

## DOCTRINAL STUDIES OF THE QUALITY ASSESSMENT CRITERIA OF JUDICIAL DECISION GUARANTEEING THE SOCIAL PROTECTION OF ITS PARTICIPANTS

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*In this article, the author examines the main criteria for assessing the quality of a court decision in the Republic of Moldova and foreign countries. In particular, the basic requirements for a court decision are revealed, such as validity and legality. Separately, the author investigated the features of assessing the quality of court decisions in the judicial practice of European states, CIS countries, Asian countries and international organizations of judges. As a result of the research carried out by the author, it was found that in all judicial systems the main criteria for the quality of a court decision are legality, validity and motivation. The theses presented by the authors can be used by scientific and practical workers for further, fundamental and theoretical, deeper researches. The most important result of the presented scientific article are the conclusions and proposals formulated by the authors, which could significantly improve the current legislation.*

**Keywords:** court decision, legality, validity, motivation, fairness, quality.

### STUDII DOCTRINARE A CRITERIILOR DE EVALUARE A CALITĂȚII HOTĂRĂRII JUDECĂTOREȘTI, CARE GARANTEAZĂ PROTECȚIA SOCIALĂ A PARTICIPANȚILOR

*În prezentul articol autorii examinează principalele criterii de evaluare a calității unei hotărâri judecătorești în Republica Moldova și în țările străine. În special, sunt dezvăluite cerințele de bază pentru o decizie judecătorească, precum validitatea și legalitatea acesteia. În mod special, autorii au investigat caracteristicile evaluării calității deciziilor judecătorești în practica judiciară a statelor europene, a țărilor CSI (Comunitatea Statelor Independente), a țărilor asiatice și a organizațiilor internaționale. Ca urmare a cercetărilor efectuate s-a constatat că în toate sistemele judiciare principalele criterii pentru calitatea unei hotărâri judecătorești sunt legalitatea, validitatea și*

motivația acesteia. Tezele prezentate de către autori pot fi utilizate de lucrători științifici și practicieni pentru efectuarea unor studii ulterioare mai profunde, fundamentale și teoretice. Cel mai important rezultat al articolului științific prezentat sunt concluziile și propunerile formulate de către autori, care ar putea îmbunătăți semnificativ legislația actuală.

**Cuvinte-cheie:** hotărâre judecătorească, legalitate, valabilitate, motivație, corectitudine, calitate.

## ÉTUDES DOCTRINALES DES CRITÈRES D'ÉVALUATION DE LA QUALITÉ DE LA DÉCISION DE JUSTICE, QUI GARANTIT LA PROTECTION SOCIALE DES PARTICIPANTS

Dans cet article, l'auteur examine les principaux critères d'évaluation de la qualité d'une décision de justice en République de Moldova et à l'étranger. En particulier, les exigences de base d'une décision de justice sont divulguées, telles que sa validité et sa légalité. Par ailleurs, l'auteur a étudié les caractéristiques de l'évaluation de la qualité des décisions de justice dans la pratique judiciaire des États Européens, des pays de la CEI (Communauté d'États Indépendants), des pays asiatiques et des organisations internationales de juges. À la suite des recherches menées par les auteurs, il a été constaté que dans tous les systèmes judiciaires, les principaux critères de qualité d'une décision de justice sont la légalité, la validité et la motivation. Les thèses présentées par les auteurs peuvent être utilisés par les travailleurs scientifiques et pratiques pour d'autres recherches, fondamentales et théoriques, plus profondes. Le résultat le plus important de l'article scientifique présenté sont les conclusions et les propositions formulées par les auteurs, qui pourraient améliorer considérablement la législation actuelle.

