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# CORRUPTION AS MAJOR FACTOR IN DISTRUST TO THE JUDICIARY

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The article deals with the conceptual bases to rising judiciary confidence. It is determined that corruption belong to the negative factors of public distrust in the justice and has the main negative influence on it. The study explores the features and problems of combating abuse in the judicial system.

Attention is focused on the fact that the judiciary corruption is spreading the practice of unfair solving trials, which is detrimental to justice.

***Keywords**: court, judiciary, litigation, judicial reform, corruption, trust of the judiciary.*

## КОРРУПЦИЯ КАК ОСНОВНОЙ ФАКТОР НЕДОВЕРИЯ К СУДЕБНОЙ ВЛАСТИ

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В работе рассмотрены концептуальные основы повышения доверия к судебной власти. Определено, что среди всех факторов самым негативным фактором недоверия общества к суду является коррупция. В статье исследуются особенности и проблематика борьбы со злоупотреблениями в органах судебной власти.

Акцентировано внимание на том, что коррупция в институтах судебной власти распространяет практику несправедливого решения судебных дел, наносит вред правосудию.

***Ключевые слова:** суд, судебная власть, судебная система, судебное дело, судебная реформа, коррупция, доверие к судебной власти.*

## CORUPȚIA CA FACTOR MAJOR ÎN NEÎNCREDEREA JUDICIARĂ

Lucrarea discută cadrul conceptual pentru creșterea încrederii în sistemul judiciar. Se stabilește că printre toți factorii cei mai negativi ai neîncrederii publice față de instanță este corupția. Articolul explorează caracteristicile și problemele combaterii abuzului în sistemul judiciar.

Atenția este axată pe faptul că corupția în instituțiile sistemului judiciar răspândește practica unei decizii neloiale în cauzele judecătorești și dăunează justiției.

***Cuvinte-cheie:** instanță, sistemul judiciar, sistemul judiciar, dosarul judecătoresc, reforma judiciară, corupția, încrederea în justiție.*

**Introduction.** One of the main tasks of the judicial reform is the implementation of democratic ideas of justice and the reliable provision of human rights developed by the international practice and science. In this regard, the development of conceptual bases for increasing trust of the judiciary is of particular importance in the context of the judicial reform in Ukraine. These issues are especially relevant today during the formation and development of the rule of law.

This **article is aimed** at highlighting the problematic issues of combating abuse in the government authorities, consideration of ways to increase confidence in the judiciary.

**Used Materials.** Considerable attention has been paid to the issues of legal nature of the trust to the judiciary in the papers of such scholars as A. Bondarenko, Yu. Garust, S. Gladiy, M. Kobak, O. Onishchuk, S. Prilutsky, A. Filatov, A. Shcherbanyuk et al. These scholars made a significant contribution to studying the problem of corruption in the judicial system in the context of judicial reform in Ukraine, as well as issues of the trust of the judiciary. However, some problematic issues remain investigated quite superficially.

**Main part.** The courts and judges should play one of the main roles in restoring justice, since the Constitution of Ukraine stipulates the protection of human and civil rights and freedoms by the court [1]. The prescription and enforcement of human rights and freedoms is the main duty of the state, which is implemented through the judicial branch. However, the level of public trust of the judiciary remains extremely low in Ukraine, which is a consequence of several negative factors.

The issue related to ensuring the full independence of the judiciary in the form existing in most European countries is still quite problematic. Today this problem has two components in Ukraine. The first one includes the facts of unlawful interference of unauthorized persons in the professional activities of judges in order to somehow incline them to make the decisions desirable for these people; and the second one is the adoption by judges of knowingly illegal decisions, sentences, rulings, that is, actual continuation of illegal activity, initiated by the unauthorized persons concerned [2, p. 8].

In the modern world, corruption is "no longer a local problem" [3, p. 7], as stated in the Preamble of the UN Convention against Corruption, but "transnational phenomenon that affects the society and economy of all the countries". Thus, it is even defined as "social pandemic" [4] In the XVII century, English philosopher Thomas Hobbes wrote that corruption was the basis, on which the contempt for all laws was

based at all times and with all kinds of temptations. And in modern political, sociological and legal sciences, corruption is recorded as "a factor of systemic destabilization of society and the state" [5, p. 7].

According to Yu. F. Lavrenyuk, the reasons for the high level of corruption in the public administration were the people's distrust of justified decision-making, decency and honor of public service and local self-government authorities, the system of law enforcement bodies and judges [6, p. 76]. These reasons negatively influenced the creation of an independent, democratic, social, legal state and led to the adaptation, rooting and "rampant" of corruption in public administration. Therefore, in order to combat corruption, one of the tasks of state power is the development, adoption, and implementation the anti-corruption legislation. For Ukraine, this is not one of the new tasks: the government has been constantly looking for ways to formulate and implement anti-corruption policies, which has always been accompanied by the adoption of a number of regulatory legal acts, strategies, programs, conventions [7].

