

STRENGTHENING VALUES IN LITHUANIAN JUDGES' ACTIVITY: DISCUSSION ON THE IMPLEMENTATION OF THE PRINCIPLE OF JUSTICE AND IMPARTIALITY

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Abstract. *In today's guaranteeing of justice, the public becomes an active evaluator of the activities of courts and judges. The latest changes in the legal regulation since 2013 have enabled any member of the public to turn to the Judicial Ethics and Discipline Commission due to doubtful judge's behaviour. In addition, this commission was given a new function of giving consultations to judges. This shows that the increasingly attention of the scientists and practitioners is paid to the observance of the principles of professional ethics of judges, while the judges must consciously understand the meaning of ethical provisions in their professional activities and lives, constantly uphold the fundamental values.*

The aim of the paper is to analyse the principle of the ethics of Lithuanian judges – justice and impartiality. The analysis of the realization of this ethical principle in practice was carried out (49 decisions were analysed, among which 4 decisions adopted by the Judicial Ethics and Discipline Commission were relevant in this regard) which showed a high level of integrity of this principle. The research reveals two main vectors for the implementation of this principle of ethics by Lithuanian judges. Firstly, in the scientific and practical implementation of the principles of professional ethics there is a debate about its realization in practice (application). Secondly, this principle of the judge's ethics is most clearly elaborated by comparing the content of the principle of impartiality of the investigator or prosecutor.

Keywords: *ethics principles, judge, Judicial Ethics and Discipline Commission, justice and impartiality, professional ethics.*

Introduction

Relevance of the research. Recently, the professionalism of employees has increasingly become an indicator – a measure of public satisfaction for a particular profession, such as judges. The category of professionalism in the field of human resources management is important not only in practical activities, but also in the learning process, when one deliberately prepares to become a professional. Therefore, it is also made relevant in the modern study process (Neve et al., 2017). Apart from the two components of professionalism - qualifications and

competences – reasonably, the integral structural part of professionalism are personal and entrepreneurship characteristics, observance of professional ethics. The construction of modern concepts of professionalism has various trajectories, which allows one to interpret the content of professionalism in its own way (Evetts, 2013; Gewirtz, 2009). For example, it is said that professionalism consists of three components: behaviour, attitudes and intellectual components (Evans, 2015). The behavioural component is related to the activity performed, competence; intelligence competence – with knowledge. L. Evans attributes personal qualities, perceptions, motivation to a separate element of professionalism – the component of attitudes (Evans, 2015). Therefore, the author, on the basis of the already mentioned research results, positions the three-dimensional structure of professionalism by following the holistic view and emphasizing the development of the personality parameters vectors: the importance of personal and entrepreneurship characteristics, observance of ethical rules as an important component of the judge's professionalism.

Novelty of the research. Analysis of documents regulating the profession of judge shows that not only the definition of judge's qualification and competence, but also the necessary personal and entrepreneurship characteristics, observance of ethical principles are important. However, in today's scientific disputes there is a clear dilemma concerning the practical realization of values: how the observance of consolidated specific ethical provisions reveals itself in practical work of the judge, what are the main vectors of realizations.

Conceptually, a number of researchers analysed judicial ethics in Lithuania (Navickienė & Žiemelis, 2015; Kiršienė, 2015; *Judicial Ethics: from the status quo towards the exemplary model: a collective monograph*, 2016). In foreign countries, these issues are addressed (Whitecross, 2016; Baïada-Hirèche & Garmil, 2015, Reeves, 2010). The nature of the particular ethics of the judge, the nature of the content, by emphasizing the lack of clarity of content, were also analysed by scientists from different countries (Mahdavi, 2016; Adiyaryani et al., 2017; Husen et al., 2017). However, the question arises as how the specific ethical principle through the trajectory analysis of the judge's behavior is revealed.

The aim of the research study is by comparing the content of the ethical principle of pre-trial investigation of investigators and prosecutors, to analyse the principle of the fairness and impartiality of the Lithuanian judge in the practice of the integrity of values. **The object of this research** is oriented towards the implementation of the principle of ethics of justice of the Lithuanian judges – impartiality and justice – in practice. In order to achieve the aim, the following **research tasks** are identified:

1. To analyse the content of the judge's ethical principle – impartiality and justice – by comparing it with the content of the principle of the impartiality of prosecutors and investigators.
2. In analysing the decisions of the Judicial Ethics and Discipline Commission, to assess the vectors of implementation of this ethical principle of the judge in practice in the context of the integrity of values.