**Mots-clés:** décision de justice, légalité, validité, motivation, équité, qualité.

## ДОКТРИНАЛЬНЫЕ ИССЛЕДОВАНИЯ КРИТЕРИЕВ ОЦЕНКИ КАЧЕСТВА СУДЕБНОГО РЕШЕНИЯ, ГАРАНТИРУЮЩИХ СОЦИАЛЬНУЮ ЗАЩИТУ ЕГО УЧАСТНИКОВ

В данной статье авторами рассматриваются основные критерии оценки качества судебного решения в Республике Молдова и зарубежных странах. В частности, раскрываются основные требования, предъявляемые к судебному решению, такие как обоснованность и законность. Отдельно исследованы особенности оценки качества судебных решений в судебной практике европейских государств, государств СНГ, азиатских стран и международных организаций. В результате проведенного исследования было установлено, что во всех судебных системах главными критериями качества решения суда является законность, обоснованность и мотивированность. Изложенное авторами тезисы могут быть использованы научными и практическими работниками для дальнейших более глубоких фундаментальных и теоретических исследований. Самым важным результатом представленной научной статьи являются сформулированные авторами выводы и предложения, которые могут существенно улучшить действующее законодательство.

**Ключевые слова:** решение суда, законность, обоснованность, мотивированность, справедливость, качество.

### Introduction

Judicial decisions will be able to carry out the tasks of civil proceedings only if they are lawful, which is entirely dependent on the court's compliance with all the requirements set forth in the Law [17, p. 311].

The establishment of requirements for ju-

dicial decisions is explained by several factors, in particular:

1) the presence of legal requirements for judicial decisions contributes to the authority of the judiciary, testifies to the perfection of the procedural form, forms a respectful attitude towards the court, the judiciary, and has an educational effect on citizens and organi-

zations. These requirements are publicly reflected in the procedural codes and are a disciplining principle for judges in the administration of justice. Reflection of the results of consideration and resolution of civil cases in court decisions that do not meet the requirements established by law is unacceptable and is the basis for canceling or changing a court decision;

2) the establishment in the law of uniform requirements that apply to court decisions allows the people participating in the case to evaluate the activities of the court when considering a specific civil case, comparing the court decisions made in a particular case with the requirements imposed by law. If the persons participating in the case come to the conclusion that the rendered judgment does not meet the requirements, they have the right to appeal it. Thus, the existence of legal requirements for judicial decisions is a guarantee of the right to a fair trial;

3) the presence in the law of uniform requirements for court decisions is the criteria for verification and review of court decisions by higher authorities. When appealing a court decision, the courts of review instances must have a clear idea of the requirements for compliance with which the court decisions are checked [7, p. 19].

### **Requirements for a judicial decision**

In the science of civil procedural law, legality, validity, reasoning, expediency, fairness, certainty is singled out as requirements for a judicial decision [9, p. 230]. However, Article 239 of the Code of Civil Procedure of the Republic of Moldova reflects only the requirements of legality and validity [5].

**The legality of a judicial decision** is the first requirement imposed by civil procedural legislation on this type of first instance decision. A decision shall be lawful when it is taken with strict observance of

the rules of procedural law and in full conformity with the rules of substantive law, which apply to this legal relationship or are based on the application, where appropriate, of analogies of law or analogies of law [6, p. 320].

The court decision must be made in accordance with substantive law. This means that the court must apply the law applicable in this particular case and correctly interpret this law.

The judgment must be made in accordance with the rules of procedural law, which means that the decision must comply with the provisions of the Code of Civil Procedure.

The legality of a court decision is a strict and unwavering compliance with the norms of substantive law to be applied in the case, with strict observance of the norms of procedural law in accordance with their content and purpose.

A court decision is legal if it was issued in full compliance with the norms of civil law that govern these legal relations, and civil procedural rules are observed. Based on the foregoing, the court is obliged to resolve civil cases on the basis of the Constitution of the Republic of Moldova, international treaties to which the Republic of Moldova is a party, constitutional, organic and ordinary laws, resolutions of the Parliament, normative acts of the President of the Republic of Moldova, orders and resolutions of the Government, normative acts of ministries, other central and local public authorities, as well as on the basis of regulations issued by the employer, and individual labor contracts.

In the cases provided for by law, the court applies customs, if they do not contradict the foundations of law and order and morality. Also, the court is obliged to resolve civil cases in accordance with national jurisprudence and the jurisprudence of the European Court of Human Rights (hereinafter - the ECtHR) [15, p. 28].