Thus, corruption in the judicial system is the most negative factor in affecting the judiciary work. It has two components:

1) criminal use by judges of their powers for personal enrichment (commission of corrupt acts by judges);

2) corruption caused by the activities of criminal elements and corrupt officials – criminal use by officials of their official powers or deliberate criminal influence of criminal elements on judges to make a favorable court decision, however, the judge is not able to stop the commission of corrupt practices for objective reasons. However, the judiciary's authority is affected not by one factor, but by a whole complex of internal and external factors.

Internal influences include: excessive length of the proceedings and making decisions; inconsistency of judicial practice; uncertainty regarding the jurisdiction of certain categories of cases; excessive and uneven load on judges; low material and technical base of courts; lack of effective judicial self-government bodies; prolonged delay with full implementation of the Electronic Court project; problems of legal regulation and practice in the field of judges responsibility; lack of proper public control over the received court fee, procurement of goods, works and services for the judicial system and others.

The external factors include: problems of the selection mechanism of judges, including long-term non-appointment of judges to the position; public disrespectful assessments of the state bodies, judicial officials and court decisions; low level of lawmaking (including in the area of judicial reform); possibility of abusing procedural rights by the parties; long-term non-enforcement of a judgment; abuse in the form of opening criminal cases against judges; illegal influence on judges by criminal elements, officials, other persons; low level of culture and legal awareness of participants in the proceedings, and others [8; 9, p. 324].

At the same time, despite the variety of negative factors of public distrust of the court, according to the results of sociological studies, the most problematic factor in Ukrainian justice, which affects the decline in the judiciary's authority, is corruption [10, p. 41]. Corruption offenses are systemically widespread in the judiciary, they level out the constitutional principles of the rule of law. Corruption in the judicial branch not only creates legal nihilism, erodes the interests of the rule of law, but also destroys the legal system of the state as a whole. Corrupt relations displace legal, ethical relations between people, and anomalies gradually turn into a norm of behavior. Corruption in the judiciary institutions spreads the practice of unfair decision-making by the courts, does the most harm to justice.

In accordance with Article 1 of the Law of Ukraine "On Combating Against Corruption", corruption is the use by a person specified in Part 1 of Article 3 of the Law of Ukraine "On Combating Against Corruption" of the authority granted to him/her or related opportunities in order to obtain undue benefits or to accept such a benefit or to accept a promise/offer of such a benefit for himself/herself or other persons or, accordingly, a promise/offer or provision of undue benefit to the person specified in Part 1 of Article 3 of the Law of Ukraine "On Combating Against Corruption", or to other individuals at his/her request to persuade that person to the illegal use of official powers granted to him/her or related opportunities [11].

In turn, corruption in the judicial system can be defined as the use by judges and officials, who administer the judiciary, of their organizational and other powers, contrary to the norms of their functioning established by the Constitution and legislation, in order to obtain undue benefits.

It should be noted that one of the features of corruption in the judiciary is its high level of latency: in practice, the situation when the judge personally hints at offering him/her some undue benefit and receives it from a directly interested person, is excluded. Another feature of judicial corruption is its corporational nature, which can explain the absence of criminal cases initiated on the facts of this phenomenon in the courts [12, p. 154].

If we talk about the fight against abuses in the government authorities, as well as in the courts, then we should talk about improving laws and their implementation.

For effective anti-corruption, it is necessary to adopt clear laws that should be understandable to everyone and should not hide the possibility (first of all for the law enforcement officers) to use them selectively against objectionable citizens [13, p. 36]. The optimal and appropriate way to fight against corruption in the courts is to develop systematic measures of prohibitions, restrictions and permits aimed at preventing corrupt practices in the organization and functioning of the judiciary. In developing such anti-corruption standards for the judiciary, they should pay particular attention to such important issues as:: a) status of a judge (qualifications, selection and appointment method, tenure, career opportunities); b) level of financial support for the court system functioning (guarantees of proper and timely financing of the courts; improvement of the quality of working conditions for the employees of the court apparatus); c) improvement of the legal regulation of mechanisms for bringing to justice for committing a corruption act; discretionary authority; quality standards of court rulings, etc [14, p. 150].

To prevent corruption, it is also proposed to introduce next appropriate

organizational and legal measures, consisting primarily of amendments to the Laws of Ukraine "On the Judicial System and the Status of Judges" such as:

a) on mandatory publication on the publicly available official Internet portal of the annual information on the number and category of cases considered by individual courts, each judge of these courts, with the number of canceled or amended decisions and orders, the grounds for their cancellation or amendment, as well as the availability of initiated disciplinary proceedings and adopted decisions on bringing judges to disciplinary responsibility;

b) on introduction of the unified meaning for the "conflict of interest in the field of justice" as a situation in which the direct or indirect personal interest of a judge affects (or may affect) the impartial and objective performance of judicial functions or if there is a threat of a conflict between the personal interest of a judge and the legal interests of the parties to the trial, that is, individuals, legal entities or the state [12, p. 155].

