

JUDGE COMPETENCE: CURRENT SCIENTIFIC VIEWS

Martynyuk Vitaliy - HEI "Lviv university of business and law"

<https://orcid.org/0000-0002-4320-5650>

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Legal Procedure, the Legal System, and Illegal Behavior. General

The particular competence of a judge is known to be a key measure of the ability to hold the office of a judge and the administration of just justice. In addition, often in domestic legal studies, the jurisdiction of a judge is considered exclusively in a systematic relationship with other elements of legal status.

The article summarizes the conceptual aspects of the formation and development of a judge's competence. Key areas of research on the competency of a judge are outlined. It has been found that a number of dissertation studies have highlighted general issues regarding the judge's competence in the context of changes that have taken place in the judiciary in recent years. It is revealed that the scientific researches of the last years do not sufficiently cover the relevant issues from the point of view of its interpretation as the process of formation, development and evaluation of the judge's competence.

It is established that at the theoretical level, the competence of a judge is investigated in the framework of forming recommendations on the formation and development of the judicial corps, increasing the authority of the judiciary and its confidence on the part of the population. Conceptual studies of the dynamics of the development of conceptual foundations of the judiciary in the context of Ukraine's European integration aspirations have a special place. The assertion of the right to a fair trial in these studies is accompanied by increased attention to the competence of the judge, on the one hand, as an element of his independence and, on the other, as part of the concept of "competent court". At the application level, individual elements of the judge's competence - professional, social and psychological competence - are explored, and attempts are made to find compromise mechanisms for assessing jurisdiction in view of the likely threat to the independence of the judge, which is a promising area for further research.

Keywords: judicial reform, judiciary, judge corps, judge's competence, judge's independence.

Конкретна компетенція судді, як відомо, є ключовим показником здатності обіймати посаду судді та здійснення справедливого правосуддя. Крім того, часто у вітчизняних юридичних дослідженнях юрисдикція судді розглядається виключно в систематичному взаємозв'язку з іншими елементами правового статусу.

У статті узагальнено концептуальні аспекти формування та розвитку компетентності судді. Окреслено ключові сфери дослідження його компетентності. Встановлено, що в ряді дисертаційних досліджень висвітлено загальні питання щодо компетентності судді в контексті змін, що відбулися в судовій владі за останні роки. Виявлено, що наукові дослідження останніх років недостатньо висвітлюють відповідні питання з точки зору його трактування як процесу формування, розвитку та оцінки компетентності судді.

Встановлено, що на теоретичному рівні компетенція судді досліджується в рамках формування рекомендацій щодо формування та розвитку судового корпусу, підвищення авторитету судової влади та її довіри з боку населення. Концептуальні дослідження динаміки розвитку концептуальних засад судової влади в контексті європейських інтеграційних прагнень мають особливе місце. Затвердження права на справедливий суд у цих дослідженнях супроводжується посиленою увагою до компетенції судді, з одного боку, як до елемента його незалежності, а з іншого - як до концепції «компетентного суду» ". На рівні заявки досліджуються окремі елементи компетенції судді - професійна, соціальна та психологічна компетентність, і робляться спроби пошуку компромісних механізмів оцінки юрисдикції з огляду на ймовірну загрозу незалежності судді, що є перспективою для подальших досліджень.

Ключові слова: судова реформа, судоустрій, суддівський корпус, компетенція судді, незалежність судді.

Introduction

Any research into the status of judges is not without recourse to their professional qualities. The particular competence of a judge is known to be a key measure of the ability to hold the office of a judge and the administration of just justice. In addition, often in domestic legal studies, the jurisdiction of a judge is considered exclusively in a systematic relationship with other elements of legal status. I am convinced that these issues require deeper research and awareness, which will not only establish the necessary minimum requirements for the position of judge, but also identify possible areas for the development of the competence of judges, which will stimulate the dynamic development of the judiciary in general, increase the authority of the judiciary to her from the public. As Shulhach N.M. rightly points out, one of the main tasks of modern judicial reform is the implementation of democratic ideas of justice, produced by world practice and science. In this connection, it is of particular importance to develop a conceptual framework for the status of judges of Ukraine, which will meet international standards, since only the latter are the bearers of the judiciary in the country. [1].

The purpose of the article is to summarize the modern scientific views that collectively form the theoretical and methodological basis for the formation, development and evaluation of the judge's competence..

Object of research – public relations, which are formed in the sphere of formation, development and evaluation of the judge's competence.

Research results

The competence requirement is set for the candidate for the position of judge Art. 69 of the Law of Ukraine "On Judiciary and Status of Judges" did not find its detail in this Law [2]. In the Regulation "On the Procedure and Methodology of Qualification Assessment, Indicators of Compliance with Qualification Assessment Criteria and Means of Establishment", the criteria for qualification assessment, along with professional ethics and integrity, are "competence (professional, personal, social)" [3]. This provision contains methodological aspects of assessing (establishing the level) the professional competence of judges. However, a review of existing sources shows that the conceptual foundations for the formation and development of the competence of judges have not been adequately covered in domestic jurisprudence.