The requirement of legality consists of two components:

1) the decision must correctly apply substantive law. The decision will be considered lawful if the court correctly applied the existing substantive law norm, did not apply the substantive law norm that is not subject to application, gave the correct interpretation of the substantive law norm;

2) a court decision will be legal if the requirements of the procedural law were observed during its issuance. In particular, if: the decision was made by the legal composition of the court; the decision was made in a procedure that ensures the independence of judges; the rights to participate in the process of all persons participating in the case were ensured; when making the decision, the rule on the language of the proceedings was not violated; when making a court decision, the equality of all participants in the process was ensured; the court decision is made in accordance with the requirements (signed by the appropriate subjects); the case file contains the minutes of the court session, which allows you to reproduce the procedure for considering a civil case, compare the court decision with the evidence examined [3, p. 35].

**Validity of a court decision** means that the court bases its decision on the evidence that was examined in court sessions. The decision is justified when the facts relevant to the case are confirmed by evidence examined by the court that meets the requirements of the law on their relevance and admissibility, or by circumstances that do not need proof, and also when it contains exhaustive conclusions of the court arising from the established facts [8, p. 103-104].

The validity of a court decision is the correspondence between the conclusions of the court in the decision and the factual material examined by the court in full and comprehensively.

The decision of the court may be considered justified if:

1) the court will correctly determine the circumstances that are essential for the case, and the presence or absence of each of them individually will express its judgment;

2) circumstances established by the court that are relevant to the case will be based on the evidence examined in the court session;

3) the conclusions of the court on the presence or absence of legal facts essential for resolving the case, set out in the decision, will correspond to the circumstances of the case [22, p. 12].

The decision is justified when the facts relevant to the case are confirmed by evidence examined by the court that meets the requirements of the law on their relevance and admissibility, or by circumstances that do not need proof, and also when it contains exhaustive conclusions of the court from the established facts.

A complete and comprehensive study of legally significant circumstances is a necessary condition for making an informed decision. A study of cassation and supervisory practice shows that most decisions are canceled precisely because the court did not establish all the necessary facts, or did not take into account certain circumstances that are important.

Considering the requirement of the validity of the judgment, it should be borne in mind that the active role in proving belongs to the parties. In this regard, the court considers and resolves the case only taking into account the evidence presented by the parties. He/she may invite the persons participating in the case to substantiate their claims or objections with additional evidence, but in any case, this is the right, and not the obligation of the parties, due to which the court is forced to substantiate its decision only with the evidence available in the case [20, p. 17].

If legality, as a requirement for a court decision, refers to the legal side of the decision, then the validity of the court decision belongs to the factual side. We can say that the validity of the judgment covers three interrelated elements: 1) the circumstances of the case; 2) evidence; 3) the conclusions of the court from the analysis of the established circumstances, confirmed by the examined evidence [19, p. 4-7].

**Motivation of a court decision** is the obligatory presence in the court decision of exhaustively reasoned conclusions of the court on the results of the evaluation of evidence and the facts established on their basis [14, p. 6].

The motivation of a judicial act is connected with the issues of stating the motives on which the court came to a particular conclusion. These motives should concern both questions of law (substantive and procedural) and questions of fact.

As a legal requirement, motivation, on the one hand, reflects the relationship between the actual circumstances of the case, established by the court, and the conclusions; eliminates the disunity of evidentiary information; allows you to uncover contradictions in the evidence studied. On the other hand, the motivation of a judicial act reveals the judges' personal understanding of the applicable legal norm of substantive and procedural law [2, p. 25-26].

**The expediency of a court decision** is the requirement that a court decision must be made within the limits of legality, in particular, within the limits of the permissibility of interpreting the rules of law.

The validity of an expedient decision means that both the evidence and the circumstances and conclusions made by the court ensure the legality of such a decision. Expediency is connected with the evidence examined and evaluated by the court.

