

SECTION 7. LAW AND INTERNATIONAL LAW

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HOLDING JUDGES ACCOUNTABLE: A COMPARATIVE ANALYSIS OF PROCEDURAL ASPECTS IN UKRAINE AND EUROPEAN UNION MEMBER STATES

Abstract. *The article focuses on the pressing issues surrounding the practical aspects of judicial reform in Ukraine, particularly emphasising the formation and development of mechanisms to hold judges accountable. The article states that the legitimacy of the lustration process in Ukraine requires the consideration of principles of judicial accountability and guarantees of due process. The article highlights the importance of analysis concerning judge accountability in European Union countries and Ukraine. The article summarises specific legal and practical challenges related to judge accountability.*

Nowadays, there are many urgent problems related to the practical aspects of reforming the judicial system of Ukraine. Taking into account the judicial reform in Ukraine, more than 12% of respondents expressed confidence that it will significantly improve the activities of judicial branch bodies, and the level of trust among society in such reform is growing [1]. Based on the realities of today, one of the key aspects of the judicial reform of Ukraine is the formation and development of applied mechanisms for bringing judges to legal responsibility. The purpose of developing such mechanisms is to introduce new effective approaches to ensuring the fundamental right of a person and a citizen to a fair trial; increasing the authority of the judiciary and citizens' trust in the judicial system of Ukraine; preventing and countering corruption in the judicial system (courts). The article aims to carry out a typological analysis of the European Union (EU) countries and scrutinise procedural aspects in Ukraine regarding bringing a judge to responsibility.

We propose to analyse the procedural aspects in the EU countries and Ukraine regarding bringing a judge to legal responsibility, according to the three directions (aspects) given below.

Thus, the first direction concerns the comparative analysis of practical issues regarding the legal responsibility of judges in EU countries. According to the results of the analysis of such main current legal documents as the Recommendation of the Committee of Ministers of the Council of Europe CM/Rec(2010)12 on judges (independence, effectiveness and duties) [2] and the European Charter on the statute for judges and Explanatory Memorandum [3], we found out that in judicial practice:

1) in Portugal and Germany, such a subtype of criminal liability of a judge as legal liability for violation of the procedure defined by law exists and is applied;

2) characteristic types of legal liability of judges for France, Germany, Lithuania and Portugal are a criminal, civil and disciplinary liability;

3) Estonia, Italy, Latvia and Poland are currently carrying out systemic judicial reforms in this direction, intending to ensure the rights and freedoms of citizens, developed based on European judicial practice and world science;

4) in Germany, there is a constitutional responsibility, which is also inherent in Lithuania, but legal responsibility is administrative in Lithuania.

At the same time, it should also be noted that in each country of the world, bringing judges to legal responsibility has certain specific and at the same time different features. This, first of all, is due to certain traditions, historical development, specifics of political systems and features of the existing state mechanism.

According to the specifics of bringing judges to legal responsibility the EU member states are divided on:

1) countries of Statutory (Romano-Germanic) law (these countries are characterised by a fairly high level of classification for the commission of disciplinary offences by judges, and also have a certain and special algorithm for carrying out disciplinary proceedings);

2) countries of Customary (Anglo-Saxon) law (in the countries of customary law no principles are detailing the main grounds for bringing judges to legal responsibility).

In all EU member states, cases of judges being held criminally liable are infrequent and are usually publicized in society, in particular through the mass media, with a fairly negative reaction to such actions, including from the judges themselves. Bringing a judge (judges) to disciplinary responsibility, primarily in Germany, is the main control mechanism that provides all the necessary opportunities for effective and prompt detection of offences committed by judges.

Judicial immunity is based on the legal inviolability of a judge, provided for by a special law, which defines him as the main representative of the judiciary. In addition, the Constitutional Court of Ukraine, in its decision dated 01.12.2004, emphasised that the inviolability of judges is not their privilege. This is a privilege of a public-legal nature, which is primarily aimed at the unimpeded performance by the judge of his professional duties for the administration of justice [4].

Moreover, we can consider certain provisions of Ukrainian legislation regarding the responsibility of judges. Thus, the Code of Ukraine on Administrative Offenses determines that some exceptions to bringing judges to administrative responsibility are based, at the same time, on the immunity of judges [5]. Judges are brought to administrative responsibility on a general basis. According to Article 1176 of the Civil Code of Ukraine, if the court passes an illegal judgment in a civil case, the state must compensate for the damage caused by the judge, but only when the judge's actions constitute a criminal offence [6].

We believe that it is appropriate to consider the second direction in the context of the analysis of practical issues regarding lustration through the prism of the legal responsibility of a judge in Ukraine. Taking into account the study of the main provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms dated 04.11.1950 [7], the analysis of the implementation of the Law of Ukraine "On Restoring Confidence in the Judiciary in Ukraine" dated 08.04.2014 [8], the Law of Ukraine "On Lustration" dated 16.09.2014 [9], Resolution of the Cabinet of Ministers of Ukraine "Some issues of implementation of the Law of Ukraine "On Lustration" dated 16.10.2014 [10] and Order of the Ministry of Justice of Ukraine "On approval of the Regulation on the Unified State Register of Persons to whom the provisions of the Law of Ukraine "On Lustration" dated 16.11.2014 are applied [11].

