4]. Suitability for judge's profession may be established both at the stage of the competition for the position of judge and throughout all the term of the judge's relevant powers. In most countries of the world it is regulated by general or specific legislation and is not unified.

**Medical indicators of the judge's suitability for work.** The laws of the majority of countries governing the status of judges provide, in varying interpretations, such a requirement for a candidate for judge that the person is able according to the health status perform the professional functions of a judge. This requirement is formulated in the form of (a) *direct authorization*: "a person has the ability to perform the duties of a judge according to health status" (Poland), "a judge may be a person not registered at a drug or psychoneurological dispensary in the alcoholism treatment, drug addiction, substance abuse, chronic and prolonged mental disorders and has no other illnesses that would interfere with the exercise of the judge's authority (Russian Federation) or (b) *direct prohibition*: "a person who has chronic psycho or other illnesses that interfere with the administration of justice cannot be appointed as judge" (Ukraine, Spain), "have no physical or mental health problems or disabilities that would interfere with the judge's duties or such an interference as unusual speech difficulties or controlling the movement of organs that others may regard as strangeness" (Turkey). Although in the latter case, the formulation is having the risk of unreasonable discrimination, the limited access to the profession of judge on medical grounds is generally justified and does not contradict to international standards in the field of judiciary organization.

At the same time, the ways of confirming the candidate's suitability for the position of judge differ. The most common is the passing of a medical examination by a candidate (Poland, Russian Federation, Turkey, USA), the binding nature of which is set directly in the law (Russian Federation) or in individual by-laws (Poland). In Ukraine, there is no medical examination for a judge candidate. However, such a person is a subject of special verification regarding the health status, namely, if the person is registered at a psychoneurological or narcological health care facility. To do this, the applicant for the position must submit a medical certificate for passing mandatory preliminary and periodic psychiatric examinations and a certificate of passing preventive narcological examination, the forms and the procedure of issuance of which are approved by the Ministry of Health Care of Ukraine.

The method of regulating the access to the judicial profession by the medical criteria existing in the Russian Fed-

eration is of interest. There is a list of diseases, which hinder the appointment of a judge. It has been developed by the Ministry of Health of the Russian Federation and approved by the Council of Judges of the Russian Federation. We have not found any such analogues in other countries to such practice. This list includes 32 types of diseases which interfere one of his/her right to apply for judge's position. Among them the first are the central nervous system diseases, which lead to the progressive disorders of the movement activity of all muscle groups, including breathing, disorders of the cerebral circulation, with the subsequent development of degenerative changes in the brain tissue. As a result of such changes, there is a decrease in the number of neurons and disconnections between them, which is clinically showed by the development of dementia (Alzheimer's, Pick's, Parkinson's, etc.). These diseases most often develop after the age of 40. In the second place there are mentioned diseases that significantly disturb the course of normal mental processes: epilepsy and epileptic seizures of another etiology, stroke (hemorrhagic or ischemic), in the event of which acute or chronic oxygen starvation of the brain tissue and their subsequent death is formed, signs of depression, dysphoria, amnesia, signs of progressive acquired dementia. The following are endocrine diseases, which are most often accompanied by intense headache, increased blood sugar levels, impaired regulatory influence of hormones on human homeostasis. Also, malignant tumors of the central nervous system and other neoplastic processes (hemoblastoses) are added, which lead to astheniaisation of the body, severe intoxication and impaired activity of all organs and systems, including the development of mental disorder. The list also includes diseases accompanied by various degrees of hemorrhagic diathesis. With hemorrhage, the number of erythrocytes is lost in the bloodstream, and therefore the amount of hemoglobin that transports oxygen to the tissues and cells. As a result, first neurons are suffered, which is accompanied by a decrease in concentration, inhibition of functions of all organs of perception, drowsiness, rapid physical and mental exhaustion. In the first place among the diseases worldwide are the diseases of the cardiovascular system in the various stages of compensation and decompensation, which are also mentioned in this list and are contraindications for the work of a judge. Systemic rheumatic diseases which are having a progressive course are also attributed to it (rheumatoid arthritis, systemic lupus erythematosus and systemic scleroderma) because in case of these disorders the vessels, heart muscle, kidneys, central and peripheral systems are always involved in the pathological process. The chronic course of hepatitis from this list includes intoxication syndrome, hemorrhage due to impaired blood coagulation, disorders of the central nervous system. Diseases of the gastrointestinal tract do not allow a person to be in a forced (fixed) position for a long time (family diffuse polyposis of the colon, Crohn's disease, nonspecific ulcerative colitis, etc.) and are accompanied by pronounced diarrheal and pain syndromes and bleeding. Chronic renal failure of varying degrees in the stage of decompensation greatly affects the function of the central nervous system due to uremic intoxication. Impairment of hearing function