**The fairness of a court decision** is a requirement aimed at establishing the correct qualification of a legal dispute for the purpose of reasonable application of legal norms that meet their moral content and is conditioned by the requirements of a public assessment of a court decision as a fair act of the judiciary, decided in the name of the law. The decision-making procedure is considered fair if the following conditions are met:

1) uniformity: a procedure is fair if it can be used in the same way in different situations for different people;

2) neutralization of prejudices: the procedure is fair when the decision does not depend on the prejudices of a third party;

3) accuracy and completeness of information transfer: a procedure is fair if it makes it possible to collect accurate and complete information;

4) correctness (the possibility of appeal): the procedure is fair if it contains the possibility of correcting wrong decisions;

5) representativeness: the procedure is fair if it takes into account the values of the participants and the groups to which they belong;

6) ethical: a procedure is fair if it meets the ethical standards accepted in society [12, p. 30].

The certainty of a court decision is the requirement that the court decision must clearly state whether the claim is satisfied or denied; if the claim is satisfied, what exactly is awarded to the plaintiff, what right is recognized for him, what the defendant is obliged to do. This requirement means that the court decision must clearly resolve the issue of the content of the rights and obligations of the parties in connection with the contentious material legal relationship that is the subject of the court's consideration. The decision of the court must contain an answer, who owns the rights, who bears the duties, what is their

specific content. This requirement, being observed by the court, entails the reality of the execution of the judgment.

If one of the above requirements for a court decision is violated, the court decision cannot be considered legal, and the issued judicial act is subject to cancellation [4, p. 43].

Summing up the foregoing, we can draw the following conclusion, the court decision must meet the requirements of legality, validity, motivation, expediency, fairness and certainty.

The legality of a court decision is a strict and unwavering compliance with the norms of substantive law to be applied in the case, with strict observance of the norms of procedural law in accordance with their content and purpose.

The validity of a court decision is the correspondence between the conclusions of the court in the decision and the factual material examined by the court in full, comprehensively.

The motivation of a court decision is the obligatory presence in the court decision of exhaustively reasoned conclusions of the court about the results of the assessment of evidence and the facts established on their basis.

The expediency of a court decision is the requirement that the decision of the court must be made within the bounds of legality.

The fairness of a judgment is a requirement aimed at establishing the correct qualification of a legal dispute in order to reasonably apply legal norms.

Certainty of a court decision is a requirement according to which the decision of the court must be clearly formulated whether the claim is satisfied or denied; if the claim is satisfied, what exactly is awarded to the plaintiff, what right is recognized for him, what the defendant is obliged to do.

### Examples of criteria for assessing the quality of a judgment in foreign countries

**Finland.** Of great interest is the project “Assessment of the quality of resolution of cases in courts. Principles and Proposed Quality Criteria”, which was carried out in Finland in the District of the Rovaniemi Court of Appeal during 1999-2005 [23]. The project was highly appreciated by the world legal community.

One of the important sections of the project is the section on the court decision, and in particular on the choice of qualitative criteria related to the court decision. There are seven in total. Here are excerpts from the project.

#### Choice of quality criteria

1) The first qualitative criterion related to the decision of the court is that *the decision is fair and legal* (correctness of the decision); this is one of the most important purposes of the judiciary. This qualitative criterion means that the decision complies with the current legislation and is based only on established facts. Moreover, the correctness of the solution should be obvious at a glance.

2) In accordance with the second qualitative criterion, *the legal reasoning of the decision must convince the parties, lawyers and scientists of the fairness and legality of the decision.*

The achievement of this qualitative criterion depends on the impression that the parties have of the reasoning part of the decision. Even if the decision is both fair and legal, from the point of view of the stability of legal relations, a problem arises if the reasoning part of the decision is not able to convince the reader of this. Naturally, it is difficult, even impossible, to compose a motivational part in such a way that it convinces every one of the correctness of the decision. For this reason, for this qualitative criterion, the group of persons whose opinion should be taken into

account was limited to the parties, legal professionals (judges, prosecutors, lawyers) and legal scholars.

3) The third qualitative criterion related to a judgment is that *the reasons for the judgment must be transparent*. The existence of an open civil society requires that court decisions should also be open. In this regard, the transparency of motivation is especially important. Even if the reasoning behind a decision is formally in the public domain, openness will not be genuine until the reasoning for the decision explicitly states the real reasons for the decision.