The theoretical foundations of the competence of judges have become one of the central issues in a small number of dissertation research. Thus, at the conceptual level, the work of Huralenko N.A., which performed a comprehensive analysis of the judge's knowledge through conceptual philosophical and legal understanding of his value-epistemological, existential-semantic, logico-technical, experimental-implicative constant levels, and definitive identifications,

deserves attention, – ascertaining and perspective orientation. The scientist considers judicial cognitive activity as one that combines socially predetermined and subjective-personal, rational-logical and projective-reflexive principles, determines the need for a high level of personal maturity and places requirements for the development of a professional and significant professional – ethical qualities [4].

Through the lens of a holistic process of professionalization, he attempted to conceptually substantiate the judge's competence at the philosophical and legal level. Bazarnyk B.I. Taking into account the purpose of professionalization of a judge as a set of legal goals that involve state, social, axiological, psychological and organizational aspects, the scientist has defined the concept of professionalization of judges as an individual, axiologically-effective process of acquiring sound legal knowledge, gaining experience and experience. guarantees the rule of law in the state and ensures the functioning of fair justice [5].

The achievement of the proper level of competence of judges as an element of the process of forming a professional judicial body was investigated by Kukhta M.M. through the prism of constitutional principles and Dekalenko V.S. from the point of view of administrative and legal regulation of personnel support of courts of Ukraine.

Kukhta M.M. analyzed the constitutional and legal requirements for candidates for judicial positions, investigated the procedure of selection and appointment of professional judges, revealed the constitutional and legal bases of formation of the corps of professional judges in foreign countries and determined the directions of legal and organizational improvement of the concept of forming the corps of professions in Ukraine [6]. Skomorokha L.V., examining the constitutional and legal aspects of the formation of a professional judicial body in Ukraine, developed proposals for improvement of the appropriate order by legislative regulation of ex-

isting norms, in particular, emphasized the expediency to legislate specific areas of education for persons who may be assigned to specialized courts [7]. Dekalenko V.S. based on the study of foreign experience of administrative and legal support of formation of personnel for judicial bodies, formulated proposals for normative legal acts aimed at improving the staffing of the courts of Ukraine [8]. The problematic aspects of the education of judges were examined by Zuieva L. Ye. taking into account the results of comparing the experience of Ukraine and Canada in this field. The scientist has developed on the basis of a comparative pedagogical research a conceptual synergistic model of psychological and pedagogical training of professional judges in the judicial education system and determined the tendencies of the corresponding model through the imperative of providing recommendations as a source of improvement of the judicial education system in Ukraine [9].

In the end, most dissertation studies on the legal status of judges and the organizational and legal aspects of the functioning of the judiciary largely recognize the importance of the judge's competence, however, in-depth studies of the conceptual foundations, structure, and peculiarities of the development of jurisdiction are hardly conducted. Although the competence of a judge is recognized as a basic requirement under which the process of training and selection of judges is carried out, in existing studies the emphasis is on the process of preparation and only limited coverage of the issue of qualification as the purpose of this process. Thus, Moskvych L.M., after examining the organizational and legal problems of the status of judges, offered to interpret the corresponding concept by describing the unity of the objective characteristics of the judicial position and the subjective requirements for the person holding it. [10]. Kuibida R.O., characterizing the peculiarities of the organization and development of the judicial system of Ukraine, outlined the general characteristic of professionalism, independence and impartiality

in the status of the courts and emphasized the importance of competitive and transparent procedure for selecting judges, enhancing the role of qualification classes in the career of judges [11].

On the other hand, there is also an approach where, in a dissertation research, it is not the process of forming the competency of the judge that is subject to analysis, but its results. Exploring the extremely important problem of truth in the criminal proceedings of Ukraine, Prylutskyi P.V. He analyzed the peculiarities of forming the internal conviction of a judge in a criminal case, identified negative factors that may influence this process and suggested directions for overcoming their negative action. Finally, the scientist stressed the inappropriate refusal of the category of «truth» in criminal proceedings [12].

The issue of the judge's competence is often considered in the context of securing the right to a fair trial within the meaning of Art. 6 of the European Convention. Sopilnyk R. L. Considers Solving Court Staffing Issues by Highly Judicial Judges as One of the Essential Elements of Achieving Fair Justice [13]. Prokopenko O. B.'s dissertation examines the competence of judges as one of the guarantees of ensuring the institutional elements of the right to a fair trial. The scientist argues that the concept of «competent court» includes two aspects: the competence of the court or the totality of its powers and the subject matter and the correspondence of the judge to the position (professionalism, competence of the judge) [14]. Similarly, Nazarov I.V., justifying the relevance of the study of the legal status of the High Council of Justice (2005) states: «Guaranteeing citizens the right to hear their cases by a competent, independent and impartial court requires the creation of a body that would take responsibility for the formation of a highly professional judicial corps» [15]. Horodovenko V.V. stressed that «International legal instruments provide for the right to a fair trial and invariably emphasize the qualities of judges such as independence, impartiality and jurisdiction» [16].