if it is impossible to improve by electro-acoustic correction to the level of perception of whispering language not less than six meters is an interference to the judge's profession. Complete blindness is also in this list. Mental illness with a prolonged or chronic course and frequent exacerbations of painful expressions is an absolute sign that a person is not fully aware of the consequences of his/her actions. Also, different types of addictions are mentioned: alcoholism, drug addiction, substance abuse.

According to a global study by The Lancet in 2016, alcohol abuse resulted in the death of 2.8 million people and became a leading risk factor for premature death and disability among people aged 15-49 [5]. Today, alcohol abuse most often depends on the causes embedded in society (historical, social, economic and socio-psychological) and lies in the anomalies of personality and characteristics of the body of the individual (hereditary, constitutional, exchange, psychological, etc.).

The incompatibility of alcoholism, drug addiction, substance abuse with the status of a judge is caused not only by clinical expressions (disorders of thinking, hypochondria, persecution mania, low self-esteem, anxiety, depression, impulsiveness, alcoholic degradation of personality) [6] which influence on doing any work. Each chemical addiction distorts the normal flexibility of an addict person's behavior toward the dehumanized compulsive behavior [7]. A person tends to live in a way of asocial lifestyle, thus ethical norms and moral values are losing their regulatory power. The influence of alcohol or drugs on the mental and physical health of a judge may raise a question on one's competence [8], which is unacceptable in this profession. In such case, the addicted must be dismissed.

Another indicator from the above list, which makes it impossible to occupy the position of a judge, namely the lack of a person's vision, which is perceived by experts ambiguously, also draws scientific attention. In the Russian Federation, this feature of human health is a direct interference to the appointment a person as a judge by the certain norms. At the same time, in 2014, by a decision of the General Council of the Judiciary, the blind Gabriel Perez could participate in the competition for the post of judge. In 2015, Richard Bernstein became the first blind judge of the Michigan Supreme Court. In general, the first blind judge in the twentieth century was the High Court of Justice of England and Wales, Sir John Wall, who was appointed in 1991 [9].

In Ukraine such possibility exists purely theoretically since the law obliges a person to submit only a medical certificate for the mandatory psychiatric examination and a certificate for passing a preventive narcological examination for participation in the competition. That is, there is no direct prohibition. However, this is practically impossible because the competitive procedure involves passing a written examination by an applicant (drafting a court decision). There is no technical ability to access for blind people at this stage.

We believe that a person's vision absence should not be an interference to the appointment of a judge, since: (a) the trial involves participating not only by a judge but also by the

auxiliary court staff (assistants, secretaries, advisers) whose aim is to assist and to help a judge (including dealing with case files); (b) the absence of vision deprives the prejudice caused by the appearance of the litigants that contributes to the impartiality of the judge; (c) long-term blindness develops other human organs of perception, in particular, hearing [10], which allows the judge to feel more intensely the intonation of the participants in the trial. No wonder that one of the attributes of the goddess of justice Themis is the blindfold, which symbolizes impartiality and justice.

A comprehensive approach to assessing a judge's suitability for work, considering a specific disease (level and quality of health defect) and conditions of judicial work, also requires existence of other ill conditions of a person that limits his physical capacity. Therefore, it is a very limited list of grounds since it is including diseases that in 100% of cases lead to disability. There are other ill conditions which are interfering professional activity, but do not lead to disability in the theoretical perspective. One of the dogmas of medicine is the "individual approach" to each patient, and this is because of one nosological unit cannot influence on two people equally - one person suffers more severely, the other one overcomes it easier, and in some case the person dies. The peculiarities of each organism are not studied well because they can be not only congenital and genetically determined, but also acquired as a result of other diseases or injuries of different genesis. That is why there is a pathological-anatomical and court-medical control over the quality of treatment worldwide.