Methodology

The paper uses these following theoretical and empirical research methods: descriptive-comparative, analytical-critical, the method of document content and the scientific literature analysis method. Using the descriptive-comparative method, comparison, as well as the methods of document content and analysis of scientific literature – the content of the principle of ethics of judge - impartiality and justice – is compared with the content of the principle of ethical impartiality of pre-trial investigation officials (investigators) and prosecutors. The analytical-critical and document analysis methods analysed the decisions taken by the Judicial Ethics and Discipline Commission for 2014-2017 (after changes in the legal regulation).

Table 1 Decisions and consultations given by the Judicial Ethics and Discipline Commission for 2014-2017 (are made by authors of the article, source: The National Court Administration)

Commission’s actions/ Year	2014	2015	2016	2017
Decisions made	6	25	12	8
Consultations given	8	4	2	6

After analysing the 51 decisions of the Judicial Ethics and Discipline Commission, 4 relevant decisions were selected, in which the implemented directions of judges' impartiality and justice as ethics principle were assessed in practice. Also, the contents of the twenty consultations provided by this commission in 2014-2017 were analysed, one consultation was selected, the content of which is relevant to the topic being analysed.

Peculiarities of legal regulation of justice and impartiality as a principle of ethics

The principles of justice and impartiality, albeit with different expressions, are established by the ethical codes of all three entities – an investigator, a prosecutor and a judge. A pre-trial investigation officer must, in accordance with

the provisions of the Code of Conduct for Police must be fair, impartial, and ensure that decisions made by him/her are legal and objective, without self-serving incentives (The Code of Police Ethics approved by the General Police Commissioner of Lithuania, 2004). In this Code of Ethics, justice and impartiality are defined as abstract, semantically oriented towards objectivity and the absence of selfish motives, and therefore there is no more detailed interpretation of the content of these principles in other legal acts.

Another situation exists in provisions of the ethical code for prosecutors. The principles and requirements of prosecutors' ethics are enshrined in the second chapter of the Code of Ethics of the Prosecutors of the Republic of Lithuania, approved by the General Prosecutor of the Republic of Lithuania, 2012. Justice and impartiality are referred to as two independent ethical principles and their content is interpreted separately (see Table 2). Justice is understood as a wise and fair conduct, leadership based on the presumption of innocence, as well as decision-making in the case without any prejudices. The content of the principle of impartiality is interpreted as equally impartial treatment with the parties to the proceedings; cautious and objective treatment of media representatives, politicians, processors; if necessary, resigning from office. Summarizing, it can be said that these principles are similar in content: firstly, the impartial treatment of parties and other parties; secondly, the impartial decision-making process without prejudice; thirdly, in case of necessity, the moment of resignation from office (Code of Prosecutors Conduct of the Republic of Lithuania, approved by the General Prosecutor of the Republic of Lithuania, 2012).

Table 2 Legal consolidation and interpretation of the content of the ethical principle of justice and impartiality of judges, prosecutors and pre-trial investigation officers (investigators) (are made by authors of the article)

Subjects/ Principles	Impartiality	Justice
Judge	Established in the Constitution of the Republic of Lithuania and The Code of Judicial Ethics, in which it is detailed (collectively)	
Prosecutor	Established and detailed in the Code of Ethics for Prosecutors	Established and detailed in the Code of Ethics for Prosecutors
Investigator	Established in the Police Code of Ethics, but not detailed	Established in the Police Code of Ethics, but not detailed

- Unlike the code of ethics for prosecutors, in the activity of a judge, the content of these principles is explained together (collectively) (see Table 2). Article 109 of the Constitution of the Republic of Lithuania. (Constitution of the Republic of Lithuania, 1992), as well as Article 1 of the Law on Courts of the Republic of Lithuania. (The Law of the Courts of the Republic of

Lithuania, 1994) states that justice in the Republic of Lithuania is administered only by courts.