4) The fourth criterion for the quality of a court decision is that *the reasoning part of the decision is set out in detail and systematically*. It should indicate which substantive issues are being contested and which are not. With this in mind, the motivational part should be problem-oriented. In detail, this means that the motivation part defines positions on all accepted evidence and on all controversial issues. A systematic approach, in turn, means that various legal issues are dealt with separately and in a logical order.

5) The reasoning part of the decision is where the judge informs the parties and the public about how the court took the issues raised by the parties and what their significance was for the resolution of the case. To fulfill this role, *the motivational part of the decision must be understandable*; this is the fifth criterion for the quality of a judgment.

6) According to the sixth quality criterion, *the solution must have a clear structure and be linguistically and grammatically correct*. A decision is more understandable when a distinction is made in its structure between the circumstances of the case, the evidence presented, the reasoning and the conclusion. In addition, the solution should not contain linguistic or spelling errors, and should be well written stylistically. You also need to pay attention to the design of the solution.

7) The seventh and final quality criterion relating to a judgment relates to the announcement of the judgment, that is, the oral communication of the judgment to the parties and the public in the case where the judgment is issued immediately after the trial. According to the qualitative criterion, *the decision must first of all be declared in such a way that it can be and will be understood*.

**Sweden.** A broad discussion of the quality of court work began in Sweden as early as 1997. The Swedish Central Judicial Administration (Domstolsverket) organized two one-day workshops on the importance of quality in a judicial context. In the report, the main aspects of the quality of judicial activity were divided into four categories: 1) qualitative aspects of the judicial decision; (2) qualitative aspects related to the timing of cases; (3) qualitative aspects of dealing with clients; and (4) qualitative aspects related to the competence and training of judges and other court staff.

The first characteristic of a good decision is its correctness in terms of compliance with the law. In addition, the decision must contain a full and understandable justification, a logical and clear statement of the facts. The report also draws attention to the appearance of the judgment as a quality criterion: a quality judgment must be pleasing to the eye. Moreover, in addition to being legal, the solution must also be flawless in terms of language and spelling.

### International organizations of judges

There is no single approach to evaluating the work of judges: such an evaluation can be considered a prerequisite for judicial independence in some countries, and absolutely incompatible with the independence of judges in others. As follows from the Conclusion of the Consultative Council of European Judges (hereinafter referred to as the CCJE) “On the

evaluation of the work of judges, the quality of justice and the observance of the principle of independence of judges” (Conclusion of the CCJE No. 17), in those countries where the work of judges is evaluated, various evaluation methods are used, which depend on the peculiarities of the formation of the judicial system in a given country. “Evaluation” may include formal and structural systems of evaluation using well-defined criteria, or more informal systems for collecting data on the quality of a judge’s performance. Formal evaluation implies a clearly defined purpose, evaluation criteria, the structure of the evaluation body and its procedures, as well as legal and/or practical implications. Informal assessment does not have these features and does not always have immediate consequences for the judge whose performance is being assessed. Informal collection of information about the work of a judge in order to promote him in his position can also be considered as one of the types of evaluation.

Another important principle is that the life tenure of judges cannot be called into question as a result of an unfavorable evaluation. According to the recommendation of the Committee of Ministers of the Council of Europe, “indefinite tenure may only be terminated in cases of serious violations of disciplinary or criminal law, or if a judge is no longer able to perform his functions.” Thus, the results of the consideration of the case under no circumstances can be the basis for punishing the judge. Similarly, the Kiev Conference Recommendations stipulate that “the work of judges should not be evaluated by the content of their decisions or verdicts (either directly or on the basis of statistics on the annulment of decisions)” [16]. In any case, the evaluation should focus on the methodology used by the judge in his work, and not on the legal merits of individual decisions [11].

Among Council of Europe member states, 24 countries use relatively formal judge evaluation systems (Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, France, Georgia, Germany, Greece, Hungary, Italy, Moldova, Monaco, Netherlands, Poland, Romania, Slovenia, Spain, Macedonia, Turkey, Ukraine). In these countries, evaluation is carried out on a regular basis.