The issue of psychodiagnostics is relevant for candidates to the position of a judge. It allows to assess the psychological readiness and suitability of a person to exercise justice, to identify among the candidates those who are neuro-psychological unstable and in a state of maladaptation, as well as persons with asocial settings and self-serving utilitarian. An important aspect of the psychodiagnosis of this group of individuals is to determine a person's stress resistance as an integrative quality, which characterizes a person's emotional stability, a low threshold of anxiety, a high level of self-regulation and psychological readiness for stress. Empirical studies show that stress, anxiety, burnout, and depression are inherent in legal practitioners to a much greater extent than in other professions (medics, teachers, scientists) [11]. Stress is associated with the development of virtually all diseases. It is the root cause of most pathologies, affecting both the genetic component and the body, stress accelerates the development of both somatic and mental illness [12]. It is known that stress is associated with an increased risk of heart attack (workplace stress increases the risk of heart attack by 23% and 9 times increases the likelihood of focal disorders of myocardial blood supply [13]). Therefore, it should not be forgotten that the assessment of a person's ability to work involves finding out whether he/she can perform professional tasks in terms of the risks to one's health.

Psychodiagnosis of the applicant for the position of judge allows to achieve more pragmatic goals in terms of the organization of judiciary. Based on the experience of Ukraine, where the psychodiagnosis of candidates for

the post of judge has become a mandatory component of the competition only recently by using 4 methods. They include: Test of the candidate's overall abilities (thinking, intellectual abilities), MMPI-2 (diagnosis of general inconsistency in the personality system, accentuations, psychopathic traits, level of neuroticism, emotion, etc.), the BFQ-2 test (diagnosis of openness of experience, honesty, extraversion, benevolence and neuroticism), and the HCS Integrity Check,). They evaluate: (a) the individual competence (cognitive, emotional, motivational and volitional qualities of the individual); (b) social competence (communicativeness, organizational skills, managerial personality traits, moral personality traits); (c) professional ethics (defined in terms of "integrativeness" taking into account the following components: understanding and adherence of rules and norms, ability to defend one's own beliefs, discipline, respect for others); (d) good faith (determined by the "integrative" indicator, taking into account the following components: honesty and integrity, lack of counterproductive actions, lack of tendency to abuse). Although some of the techniques used in Ukraine (HCS Integrity Check) and the evaluation process itself have many complaints from experts, the introduction of psychodiagnostics as a mandatory procedure for assessing the suitability of candidates for judicial work is a progressive and necessary measure in this socially relevant profession and field.

#### ***Medical indicators for termination of judicial activity.***

Besides the medical filters for admission to the judicial profession, there should obviously be a system of monitoring of the physical and mental health of the judge. The health status of judges is of great social importance because exhaustion and mental stress increase the likelihood of judicial mistake. For example, in Ukraine, as in many other countries, a judge's illness is an independent ground for dismissal. In the United Kingdom, for example, the Lord Chief Judge after consultation with the Lord Chancellor may dismiss a judge for reasons of poor health and inability to perform judge's authority. It was first provided for by the Justice Act in 1973 and is now contained in the Law on the High Courts 1981. However, judges of higher courts evaluate such a rule as having the risk of extra-procedural pressure on them (given the specifics of the judicial career structure in this country, where the posts of judges in the high courts are of a sufficiently respectable age) and are discriminatory in nature, since such dismissal ground is not foreseen for lower-courts judges. Therefore, since 2005, requirements for such decision-making procedure have been formalized, including legal certainty and transparency [14].

The main issues of a judge's dismissal for health reasons are, first, that it may be compulsory when the person is not dismissed on his/her own will. The reasons may be different, in particular: (a) the person does not understand (in particular, due to the effect of the illness on his/her consciousness) that his/her health condition does not allow to perform judicial proceedings; (b) the person is self-confident or has a low social responsibility threshold; (c) the person hopes that his/her health will improve over time.

Secondly, a person can and does recognize that his or her health status does not allow him/her to exercise justice at the proper level, but wishes to be dismissed not at his/her own will (or in connection with the resignation or of the maximum allowable age on position), and it is because of a health status which, in one's opinion, has been damaged in connection with the performance of professional functions, and therefore one should have increased social guarantees and material compensation.

Mentioned above highlights the issue of ensuring a fair procedure for dismissing a judge from a position on the ground of health status, which ensures a reasonable balance of the human right to work and the interests of the state in the proper performance of one's functions (justice), since the judge in the classification of public positions belongs to the person "authorized to perform state function".