- In explaining the qualification requirements for the judge and emphasizing the importance of the qualification necessary for a lawyer, the Constitutional Court stated that "the principle of justice enshrined in the Constitution, as well as the provision of Paragraph 1 of Article 109 of the Constitution that justice is exercised only by courts, means that the constitutional value is not the adoption of a decision itself in court, but the adoption of a fair court judgment; the constitutional concept of justice implies not only the formal, nominal justice exercised by the court, not only the external appearance of justice administered by the court, but also, most importantly, such court decisions (other final lawsuits) that are not wrong in their content; the justice that is only formally executed by the court is not the justice that is enshrined, protected and defended by the Constitution "(Constitutional Court of the Republic of Lithuania, Ruling, 2008). The consolidation of the principle of justice essentially implies the principle of the impartiality of the judge, i.e. judges, when executing the justice, act impartially and obey only laws.
- Content of justice and impartiality is defined in Article 8 of the Code of Judicial Ethics. The fairness and impartiality of the judge occurs through the following actions of the judge (Code of Judicial Conduct of the Republic of Lithuania, 2006):
 - *Non-discrimination*: the judge cannot discriminate against individuals or groups of people by his/her language, actions or decisions;
 - *Absence of preliminary prejudice*: the judge must not have personal preliminary prejudices in the decision-making process or express a preliminary opinion;
 - *Showing no special attention*: the judge must not demonstrate his/her sympathy or dislike and exclusive attention to individuals or their groups, the persons involved in the proceedings, and to act impartially in conflict situations;
 - *Avoidance of conflicts of interest*: the judge must withdraw from the trial if there is a conflict of interest or information available that private matters may harm the proceedings;
 - *No comments on the progress of the case and the absence of expressions of personal opinion*: the judge must avoid public statements that can predict the outcome of the case, must not consider the case with the participants in the proceedings outside the court proceedings; must not express personal opinion in cases of communication with the public and the media.

The judge, in exercising his/her constitutional duty to administer justice and to take motivated and reasoned decisions, investigates the cases independently, and in his/her discretion, resolves all issues related to the case in question, in

accordance with law, based on a comprehensive and objective assessment of facts, his / her knowledge, inner convictions, and ethical requirements. Therefore, it is argued that the provisions of justice and impartiality include both internal aspects (the judge's inner attitude to perceive, determine and to be impartial), and external actions of the judge, which manifest themselves in a specific relationship with other persons.

Lithuanian scientists have paid a lot of attention to the content of this principle. Procedural justice is very important to ensure that material justice, i.e. the correct decision in a case would be achieved by the right and proper means (Dereškevičiūtė, 2013). Justice is called "the most sensitive and most vulnerable function", because the Seimas of the Republic of Lithuania, when announcing the amnesty and the President of the Republic of Lithuania, when granting a favour de facto, influences the execution of judgments when justice is already executed (Šileikis, 2005). Thus, it is generally recognized that absolute justice and impartiality are not possible – albeit indirectly, however a political influence is done on court decisions.

Discussions on the realization of the principle of fairness and impartiality in practice

In implementing the provision of justice, the Judicial Ethics and Discipline Commission also emphasized that the implementation of this principle involves the authority of the judge, a firm internal impartiality provision, its procedural decisions and actions carried out in compliance with the requirements established by law, the rules of ethics of judges, the absence of specific and actual reproaches concerning the judge's bias (Decision of the Judicial Ethics and Discipline Commission to Start a Discipline Case for a Judge, 4 of April 2016, No. 18 P-1).

Data from a practical study indicate practical discussions about the implementation of this principle. Concerning the content and application of this principle in specific situations, the Commission for Judicial Ethics and Discipline also provided consultations (Consultation of the Judicial Ethics and Discipline Commission, 2014). However, the violation of this principle is acknowledged (Judgment Ethics and Discipline Commission on Discipline for a Judge, 4 of April 2016, No. 18 P-1).

Firstly, in the context of impartiality, the relationship between the judge and other participants in the process is discussed. In practice, questions often arise whether a judge is impartial when he/she communicates with lawyers (Decision of the Judicial Ethics and Discipline Commission on the Refusal to Start a Discipline Case for a Judge, 13 April 2015, (No. 18 P-11) or other parties of the proceedings. For example, in assessing the relationship between the judge and the

police officers who took the explanations from the applicant and collected the material, the possible bias of the judge, was emphasized, which seems to indicate the fact that the police and the court are located in one building, thus the judge may know the above-mentioned officials (Decision of the Judicial Ethics and Discipline Commission on Refusal to Start a Discipline Case for a Judge, 9 of March 2015, No. 18 P-3).