7 countries do not use formal assessment (Czech Republic, Denmark, Finland, Iceland, Luxembourg, Norway, Sweden, Switzerland, UK). However, Sweden uses certain assessment tools to differentiate the remuneration of judges, while Finland and Sweden use them when discussing professional development programs. In the UK, informal assessment is used in relation to the issue under consideration of the promotion of judges [18].

The quality of a court decision fundamentally depends on the quality of its motivation [11]. At the same time, the decision will be motivated only if the judge has enough time to prepare it. When issuing a court decision, under no circumstances should proper motivation be neglected in order to expedite proceedings; on the contrary, proper motivation should be considered an “absolute necessity”. Sequential, clear, unambiguous and consistent arguments of the court should allow the reader to trace the chain of inferences on the basis of which the decision was made.

The motivation should reflect the judge’s compliance with the principles enshrined in the ECtHR, in particular the right to a fair trial. In order to comply with the principle of a fair trial, the reasoning must indicate that all the main issues put before the judge were actually investigated. The judgment must examine the issues of fact and law that underlie the dispute, as well as the objections of the opponent. Particularly close and careful consideration requires complaints of viola-

tion of the rights guaranteed by international legal treaties in the field of human rights. At the same time, “although Article 6 and 1 of the Convention provides for the obligation of courts to substantiate their decisions, this should not be understood as a requirement to respond in detail to each argument”. The scope of this obligation may vary depending on the nature of the decision. However, if a party’s argument is decisive for the outcome of the case, the judgment must contain a separate, specific response to that argument.

It is important to note that when examining legal issues, the court must apply the provisions of national and international law, including national constitutions and the practice of international bodies and courts of other countries, as well as rely on legal literature. This presupposes that, judges have an adequate knowledge of international and European law and case law “so as to exercise their judicial functions in accordance with the principle of legality which all democratic countries adhere to”. In interpreting the law, judges should take into account the principle of legal certainty. In general, judges must consistently apply the law, and any discrepancy with established jurisprudence must be clearly identified in the decision, with appropriate justification.

The Magna Carta of the Judges stipulates that, judicial documents and decisions must be written in “plain, simple and clear language. Based on the results of a fair and public hearing, judges must make reasoned decisions, with public announcement within a reasonable time [10].

Conclusion No. 11 of the Consultative Council of European Judges on the Quality of Court Decisions.”

On December 18, 2008, the Consultative Council of European Judges (CCJE) for the Committee of Ministers of the Council of Europe adopted Conclusion No. 11 “On the

quality of judicial decisions” in Strasbourg. (CCJE (2008 Op. No. 5) [21].

According to the CCJE, the quality of judicial decisions is the main factor determining the quality of justice (p. 2).

A judgment of high quality is one that achieves the correct result to the extent that the tools at the judge’s disposal allow - and this process occurs fairly, promptly, clearly and definitely (paragraph 3).

The judicial decision is aimed not only at resolving the dispute between the parties and determining their legal status, but often also at the formation of judicial practice that can prevent the occurrence of such disputes in the future and ensure the preservation of social balance (paragraph 7).

The quality of a judicial decision depends not only on a particular judge, but also on a number of various conditions external to justice, such as the quality of legislation, the material support provided to the judiciary, and the quality of legal education (paragraph 10).

The quality of judicial decisions also depends on internal factors such as the professionalism of judges, procedures, case management, hearings and integral elements of the decision itself (paragraph 20).

Transparency and openness of hearings, as well as adherence to the principle of adversarial and equal rights of the parties, are a necessary prerequisite for the parties and the general public to correctly perceive the court decision (paragraph 30).

### **Mandatory elements of a ruling**

All judicial decisions must be understandable, written in clear and simple language - this is a prerequisite for their correct understanding by the parties and society as a whole. To do this, it must be properly structured, and the motivational part must be clear and understandable to everyone (paragraph 32).

Court decisions must be justified. The quality of a court decision fundamentally depends on the quality of its motivation. Proper justification is a mandatory requirement that should not be neglected in the interest of speeding up the process. Proper reasoning requires the judge to devote some time to preparing the judgment.