However, as noted above, in Ukraine there is no list of such diseases that give grounds to the conclusion on "the inability to perform justice functions" and, accordingly, the mechanism of establishing the presence or absence of the judge's disease incompatible with the substitution of a judicial position, and guarantees for the reinstatement of the person whose health has been restored. Now in Ukraine there are only formal grounds for dismissal of a judge on health status basis. There is a general rule in Ukrainian labor law, according to which an employee is retained in the event of his temporary disability for no more than 4 consecutive months. That is, the employee's work at least for one day interrupts the progress of the prescribed period. But there is no deadline for a judge to be absent at work due to illness, which creates the risk of some manipulation by judges who may stay in hospital for a long time while maintaining the position (thus increasing the workload for other judges of this court), increasing the work experience and receiving social benefits. In this context, an interesting example is the legal regulation of this issue at the times of the Russian Empire, where it was assumed that a judge was obliged to be dismissed if "for less than two years in a row no more than half of all working days in each of these two years he was present at work." Today, the specifics of judicial profession (in particular, the principles of consistency of the court composition; reasonableness of the terms of trial; the calculation of full-time judicial positions, in particular, on the criteria of average workload; significant economic value of the judge's work) requires the development of more specific criteria for assessing the fairness of a judge's dismissal on the ground of health status. This issue becomes especially relevant when the judge does not admit his/her inability to perform justice precisely because of one's health status.

Obviously, the list of diseases that interfere a person from being a judge should be at least the same as when admitting to the profession. Attention to that issue was paid above. But unlike candidates for a judge who undergo at least some health assessment (opinion of a narcologist, psychiatrist, psychologist), no health control measures are provided for persons holding judicial positions (at least until they decide to compete for a vacancy in another

court). In Ukraine, the activity of a judge is not included to the list of professions whose employees are subject of periodic medical examinations.

In many countries, employers seek dispensary examinations of their employees once a year, but if it is not free of charge for the employees, they may refuse to do so. Today, laboratory and instrumental examination is very expensive in Ukraine, but it is available to certain categories of workers. Therefore, in the case of the health control of a judge it is necessary to fix at the legislative level the passage through the medical expert commission not only of the applicant, but also of the acting specialist at least twice a year, provided that the composition of the commission should be new every time. Compulsory paid laboratory and instrumental testing – in such cases very modern equipment, high quality reagents and high resolution of the equipment are used. There is another unpleasant effect here – deliberate dissimulation (hiding an existing health disorder with either medication or deception). For this reason, these surveys should be conducted at least twice a year. There may also be a corruption component in the dispensary process because the financial status of the doctor and the judge's one cannot be compared today. Experts should include as many doctors of different specialization as possible, and in our opinion, it is possible to invite foreign specialists. It is not difficult to examine such a small group of professionals, because the state and social responsibility of judges is extremely high.

It should also be noted that a judge's health status can negatively influence not only the quality of performing one's professional function, but also contribute to the deterioration of the judge's health. A common example: a judge with type 1 diabetes requires periodic insulin injections, which should be followed in some cases by food. The court hearing may be delayed and the time for receiving the appropriate injection is over. Failure to receive a medication on time by a judge can have the most negative health effects. This should be provided by endocrinologists caring for such a patient and should be given prolonged insulin action if a dose is selected. But again, the problem is that dose selection is not a simple mathematical action. The patient should be examined in a stationary setting, blood glucose monitored while the use of prescribed doses of new insulin, and the body's reaction to be expected. These appointments can then be corrected, or generally returned to the primary doses of simple insulin. This process is a great stress for the body and requires a certain amount of time, during which it is very difficult and contraindicated to engage in intense professional workload.

The foregoing updates the issue of the introduction of a judge's health monitoring system in Ukraine, which, first, will provide for a list of diseases that negatively affect (or may affect) the quality of the judge's professional functions.