According to the results of the analysis of the above sources, we conclude that the lustration of a judge in Ukraine:

1. is a way to restore the level of trust and respect for the judiciary on the part of citizens, especially under conditions of social instability, to satisfy society's request;
- 2, fulfils the function of protecting democracy and democratic values;
3. to some extent contributes to strengthening and increasing the level of authority of the court (judge);
4. has a special (rather specific) character, as it includes elements of his legal and political responsibility.

In Ukraine, the model of lustration measures combines elements of administrative and criminal sanctions. In our opinion, today it is also necessary to increase the responsibility of the society for disrespecting the court (judge) in Ukraine, taking into account the experience of the

EU member states. To ensure the legitimacy of the lustration procedure (purification of power) in Ukraine, it is necessary to take into account: the principles of the institution of legal responsibility of judges, as well as guarantees of due legal procedure. At the same time, the lustration of judges in Ukraine should exclude extra-procedural review of court decisions, which contradicts the current Constitution of Ukraine [12].

Also worthy of attention is item 10 of the Resolution of the Plenum of the Supreme Court of Ukraine “On the Independence of the Judiciary” dated 13.06.2007 [13]. This paragraph emphasizes that the bodies that decide on the issue of disciplinary responsibility and responsibility for violating the oath of a judge are not empowered by law to assess the legality of a court decision. According to the definition of the Constitutional Court of Ukraine, the legal status of a judge implies legal responsibility for failure to fulfil his duties [14].

As for the third direction, it is crucial to determine here the question of the ratio of the types of legal responsibility of judges and the application of certain sanctions to them for the simultaneous violation of certain norms of several (or different) branches of law, which sometimes characterizes the multiplicity of offences by judges.

Types of the multiplicity of offences committed by judges should be divided into the following three main groups, namely:

1) when the judge, by his illegal act (action, inaction), violated separate norms of several branches of law at the same time and specific and different defined measures of several different types of legal responsibility are applied to him at the same time;

2) when the judge has committed several (different) illegal acts, which, based on the essence and totality of structural components or elements, are qualified by one specific, specific basis of legal responsibility;

3) combines a combination of the first group and the second group. The application of a certain penalty (administrative) to judges is the basis for bringing them to disciplinary responsibility in those cases defined by the Law of Ukraine “On the Judiciary and the Status of Judges” dated 02.06.2016 [15].

However, bringing to legal responsibility a judge, taking into account the decision and practice of application of the European Court of Human Rights should be based exclusively on:

1) the subject to final proof of the judge's guilt;

2) within the limits and procedure of the determined procedure of bringing the judge to legal responsibility (disciplinary, civil and criminal), and by the current legislation of Ukraine.

According to the current Law of Ukraine “On Lustration”, the model of lustration measures combines elements of administrative and criminal sanctions [9]. Lustration of a judge in Ukraine:

1. is a way to restore the level of trust and respect for the judiciary on the part of citizens, especially under conditions of social instability, to satisfy society's request;

2. has a special (quite specific) character, as it includes elements of his legal and political responsibility;

3. fulfils the function of protecting democracy and democratic values;

4. to a certain extent contributes to strengthening and increasing the level of authority of the court (judge).

Lustration of the actions and/or inaction of judges in Ukraine, which is provided for by Ukrainian legislation, is subsidiary, since certain (defined by Ukrainian legislation) measures of legal responsibility of a general nature may be applied to judges as a result of the submitted lustration. To ensure the legitimacy of the lustration procedure in Ukraine, it is necessary to take into account: the principles of the institution of legal responsibility of judges, as well as guarantees of due legal procedure.

To summarise, the experience of the EU countries in the direction of bringing judges to legal responsibility is taken into account quite often and is actively used by many other countries of the world. It is necessary to take this into account in Ukraine, in particular - we recommend that the legislation of Ukraine take into account the existing experience of Germany regarding the application of disciplinary responsibility of retired judges. This, taking into account the problems

of theory and practice in this direction, will to some extent reduce (in the future) certain abuses of their status by judges, as well as contribute to the restoration of the level of trust and respect for the judiciary on the part of society.

Conclusion. We consider it expedient to establish a legible ban on bringing judges to justice in Ukraine for the same specific illegal act. The ban must be within one type of proceeding (disciplinary, administrative or criminal); administrative and criminal proceedings; any type of legal liability after the application of specific measures provided for by the legislation of Ukraine in the sphere of lustration.

Further research on this topic can take into account important aspects such as the effectiveness and results of applying accountability to judges in different countries, as well as assessing the impact of lustration on citizens' trust in the judicial system. Conclusions obtained from the experience of other countries should be carefully considered and used to improve the procedure of lustration of judges in Ukraine. This will help strengthen the rule of law, increase confidence in the judicial system, and ensure fairness and legality in court decisions.

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