The obligation of the courts to formulate a reasoning part does not mean an obligation to respond to every argument put forward by the parties in support of their position. The level of detail should vary depending on the nature of the decision. In accordance with the practice of the ECtHR, the scope of the arguments presented depends on the various arguments put forward by the parties, as well as on different legal norms, customs, doctrinal principles and judicial practice regarding the presentation and drafting of judgments in different countries (paragraph 41).

The study of legal issues involves the application of the legal norms of national, European and international law. In your arguments, you should refer to the relevant provisions of the constitution and applicable national, European and international law. Where appropriate and likely to be useful, and in common law countries essential, references may be made to national, European and international jurisprudence, as well as to the legal literature (paragraph 44).

### **Judgment quality assessment**

The Advisory Council emphasizes that any way of assessing the quality of judicial decisions should not affect the independence of the judiciary in a general and individual sense (paragraph 59).

Any assessment of the quality of the judiciary should be aimed solely at improving the quality of judicial decisions, and not serve only as a bureaucratic tool and not be limited to it. It is not an instrument of external control over the judiciary (paragraph 61).

The Advisory Council recalls that the assessment of the quality of justice, that is, the quality of the work of the judiciary as a whole and of an individual court or group of courts, should not be confused with an assessment of the professional abilities of a particular judge, which serves other purposes (paragraph 62).

The Advisory Board emphasizes (especially when using quantitative and qualitative statistical indicators) that it is desirable to combine different methods of assessment associated with different qualitative indicators and data sources. No method should take precedence over others. Assessment methods may be acceptable provided they are scientifically sound, literate, carefully prepared, and presented in an accessible manner. In addition, the evaluation system should not call into question the legitimacy of judicial decisions (paragraph 68).

The Advisory Board welcomes the consideration and evaluation of judicial decisions by the judges themselves. The Advisory Council also encourages the participation of “outside” persons (e.g., lawyers, prosecutors, law professors, citizens, state and non-state public organizations) in the evaluation, provided that the independence of the judiciary is fully ensured. Such external evaluation should not be used as a method of limiting judicial independence or the integrity of the judicial process. The first point in assessing court decisions should be the assessment of the availability of a timely and effective appeal procedure (paragraph 70).

In addition, the limited number of appeals and successful appeals can become objectively measurable and relatively reliable indicators of quality. However, the Advisory Board emphasizes that neither the number of appeals nor the number of successful appeals can directly reflect the level of quality of the judgments being challenged. A successful appeal may be nothing more than a way for the appellate judge to

evaluate difficult issues, whose decision could be reviewed if the case were referred to an even higher-level court (paragraph 74).

The proper conduct of the procedure, the correct application of legal principles and assessment of the facts of the case, as well as enforceability, are key elements to ensure a high-quality judgment.

The decision must be clear, written in clear and simple language, but each judge must be free to choose his/her own style or use standard patterns.

The Advisory Board recommends that the judiciary prepare collections of samples and examples to facilitate the process of writing judgments.

Court decisions must be fundamentally justified. Their quality fundamentally depends on the quality of their justification. The reasoning part may include an interpretation of legal principles while providing legal certainty and consistency. However, if the court decides to depart from previous jurisprudence, this should be clearly stated in the judgment.

The Advisory Board recommends the development of a mechanism, acceptable to the legal traditions of each country, to ensure access to higher courts.

It is permissible for judges to express dissenting opinions that may affect the quality of the content of a court decision, and may also contribute to a better understanding of the decision, the development of law as such. These opinions must be properly substantiated and published.

Any order contained in or following a judgment must be set out in clear and unambiguous language so that it can be carried out immediately or, in the case of an order for action or payment, was made immediately.

The Advisory Board stresses that the content of an individual judgment is examined by means of an appeal or review procedure

provided by the national courts or by the right of access to the European Court of Human Rights.

The judiciary as a whole should be subject to scrutiny to assess the quality of judicial decisions. Attention should be paid to the duration, transparency and proper conduct of the procedure.

The evaluation must be carried out in accordance with the fundamental principles of the Convention and cannot be carried out solely in the light of economic and managerial considerations.

