

SAVYTSKA N. V.,
PhD student at the Criminal Law
and Procedure Department
(Sumy State University)

UDC 342.951

DOI <https://doi.org/10.32842/2078-3736/2023.6.32>

**THE ROLE OF ETHICAL SAFEGUARDS IN ENSURING THE
IMPLEMENTATION OF INTERNAL INDEPENDENCE OF JUDGES
IN UKRAINE'S ADMINISTRATIVE COURTS**

The article is dedicated to exploring the significance of ethical safeguards in ensuring the internal independence of judges in Ukraine's administrative courts. This article is highly relevant in the context of contemporary reforms in Ukraine and the fight against corruption, as the internal independence of judges is crucial for ensuring fair and independent judiciary. The analysis of the role of ethical safeguards contributes to improving the quality of justice and reaffirms that the judicial system works in the best interest of society and the rule of law. The article examines aspects related to adhering to ethical norms and principles in judicial activities and their impact on ensuring the independence of judges within Ukraine's judicial system. The authors emphasize the importance of these aspects in fostering public trust in the judicial system and preserving judges' independence from external influences. The study underscores the need for further enhancement of judges' ethical training and the implementation of effective mechanisms for monitoring their conduct.

The article proposes defining ethical safeguards of judges' independence, which should be understood as rules and standards of behavior that judges must adhere to in order to maintain their independence, immunity, and high professional standards. Some of these safeguards include the existence of ethical codes of conduct for judges, a high level of professionalism among judges, and transparency in their activities.

The article also pays special attention to the use of social media by judges and the formation of the principle of judges' internal independence. The author highlights that judges' use of social media can influence both transparency and the internal independence of judges, as well as the level of public trust in the judicial system. On one hand, social media provides judges with a platform for interacting with the public and enhances transparency in their work and decision-making processes. On the other hand, the use of social media can pose risks to judges' internal independence.

In conclusion, ethical safeguards help cultivate professionalism and integrity among judges, which, in turn, can support their internal independence. These safeguards encompass several critical aspects: the existence of ethical codes of conduct for judges, a high level of professionalism among judges, and transparency in their activities.

Key words: *principles of judiciary, administrative justice, ethical safeguards, internal independence of the judge, transparency.*

**Савицька Н. В. Роль етичних гарантій у забезпеченні реалізації
внутрішньої незалежності суддів адміністративного суду в Україні**

Стаття присвячена дослідженню важливості етичних гарантій для забезпечення внутрішньої незалежності суддів адміністративного суду в Україні. Ця стаття є актуальною в контексті сучасних реформ в Україні та боротьби



з корупцією, оскільки внутрішня незалежність суддів є важливою для забезпечення справедливого та незалежного судочинства. Аналіз ролі етичних гарантій сприяє покращенню якості правосуддя та підтверджує, що судова система працює на користь суспільства та правопорядку. Стаття розглядає аспекти, пов'язані з дотриманням етичних норм та принципів у суддівській діяльності та їх вплив на забезпечення незалежності суддів у судовій системі України. Автори наголошують на важливості цих аспектів для формування довіри суспільства до судової системи та збереження незалежності суддів від зовнішнього впливу. Дослідження підкреслює необхідність подальшого вдосконалення етичної підготовки суддів та впровадження ефективних механізмів контролю за їхньою поведінкою.

Пропонується визначення етичних гарантій незалежності суддів. Під якими треба розуміти правила та стандарти поведінки, які повинні дотримуватися суддями з метою збереження їх незалежності, недоторканості та високого професійного рівня. Деякі з таких гарантій включають наступні: наявність етичний кодексів поведінки суддів, високий професійний рівень суддів, а також прозорість їх діяльності.

У статті окрема увага приділяється питанню використання соціальних мереж та формування принципу внутрішньої незалежності судді. Автор наголошує, що користування суддями соціальними мережами може впливати як на прозорість, так і на внутрішню незалежність суддів, а також на рівень довіри суспільства до судової системи. З одного боку, соціальні медіа надають суддям платформу для взаємодії з громадськістю та забезпечують більшу прозорість в їхній роботі та в процесах ухвалення рішень. Але з іншого боку – використання соціальних медіа також може створити ризики для внутрішньої незалежності суддів.

Робиться висновок, що етичні гарантії сприяють культивуванню серед суддів професіоналізму та інтегритету, що, в свою чергу, може підтримувати їхню внутрішню незалежність. Ці гарантії включають в себе наступні аспекти: існування етичних кодексів поведінки для суддів, високий рівень професійності серед суддів та прозорість їхньої діяльності.