The positive image of the judiciary is its external reflection, an indicator of business and moral qualities of the persons it represents. An essential parameter of the judiciary is a moral authority. Rejection of moral principles, loss of moral authority by the authorities lead to its separation from the people. The level of legitimacy as an indicator of trust of the public authorities should not be below the extreme critical value in society [16, p. 104].

The trust of the judiciary may be restored only with the coordinated interaction of all three branches of government. Under such conditions, the courts will professionally, promptly and openly be able to ensure the implementation of the principle of the rule of law and the functioning of the judiciary in accordance with European values and human rights standards [17, p. 77].

**Conclusions.** The court's role is one of the decisive in ensuring the rights and legitimate interests of citizens and the interests of the state. The protection by the court of the rights and freedoms of a citizen or state is an important guarantee and a form of implementation of the constitutional everyone's right to protect their rights. In Ukraine, the process of implementing European standards for the judiciary's transformation is actively ongoing, but the implementation processes are still far from complete. The mechanism of prevention and combating corruption in the judicial system can be considered as a series of measures to prevent corruption and minimize its risks.

Thus, within the framework of the transformational changes in the judiciary, the following suggestions can be made to improve its work: involvement the general public to discuss the ways of reforming the judiciary, directions of solving urgent problems that arise during the performance by judges of their powers; professional development of the court employees, especially legal culture; organization of permanent monitoring of the state of public opinion on the court's activities; increasing the transparency of the court's activities, bringing information about the social purpose, legal status, and conditions of the court's activities to the public; a specific process of impartial job evaluation; adequate financial support; increasing the number of court employees in order to reduce the burden on judges and their assistants.

In addition, effective corruption prevention requires:

– compliance with the recommendations of international organizations against corruption;

– public declaration on the anti-corruption position and measures applied in the judicial system;

– development of clear guidelines for transactions with high corruption risks;

– permanent strategic monitoring with the identification of weaknesses;

– general support from the judiciary, positive attitude, and loyalty to the organization.

In modern conditions, the issue of completing the judiciary reform in order to quickly bring its functions to international standards is acute. Therefore, in order to combat corruption, one of the tasks of state power is the development, adoption, and implementation the effective anti-corruption legislation.

Summing up, we should note that the level of trust of the judicial authorities remains quite low in Ukraine, despite the progress achieved in reforming the judiciary in modern conditions. The above indicates the importance of further judicial reform in order to increase the effectiveness of the judicial system in this context. The development and implementation of European standards as common guarantees ensuring effective protection of human rights in the judiciary's practice of our state lays the foundation and provides basic guidelines for the further scientific study of this issue.

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# КЛАССИФИКАЦИЯ ПОЛНОМОЧИЙ СЛЕДСТВЕННЫХ СУДЕЙ В СФЕРЕ РЕАЛИЗАЦИИ ПРИНЦИПОВ УГОЛОВНОГО ПРОИЗВОДСТВА В УКРАИНЕ

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Институт следственных судей сравнительно молодой для украинского уголовного процессуального законодательства. Интерес ученых и практикующих юристов к нему только возрастает. Тема классификации полномочий исследуемого субъекта достаточно актуальная и дискуссионная. В статье проанализированы уже предложенные подходы к систематизации полномочий следственных судей. Предложен собственный. Изложенная в статье классификация построена в свете реализации следственным судьей принципов уголовного процессуального законодательства, таких как верховенство права, законность, равенство перед законом и судом, уважение к человеческому достоинству, неприкосновенность права собственности, доступ к правосудию, разумность сроков и другие.

***Ключевые слова:*** *следственный судья, полномочия, судебный контроль, классификация, принципы, уголовное производство, доказывание*

## CLASSIFICATION OF POWERS OF INVESTIGATIVE JUDGES IN THE FIELD OF IMPLEMENTATION OF PRINCIPLES OF CRIMINAL PROCEEDINGS IN UKRAINE

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***Keywords:*** *investigating judge, authority, judicial control, classification, principles, criminal proceedings, evidence*

## CLASIFICAREA POTENȚILOR JUDECĂTORILOR DE INVESTIGATIGARE ÎN DOMENIUL DE APLICARE A PRINCIPIILOR PROCEDURILOR CRIMINALE ÎN UCRAINA

Institutul Judecătorilor de Investigare este relativ tânăr pentru legea procesuală penală din Ucraina. Interesul oamenilor de știință și al avocaților practicanți în nu crește decât. Subiectul de clasificare a puterilor subiectului studiat este destul de relevant și discutabil. Articolul analizează abordările deja propuse pentru sistematizarea competențelor judecătorilor de investigație. Clasificarea descrisă în articol a fost făcută în lumina punerii în aplicare de către judecătorul de instrucție a principiilor legislației procesuale penale, precum statul de drept, legalitatea, egalitatea în fața legii și instanța de judecată, respectarea demnității umane, inviolabilitatea drepturilor de proprietate, accesul la justiție, timp rezonabil și altele.

***Cuvinte-cheie:*** *judecător de instrucție, autoritate, control judiciar, clasificare, principii, proceduri penale, probe.*