There may be several ways to resolve such issues. First, the periodic medical examination of the judges by a panel of doctors. We have already stated that. Provide that the judge periodically must undergo a medical examination and submit a certificate of his/her health status to the High

Council of Justice as the authority empowered to decide on the dismissal of the judge on the health status basis. Another way, when competing for position the judge provides information about his/her doctor and signs up the consent to the doctor's disclosure of the patient's health status at the request of the High Council of Justice (this path, in our opinion, is more promising because it eliminates risks of a formal approach and may be involved situationally when the person responsible for the staff of the court personnel has reasonable grounds for suspecting that the health of the judge interfere the performance of justice). But in this case the question arises: "What doctor? Is it that doctor, who the consent was signed with?" It is impossible to do this, because doctor's specialization should be narrow enough for a specialist to treat a certain disorder. There is no isolated disease of only one organ or one system. All other organs and systems are suffering to compensate an existing problem. How could a therapist give such messages if it is related to a surgical problem (blood vessels, gastrointestinal tract, urinary system, sexual disorders, etc.)? Then an agreement should be concluded with each specialist (otolaryngologist, ophthalmologist, neurologist, geneticist, surgeon, endocrinologist, infectious specialist, cardiologist, etc.). Again, the statement "expert medical commission and its conclusion" is arising. But in both the first and second cases there must be at least a formal list of diseases approved by the Ministry of Health, the presence of which testifies to the inability of the person to perform justice.

Judges in Ukraine today are not provided with adequate guarantees of protection, cases of assault on judges, causing them physical and mental injuries, even death, have increased. The law set that the life and health of judges are the subject of compulsory state insurance, which is provided at the expense of the Social Insurance Fund on accidents and occupational diseases. The occurrence of an insured event involves certain material payments and social services. Therefore, of course, a judge who has a chronic illness and wants to be dismissed is himself interested in finding his illness to be professional or injury (physically or mentally) to be professionally conditioned. However, due to the lack of clear criteria of understanding a professionally caused injury or occupational disease, a judge may be able to predict difficulties in law enforcement. Ukraine is not the only example of it. For instance, a Paris court categorized the death of an employee who had been on a business trip and died while having sex with a stranger as "an accident at work." The court referred to the rules of the law that made the employer liable for any situations that might occur with the employee during a business trip [15]. Manchester court has found a company guilty of dismissing an employee for over 97 days on sick leave due to a depression illness that resulted from one's work with a company troubled software. The court did not accept the employer's argument that the employee was offered other vacancies that did not require the use of problematic software, and the fact that to retain an employee who was seek leave for a long term is economically unprofitable [16]. However, this example demonstrates that deciding whether to dismiss for reasons

of inability to perform professional functions due to the health status should be preceded by a set of measures to protect the human right to work, in particular finding the best balance between the interests of an employee who has certain health problems and an employer's interests.

In our view, the dismissal procedure in the ground of health status will be a fair enough if, first, *it is based on facts and not on presumptions*. It means that a qualified (medical) commission determines that (a) the person's illness does not allow one to perform professional functions effectively; (b) it is impossible to predict when a person is recovering (or at all if it is possible); (c) the employer has no other position that is appropriate for the employee's qualifications (see EAT Decision in Merseyside & North Wales Electricity Board v Taylor [1975] ICR 185).

Secondly, the procedure of dismissing a judge meets the criterion of *legal certainty*. In particular, the list of diseases/defects/injuries, the presence of which indicates the professional inability of a person to perform a certain type of activity. At the same time, these interferences should be objective, not subjective and without any risk of discrimination. For example, if a judge has been granted disability status, then he/she cannot be dismissed because the court building is not adapted for wheelchair use. Trauma, such as a leg one, is unlikely to interfere with the administration of justice, but a spinal injury may interfere if the person is bedridden, but the question of dismissal can only be raised after the responsible (medical) commission concludes that it is impossible to predict the terms for which recovery will take place. In other words, the nature of the illness, the prospect of recovery and the return of professionally important qualities (physical and mental capacity) to a judge should be considered (see SCIH 91 BS v Dundee City Council (2013)).

The critical number of days of absence at the workplace to initiate a dismissal procedure should be clearly identified (see EAT Decision in Spencer v Paragon Wallpapers Ltd [1977] ICR 301). This authority is entirely at the discretion of the State as the employer of the judge. There is no universal term in world practice. For example, under the Fair Work Act an employee is protected from dismissal when temporarily absent due to illness or injury unless the employee's absence on unpaid personal/carer leave extends for more than 3 months, or total absences of 3 months within a 12-month period. Many State and Territory workers compensation laws also prohibit the termination of an employment by the employer within a specified period where the sole or primary reason for the dismissal is because of the employee's absence. The specified period can range from 6 months (under NSW law), to 12 months (under Queensland law), or indefinitely (under South Australian) [17]. We believe that in cases where it is difficult to determine the prospect of recovery for a judge, the alternative should be used: either dismissal for health reasons, or suspension a term of authorities for no more than one year. The right to choose the decision must be vested in the judge. If, after a prolonged illness, the judge receives the medical panel's conclusion that his/her health

is in line with the requirements of the profession, the judge's authority must be renewed (see EAT Decision in *Cooper v Balfours Bakery Pty Ltd*).