Ключові слова: *засади судочинства, адміністративне судочинство, етичні гарантії, внутрішня незалежність судді, прозорість.*

Introduction. Internal independence of judges is one of the fundamental components of justice and is rigorously safeguarded by international standards and national legislation. Ensuring the internal independence of judges is the duty of every democratic country and is a guarantee of fair and independent judicial proceedings. Consequently, the study of ethical safeguards for judges of the administrative court becomes a key aspect of ensuring this vital component of Ukraine's judicial system. Furthermore, contemporary Ukraine is undergoing profound reforms in various fields, including the judicial system. The administrative court plays a pivotal role in resolving disputes related to the activities of state institutions and public services. Ensuring the internal independence of judges of the administrative court directly impacts judicial decisions that affect the realm of public administration and citizens' rights. Therefore, researching the role of ethical safeguards for this category of judges will contribute to enhancing the quality of justice and demonstrate that the judicial system operates in the interest of society and the rule of law.

The issue of ethical safeguards for judges in Ukraine is significant in the context of combating corruption and ensuring honest and unimpeded legal proceedings. The internal independence of judges plays a crucial role in preventing the influence of external factors on the judicial process and in ensuring transparency and openness in judicial decisions. This points to and emphasizes the need for studying the role of ethical safeguards in ensuring the internal independence of judges in the administrative court of Ukraine.



Problem Statement. The purpose of the article is to investigate and highlight the importance of ethical guarantees in ensuring the internal independence of judges of the administrative court in Ukraine. This article is aimed at examining aspects related to compliance with ethical norms and principles in judicial activities and studying their impact on ensuring the independence of judges in the judicial system of Ukraine.

Research Findings. The ethics of an administrative court judge are part of professional ethics, reflecting a set of norms for the moral and ethical behavior of judges in the administration of justice. These norms define the requirements for judges' ethical behavior in various aspects, from heightened moral requirements for judicial candidates to moral and ethical responsibility for their actions in judicial proceedings. In addition, judges in administrative courts are also subject to general moral and ethical requirements regarding the behavior of individuals and citizens in society.

In our opinion, ethical safeguards for the independence of judges are the rules and standards of conduct that judges must adhere to preserve their independence, integrity, and high level of professionalism. Some of these safeguards include the following: the existence of ethical codes of conduct for judges, a high level of professionalism among judges, and transparency in their activities.

We suggest focusing on each of these safeguards. Firstly, the presence of ethical codes of conduct for judges. Ethical safeguards for judges have long been enshrined in various oaths, codes, compendiums of rules, and judicial ethics bodies, guaranteeing the independence of judges. The critical role of ethical safeguards in realizing the principle of the internal independence of a judge is recognized in all countries worldwide. Therefore, most countries have their ethical code for judges, which sets the standards for judges' behavior and responsibility. Ethical principles and safeguards are enshrined in the Code of Judicial Ethics of the Republic of Latvia.

One of the main constitutional principles of the Republic of Latvia is the rule of law and the equality of all persons before the law and the courts. The rights of a person are realized without any discrimination, and everyone can protect their rights and lawful interests in a fair court. Judges play a central role in ensuring fair judicial proceedings and the rule of law. In a democratic society, public trust in the judiciary as a whole and in individual judges is crucial. A judge must be independent and impartial, possess high professional competence, moral authority, integrity, and an impeccable reputation. Realizing that the promotion and support of high ethical standards for judges is the responsibility of every judge, Latvian judges have adopted the Code of Judicial Ethics and have undertaken to uphold the principles enshrined in it.

It is important to note that the first canon of this code is the independence of judges. Judicial independence means that a judge is free from the influence of other branches of government and makes decisions independently, evaluating facts and applying the law without any direct or indirect external influence, coercion, pressure, threats, or interference. The judge is free from unlawful influence by the legislature and the executive and creates an appropriate image for himself. The judge promotes and safeguards the guarantees necessary for the office of a judge. Through their position, judges assert and promote high standards of judicial ethics to strengthen public trust in the judicial system.

A judge ensures that family, social, political, or other relationships do not affect the judge's actions in the administration of justice. In resolving cases, a judge is not influenced by the interests of individual persons, public protests, or fear of criticism [1].