A considerable number of professional papers cover some aspects of the organizational and legal mechanism of forming and developing the competency of a judge. In this direction, there is a tendency to analyze the concept of competence of a judge through the prism of judges' personal qualities. Thus, Kataieva E. V. examined the judge's competence as an integrated characteristic of the personality of a specialist, which presupposes the presence of a complex of attitudes, values, knowledge, skills and abilities that are manifested in the ability to perceive individual, professional and social needs; to ensure social and professional self-realization in the field of justice, and to enable professional and personal self-improvement throughout life. The scientist proposed to study competence at three levels of formation – functional; optimal and harmonious [17]. Shpenov D. Yu. developed a system of personal and moral and ethical qualities, which the judge and the candidate for his position must meet, considered the mechanism of checking the level of personal and moral and ethical qualities of the candidate for the position of judge, substantiated the necessity of introducing mandatory periodic evaluation of judges [18].

A number of studies focus not only on the professional but also the social and psychological competence of the judge.

The judge's social competence was examined by Fedina A.V. The scientist examined the factors of forming the professional skill of a judge, emphasized the importance of forming a judicial corps in view of the need to ensure public confidence in the professional level and moral and ethical qualities of a judge, and noted the relationship of social and psychological competence of a judge [19].

The psychological competence of the judge in practical activity was investigated by Chernovskiy O.K. Describing the mental processes by which the judge solves theoretical and practical problems in his work, the scientist emphasized that «often the professional activity of a judge is considered only as an opportunity to exercise his

legal knowledge, a peculiar challenge to his own qualification and legal literacy. However, in the process of training and adapting to a judicial position, the psychological component of professional activity is mistakenly omitted, whereas in the courtroom, interaction occurs with specific people »[20, C. 16].

The combination of approaches that reflect both professional and sociological and psychological competence of the judge is quite well traced in the writings where the judge's judgment becomes the subject of research.

Kotskulych V.V., examining the organizational and praxeological aspects of the formation of the professional justice of the judge, developed the concept of transformation of the legal consciousness of the judge as a process, which is a consistent, logical change in the state of his legal consciousness and on this basis highlighted the theoretical and applied aspects of professional judges [21]. He summarized the features of the professional justice of the Panchuk IO judges, emphasizing that this is a special kind of public consciousness that reflects the attitude to the right of judges as representatives of a particular professional group and includes a set of legal knowledge, evaluations, ideas, ideas, judgments that infuse them. their professional responsibilities, namely the administration of justice [22].

The systematic connection with the issues of formation and development of the competence of judges is problematic of its evaluation. The analysis of scientific sources in this area proves the existence of a paradoxical situation.

The mechanism of judges' qualification attestation was investigated by Riadinska V., Karpushova O. In their work, based on the analysis of foreign and national experience in the field of judicial system reform, it was established that the judges' qualification attestation as an organizational and legal mechanism for motivating a judge to perform his / her duties lacunae and career growth, is an effective and essential means of improving the judiciary. However, scientists say, the procedure for conducting judges'

qualification certification should strike a balance between assessing the professionalism of a judge and adhering to the principle of the independence of the judiciary. [23]. Kniazkov V., examining the theoretical aspects of quality assurance of justice in Ukraine, drew attention, in particular, to the fact that the availability of quantitative indicators of annulled and amended court decisions, grounds for their annulment and changes to determine the criteria of jurisdiction of a judge gives grounds to state that the procedure for qualifying judges in Ukraine is biased and restricts individual independence and subjective impartiality of a judge secured by international law in a fair trial [князь].

Thus, while the development of the competence of judges is recognized as a necessary element in the achievement of its independence, the attempt to assess the competence or its individual components may be regarded as an attempt on the independence of the judge. This conflict, of course, requires further research.

Conclusions

According to the results of the research, the concept of the judge's competence continues to develop dynamically in accordance with the changes that have taken place in the judiciary in recent years. One of the central tasks of the reform of the judiciary after the Revolution of Dignity was to increase the public's confidence in the judiciary, which resulted in the improvement of the organizational and legal support for the formation and development of the competence of judges and was reflected in a number of scientific works. At the same time, it has been found that the scientific research of recent years does not sufficiently cover the relevant issues from the point of view of its interpretation as a process of formation, development and evaluation of a judge's competence.

It is established that at the theoretical level, the competence of a judge is investigated in the framework of forming recommendations on the formation and development of the judicial corps,

increasing the authority of the judiciary and its confidence on the part of the population. Conceptual studies of the dynamics of the development of conceptual foundations of the judiciary in the context of Ukraine's European integration aspirations have a special place. The assertion of the right to a fair trial in these studies is accompanied by increased attention to the competence of the judge, on the one hand, as an element of his independence and, on the other, as part of the concept of "competent court".

At the application level, individual elements of the judge's competence – professional, social and psychological competence – are explored, and attempts are made to find compromise mechanisms for assessing jurisdiction in view of the likely threat to the independence of the judge, which is a promising area for further research.

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