In addition, the procedure for establishing the grounds for dismissal of a judge for health reasons itself must be concrete, clear, and explicit. That is, the authorized entity entrusted such a decision making is identified, the method of obtaining information about the health of the judge (see Fair Work Commission (FWA) decision in *Chetcuti v Coles Group Supply Chain Pty Ltd*) and the entity, competent in determining a judge's suitability for justice due to the health status; the order of initiation (the subject of appealing to the High Council of Justice) and the order of studying the matter essentially; ensuring guarantees of the right to work and protection against discrimination on disability.

Third, the issue of *financial compensation* is analyzed. That is, the cause of illness/defect/trauma occurring is evaluated, which interfere him/her being a judge, which will confirm (refute) the nature of professional cause (and not, for example, heredity, genetic predisposition or development due to abuse) of illness or injury (physical or mental). If the nature of the illness or injury is determined to be professionally caused, additional guarantees of financial security and social protection should be applied. In addition, the employer (for judges the employer is the state) should have additional obligations to take measures in preventing occupational diseases and injuries, that is, to prevent the psychotraumatic effects of professional stress factors, as noted above.

Another problem is a situation in which damaging health is due to the performance of professional functions or, for example, inadequate working conditions. In addition, the profession of judge is associated with constant stressful situations, so the question on development of a program for the prevention of psychotraumatic impact of factors of professional stress.

So-called "occupational diseases" in legal profession have not been established yet. But there are already such health disorders that are quite common among lawyers who work as judges. Working as a judge is very difficult because the parties' competitiveness in any of the lawsuits is based on a conflict that creates certain types of emotions: anger, fear, excitement, disgust, anxiety - all of them cause stress. At the mental level, the most typical signs of prolonged stress and accumulated different emotions are unmotivated anxiety, depressed mood, which can lead to depression, mood swings, unreasonable irritability and conflict, emotional coldness, indifference and hostility with people. These processes are caused not mainly by external circumstances, but more by a disturbed internal psycho-emotional state. Traditionally, depression and hostility always coexist. When a person is in such a state, it is important what exactly will prevail: if one is depressed, that can develop into apathy or emotional dullness, and if hostility is taken place - dysphoria develops (profound disturbance of the emotional sphere of mental activity). Biochemically, in case of presence of such changes in the body there is an increase in the content of proteins in the blood, which are responsible for the inflammatory response

and the increasing the amount of adrenaline and cortisol, which, in turn, is a very dangerous risk factor for the cardiovascular system, as well as smoking.

The most common somatic expression of stress are a sudden increase of blood pressure accompanied by a feeling of heat; pain of different intensity, which is most often felt in the head area (by the type of migraine, sometimes dizziness) and neck, in the heart (increased palpitations or arrhythmias) and in the abdomen (imitate pain in peptic ulcer); shortness of breath, foreign body sensation in the throat, sudden loss of voice; appetite disorders - from complete rejection of food to attacks of uncontrollable appetite; sleep disorders - insomnia or, conversely, drowsiness, and sleep becomes anxious and restless due to unpleasant dreams; various sexual problems. In regular life it is expressed by the loss of interest to work, the desire to fulfill one's duties formally, without interest in the outcome, and in some cases, the disgust to work. Because of it, judges have self-doubt, a decline in professional self-esteem, doubts and hesitation while making independent decisions.

In the Netherlands the research has been conducted not only on health risks such as professional burnout ("tension hypothesis"), but also on positive aspects of the judge's work, such as involvement in work ("motivational hypothesis"). Various studies in other countries show that judges are at a significantly higher risk of stress, burnout or secondary injury influence (more relevant to the criminal side of the legal field) or already suffer from them [18].

The work of a judge is one of the highly stressed ones, the consequences of which are alcohol or drug addiction in some cases. According to research by American scientists, lawyers are three times more likely to suffer from depression than representatives of other professions. One in four lawyers suffers from psychological stress, including feelings of inadequacy, inferiority, anxiety, isolation, and social alienation. As a result, the level of drug addiction among lawyers is twice as high as that of the entire US population, and male lawyers are twice as likely to commit suicide as men in the general population. In the legal profession of this country, alcohol abuse reaches 20%. Reports from help programs for US attorneys show that 50% -75% of discipline violation cases in legal practice are related to drug addiction [19].