In Ukraine, Article 56 of the Law of Ukraine "On the Judiciary and the Status of Judges" from July 7, 2010, for the first time at the legislative level, defined that issues of judges' ethics are determined by the Code of Judicial Ethics, approved by the Congress of Judges of Ukraine. This code was adopted in 2013. Specifically, in Articles 1, 2, and 3, it is stated that a judge must be independent, should avoid any unlawful influence on their activities related to the administration of justice, must not belong to political parties and professional associations, participate in any political activities, hold a representative mandate, hold any other paid positions, or engage in other paid work, except for scientific, teaching, and creative work.

However, in some countries, ethical safeguards for the internal independence of judges are not always codified in separate codes of judicial ethics. For example, in the preamble of the



Constitution of India, a commitment to justice, social, economic, and political equality is enshrined. Constitutional morality and judicial values are closely intertwined. Morality as envisioned in the constitution has significance when reasonably protected for the benefit of the people. The duty is imposed on the judicial branch, which is the guardian of the Indian Constitution, to incorporate judicial values into its functions to achieve constitutional goals. Since its inception, India has witnessed how the judicial system has transformed from a weak state organ into the most powerful instrument with its judicial creativity, which rightfully binds elements that are contrary to constitutional morality and judicial values.

Dr. B.R. Ambedkar, the founding father of the Indian Constitution, cautioned the nation during its formative years about the importance of adhering to the morality of the Constitution and judicial values [2].

The next important ethical guarantee for the implementation of the principle of internal independence of administrative court judges is a high level of professionalism. Judges are required to have a high level of qualification and be knowledgeable in the norms of substantive and procedural law.

A person's professional suitability is not determined at birth but is formed through education and professional experience, considering their positive motivation. This suitability reflects the alignment between the requirements of the profession and an individual's specific characteristics, including personality traits, abilities, motivation, physical condition, level of professional training, and other qualities [3, c. 68]. Professional suitability describes how effectively an individual can perform a job in a particular profession. In the context of selecting judges, professional suitability can be assessed using several criteria, including medical indicators, which encompass physical fitness; educational level or performance in competitive exams; psychological testing; social screening; as well as the level of professional adaptability [4, c. 175].

In our opinion, professional competence is a guarantee of the internal independence of a judge, as it enables the judge to make decisions solely based on the law and the evidence presented in the case, without succumbing to personal biases, pressure, or other factors, which could undermine their internal independence. When a judge possesses professional qualifications, it means that they have the necessary education, training, and experience to understand the legal system, interpret the law, and apply it fairly and consistently across a wide range of cases. This level of knowledge allows them to make well-founded and objective decisions, free from external influence or personal prejudices.

Furthermore, professional competence also encompasses ethical standards and a commitment to upholding the principles of judicial independence, impartiality, and integrity. Judges who are dedicated to these principles are more likely to resist pressure and protect their internal independence. Overall, professional competence is a critical factor ensuring that judges can fulfil their role as impartial arbiters of the law, which is a cornerstone of the justice system and fundamental for safeguarding individual rights and the rule of law.

Another ethical guarantee to ensure the realization of the internal independence of judges in the Administrative Court of Ukraine is the transparency of their activities. Corruption impedes the administration of justice worldwide. People perceive the judicial system as the second most corrupt public service, following law enforcement agencies. Corruption undermines justice in many parts of the world, with the poor and vulnerable populations suffering the most. Openness in the judicial system promotes integrity and enhances public trust without compromising the independence of the judiciary [5].

When corruption is present in the judicial system, it can foster a culture in which judges may feel pressured to make decisions based on personal gain or pressure rather than the merits of the case and the law. This threatens their internal independence and impartiality and can lead to unjust outcomes, eroding society's trust in the judiciary.

Similarly, the lack of transparency in the judicial system can make it challenging for judges to maintain their internal independence, as it may allow decisions to be made behind closed doors without proper oversight or accountability. This can lead to perceptions of favoritism or



injustice, further undermining public trust in the judicial system and weakening the independence of judges.

To combat these threats to internal independence, it is crucial to promote transparency and accountability within the judicial system and implement stringent anti-corruption measures. This includes establishing clear ethical standards and codes of conduct for judges, creating monitoring and reporting systems for potential corruption or unethical behavior, and ensuring proper checks and balances to prevent abuse of power.

By promoting transparency, accountability, and integrity in the judicial system, internal independence of judges can be strengthened, the rule of law can be upheld, and public trust in the justice system can be preserved.