The Judicial Ethics and Discipline Commission, when assessing the judge's specific actions, stated that it is important to take into account the specific relationship between the judge and other persons, and in the absence of factual data confirming the conflict of interests of the judge or other circumstances of a personal nature due to relations with the police officers, the judge's biased actions also cannot be stated. Therefore, considering the question of possible violations of the impartiality principle in this aspect, not possible assumptions and hypotheses should be taken into account, but specific data proving biased actions of the judge. As the Judicial Ethics and Discipline Commission points out, there are no provisions in the Code of Judicial Ethics that categorically prohibit the judge from communicating with the participants of the trial (him/herself or through the court staff), therefore, not every judge's conversation with the participant in the proceedings from the point of view of the judicial ethics would in itself be considered to be blameworthy (Decision of the Judicial Ethics and Discipline Commission on Refusal to Start a Discipline Case for a Judge, 14 of December 2015, No. 18 P-23).

When assessing a possible conflict of interests of the judge, facts must be presented, based on which one could see what were the specific actions of the judge were and how the proceedings of the case were harmed by it. Therefore, it is argued that when considering the ethical aspect of the possible bias of a judge, particulars should be given regarding the conflict of interest or another personal interest of the judge.

However, in order to strengthen the realization of the principle of impartiality in practice, the author thinks that triple expression of the actions of the judge is necessary: first, the internal understanding of the judge and the conviction of being impartial and objective; and, secondly, the external actions of the judge, which prove the impartiality of his/her actions, are necessary, that is, the judge must establish such interpersonal relations with other persons that it would not call into question possible bias and objectivity, and, thirdly, to apply the form provided by the law to defend the impartiality of actions. As the Judicial Ethics and Discipline Commission points out, a judge must avoid situations and not to maintain or develop personal relationships that would personally impede him/her in the proper administration of justice, or raise doubts on his/her independence and impartiality (Judgment Ethics and Discipline Commission to Start a Discipline Case for a Judge, 4 of April 2016, No. 18 P-1). The Commission for

Judicial Ethics and Discipline recommends avoiding ambiguous situations that could cast doubt on whether the judge acts ethically (Judgment of the Judicial Ethics and Discipline Commission of 13 April 2015, No. 18 P-11).

The Judicial Ethics and Discipline Commission notes that in cases where the judge's knowledge of the process participants, for example with a lawyer, goes beyond the normal communication with him/her as a person involved in legal proceedings, the nature of both the relationship between the judge and the lawyer (private communication, friendship, etc.) should be assessed, including the social dimension of these relations – the attitude of the third parties, the media (Judgment of the Judicial Ethics and Discipline Commission to Start a Discipline Case for a Judge, 4 of April 2016, No. 18 P-1). In addition, when considering the possible violation of the principle of impartiality of a judge, the procedural form of this action should also be assessed: the procedural guarantee of the functioning of the principle of the impartiality of a judge – the law establishes the right of persons involved in a case to dismiss a judge and the duty of a judge to resign if he/she is directly or indirectly interested in the outcome of the case or there are other circumstances which raise doubts as to his/her impartiality.

The analysis of the content of the consultations provided by the Judicial Ethics and Discipline Commission for 2014-2017 suggests that judges are also active in solving various issues related to the determination of their activity and ethics. This demonstrates the initiative of judges themselves to deliberately understand and constructively respect the norms of professional ethics. On the other hand, not only the immediate interpretation of the content of ethical principles is important. The use of permanent didactic tools is also appropriate for organizing training sessions for judges in the field of professional ethics.

Conclusions

Recent changes in legal regulation in Lithuania enabled the society to be more active as the assessor of activity and behaviour of courts and judges, and created important prerequisites for a scientifically re-evaluation of the key vectors for the implementation of ethical principles of judges. By comparing the content of the ethical principle of investigating prosecutors (investigators), prosecutors and judges, the principle of impartiality was specified and explained in more detail.

The content of the debate on the impartiality of the judge and the principle of justice do not raise any doubts – the principle is established clearly and specifically. However, the dilemma of absolute justice and impartiality is highlighted. It is acknowledged that this is the most sensitive function of the court,

albeit indirectly, but may be influenced by decisions of other public administration institutions.

The results of the research show that in practice, two main vectors of discussion often occur due to its realization. Firstly, the limits are unclear concerning the relationship between the judge and other participants in the process, such as lawyers. Secondly, the procedural form of impartiality as an action must be evaluated, where the law provides for the right of persons involved in a case to exclude a judge and the obligation of a judge to resign if he/she is directly or indirectly interested in the outcome of the case or there are other circumstances that raise doubts to his/her impartiality.

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