In the light of the mentioned above, we consider it to be a fair practice to legally prescribe the powers of the High Council of Justice to require a judge to obtain an opinion from a narcologist and psychiatrist, but only in the context of a judge dismissal proceeding on the ground of his health status. Sometimes it is necessary to find out the fact of a judge's health deterioration due to his own actions, rather than the influence of negative factors of the profession. In our opinion, before visiting these specialists by the patient (judge), medics should be silently present at the trial of a judge and objectively determine the true mental state of the person beforehand, since there is again the possibility of deliberate stimulation when attending such specialized doctors.

Fourthly, there is a mechanism for appealing the decision of the competent authority on dismissal for health reasons

(see EAT judgment in *Foster v Somerset County Council* 2003, EAT / 0355/03 RN). In Ukraine judges can appeal to a court for dismissal because of their inability to fully exercise their authority due to the health status, it means that the judge's right to a court defense on this issue is unlimited (unlike dismissal on other grounds). Western jurisprudence has already developed a system of principles for dealing with such complaints [20] and the procedure for calculating compensation for unfair dismissal, as well as for legal protection against discrimination on disability [21].

In fact, European court practice has contributed to the fact that the legal procedure for dismissing a judge is similar to a disciplinary procedure: studying of a statement by a competent authority about the inability to perform justice for health reasons (filed by a judge, court administrator, third party) on a publicity basis (unless there are objections by a judge), the reasonableness of the terms, the proven fact of the unhealthiness of the judge which is incompatible with professional activity; examination of evidence (conclusion of medical commission); adopting a decision and granting the right to appeal that decision [22].

Thus, the interests of the judiciary require the specification of the criteria of mental and physical disease health of the judge, the term of one's absence at work in connection with temporary disability, which is the ground for the conclusion about the impossibility (inability) to perform his/her professional functions due to the health reasons, establishing a fair procedure for substantive review of the issue of the right to appeal the decision made, and increased financial compensation if health deterioration was caused as a result of performing professional functions.

It is advisable to legally prescribe the authority responsible for the court personnel the power to obtain timely and reliable information about a judge's health, including to prevent deterioration of one's condition due to the influence of professional factors.

## CONCLUSIONS

Undoubtedly, to study within a single publication the question of a person's suitability for the judicial profession in the aspect of analyzing the whole spectrum of existing diseases for their compatibility with the professional activity of a judge is an unattainable task. But we didn't set it for ourselves. Within this section of our study, we can draw the following conclusions:

- candidates for the position of judge must undergo a medical examination for the purpose of assessing the suitability for exercising of judicial powers, which requires appropriate legal regulation;
- it is advisable to have a legally prescribed indicative, but not an exhaustive list of diseases, the presence of which interfere the person from performing professional functions. There are at least four arguments in favor of its existence: 1) persons with such illnesses will have some certainty about their career; 2) there will be legitimate grounds for denying persons with such diseases in access to the profession of a judge or in case of dismissal; 3) it will serve as a factor

of population's confidence that justice is performed by adequate judges; 4) to protect from the deterioration of health through the work of a judge a person who already has certain diseases. Such a list must be developed jointly by medical and judicial professionals;

- psychodiagnosis should be a mandatory part of assessing a person's suitability for performing of judicial authority. Depending on the features of the appointment of a judge in the country, it may be part of a medical examination or a separate procedure in the competition process for a judicial position;
- the dismissal procedure of a judge on medical grounds must be in line with the following criteria of fairness: (a) to be based on indisputable facts about the judge's health status which is inappropriate for performing professional functions, as confirmed by the medical opinion of the expert medical commission; (b) to be legal, that is, the law defines the procedure for initiating the dismissal of a judge on medical grounds; the examination procedure is substantially ensured by guarantees of competitiveness, openness, reasonableness and protection against disability discrimination; a mechanism of appealing the decision on dismissal due to health status should be set; (c) financial compensation if the health status has become unsuitable for performing professional functions as a result of an occupational illness or injury is provided;
- implementation of the program of prevention of psychotraumatic influence of occupational stress factors on judges is relevant.

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**Conflict of interest:**

*The Authors declare no conflict of interest.*

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**Received:** 10.09.2019

**Accepted:** 27.11.2019