Moreover, when discussing the transparency of the activities of judges in the Administrative Court of Ukraine, it's essential to note the freedom of expression and the right to information. Social media, open databases of court decisions, and algorithmic processing allow for the discovery of a considerable amount of personal data about judges. However, legislation imposes restrictions on the publicity of judicial decisions to ensure the safety and confidentiality of judges. Sometimes, available information about judges can lead to profiling, including using machine learning programs to predict their decisions. This can raise ethical dilemmas concerning the right to a fair trial, impartiality, honesty, and the integrity of judges, among other issues.

Nevertheless, the principle of judicial transparency remains, and parties should have access to information about judges unless the judge can demonstrate a risk to their safety and private life. Furthermore, it may not be feasible to prohibit parties from searching for information about judges online [6].

We believe that judges' use of social media can impact both transparency and the internal independence of judges, as well as society's trust in the judicial system. On one hand, social media can provide judges with a platform to communicate with the public and enhance transparency regarding their work and decision-making processes. By sharing insights into their work and the legal system, judges can help demystify the judicial system and make it more accessible to the public.

However, the use of social media can also pose risks to the internal independence of judges. Judges must be cautious not to express opinions that may compromise their impartiality or raise doubts about their ability to make fair and objective decisions in the cases they are handling. For example, a judge who expresses strong opinions on contentious social or political issues may be perceived as biased or impartial, which can erode public trust in the judicial system.

To balance these competing interests, many courts have established guiding principles or codes of conduct for judges regarding their use of social media, as is the case in Ukraine. According to Article 20 of the Code of Judicial Ethics, a judge's participation in social media, internet forums, and other forms of online communication is permissible. However, a judge may only post and comment on information that does not harm the judge's authority and the authority of the judiciary.

This approach seeks to strike a balance between judges' right to engage with the public and the need to maintain their internal independence and impartiality while upholding public trust in the judiciary. It encourages responsible and ethical use of social media by judges [7].

Conclusions. In conclusion, we would like to emphasize that ensuring the internal independence of judges of the Administrative Court is crucial for the proper functioning of this branch of the judiciary, as it resolves disputes related to the activities of state bodies and public services that affect the rights of citizens and the field of public administration. In this regard, ethical guarantees play a significant role in ensuring the internal independence of judges of the Administrative Court in Ukraine. Adherence to ethical norms and principles in the judicial activities contributes to building society's trust in the judicial system and preserving judges' independence from external influences. The aspects of ethical guarantees discussed, such as judges adhering to higher standards of professional conduct, maintaining confidentiality, and avoiding conflicts of interest, are essential for ensuring the independence of judges and the high quality of justice. The study of the role of



ethical guarantees underscores the necessity for further improvement of ethical training for judges and the implementation of effective mechanisms for monitoring their conduct.

References:

1. Code of judicial ethics of the Republic of Latvia. URL: https://www.at.gov.lv/files/uploads/files/9_Tieslietu_padome/Dokumenti/CODE%20OF%20JUDICIAL%20ETHICS_EN.pdf (date of appeal: 12.12.2023).
2. Minu E. S. Constitutional Morality and Judicial Values. URL: <https://www.legalserviceindia.com/article/1186-Constitutional-Morality-And-Judicial-Values.html> (date of appeal: 12.12.2023).
3. Марцинкевич А. М. Концептуальний підхід до розробки методики професійно-психологічного відбору кандидатів на посади суддів в Україні. *Наукові записки Львівського університету бізнесу та права*. 2012. Вип. 9. С. 67–73.
4. Скоромороха Л. Конституційно-моральні критерії прогнозування професійної придатності для роботи на посаді судді. *Право України*. 2014. № 10. С. 175–185.
5. A Transparent and Accountable Judiciary to Deliver Justice for All. Asia. *Asia and the Pacific* : website. URL: <https://www.undp.org/asia-pacific/publications/transparent-and-accountable-judiciary-deliver-justice-all> (date of appeal: 12.12.2023).
6. Finding balance between judicial transparency and the freedom of expression and judges' right to privacy: *United Nations Office of drugs and crime*. Asia and the Pacific : website. URL: https://www.unodc.org/dohadeclaration/en/news/2021/23/finding-balance-between-judicial-transparency-and-the-freedom-of-expression-and-judges-right-to-privacy_-french-experience.html (date of appeal: 12.12.2023).
7. Про затвердження Кодексу суддівської етики : рішення XI з'їзду суддів України від 22 лют. 2013 р. URL: <https://zakon.rada.gov.ua/rada/show/n0001415-13/sp:max50:nav7:font2#Text> (дата звернення: 12.12.2023).