Any method of assessing the quality of a judgment should not limit the independence of the judiciary as a whole or its individual elements, should not serve as a bureaucratic means or consist only in it, and should not be confused with an assessment of the professional abilities of an individual judge, which is carried out for other purposes. Moreover, evaluation systems should not call into question the legitimacy of judicial decisions.

The evaluation procedure should be primarily aimed at determining the need, if any, for changing the law, changing and improving the judicial procedure and / or further training of judges and judicial personnel.

The Advisory Board emphasizes that it is desirable to combine different evaluation methods. Assessment methods should be applied under the condition of their deep scientific development, literacy and thorough preparation, and the way they are selected should be transparent.

The Advisory Council encourages the study and evaluation of judgments by the judges themselves. The Advisory Council also approves the participation in the assessment of “external” persons, provided that judicial independence is fully ensured.

Through their jurisprudence, their appraisal of judicial activities and their annual reviews, superior courts can influence the qual-

ity of court decisions and their evaluation, and in this regard, it is essential that their jurisprudence be clear and consistent.

Assessing the quality of decisions should be one of the powers of the Council for the judiciary, if one exists, or another independent body, with the same guarantees for the independence of judges as for the Council for the judiciary.

### **Features of judicial proceedings in the countries of Central Asia**

The Judgment Writing Methodology for the countries of Central Asia [1] was prepared within the framework of the EU Supremacy Platform - Central Asia project funded by the European Union.

Section 2.2. of the report is devoted to indicators of the quality of court decisions. The following quality criteria are called:

**2.2.1. Legality.** There are three legitimacy criteria:

1) Legitimacy is often defined as the compliance of a judicial act with current regulations. It really is. But there is a problem that a judge may make a decision that is not in accordance with the law, but it has not been overturned and, therefore, is legal in the sense that the law prescribes that the decision be respected and enforced. Therefore, the first criterion for the legality of a judicial act will be its compliance with the general practice of application and interpretation of the law applied or to be applied in such a case.

2) The competence of the judge or the judicial acts issued by him/her (violations: non-compliance with the rules of jurisdiction, dressing in a form not provided for by law, circumstances of personal interest, etc.). The second criterion of legality will be the absence of circumstances that testify to the illegality of the judicial act.

3) The third criterion of legality will be the presence in it of the details required by law (the name of the act, an indication of the body that

adopted the act, the date of the decision, the signature of the judge, etc.).

**2.2.2. The legal validity** of a decision is often confused with its legality. At the same time, although these are close, but different aspects from each other. If legality is measured by the compliance of the decision in form and content with the current legislation, then validity has a slightly different dimension. This measurement lies in the extent to which a court decision can be perceived as correct, reasonable, fair, logical both by the participants in the process, higher-ranking judges, and by society as a whole. In other words, validity indicates the presence in the decision of arguments that can be considered as convincing grounds for issuing just such a judgment within the framework of this legal order.

At the same time, the decision of the court must indicate the motives on which the judge made this decision. In practice, legal, but unmotivated decisions often come across. This indicates that the courts do not fully fulfill their main public function of restoring the disturbed social peace, strengthening the rule of law and maintaining law and order.

If the judge clearly and reasonably states why he/she considers this or that punishment fair, why he/she chooses this or that legal qualification of the dispute, why he rejects some evidence and accepts others, then this will undoubtedly serve to strengthen the authority of the judiciary, and will indirectly contribute to the development of legal awareness in society. Even if the losing party does not agree with the arguments given by the court, it will have to admit that the decision was not made arbitrarily, but is the result of a balanced and reasonable reasoning of the judge, and that the losing party had the opportunity to effectively exercise its right to be heard by the court. These reasonings of the judge can become the subject of verification

when appealing the decision in a higher instance, which will create additional guarantees for the losing party of the fairness and validity of the decision made in its case (Article 427 of the Code of Civil Procedure of the Republic of Kazakhstan, Article 339 of the Code of Civil Procedure of the Kyrgyz Republic, Article 353 of the Code of Civil Procedure of the Republic of Tajikistan, Article 314 of the Code of Civil Procedure of the Republic of Uzbekistan, Article 353 of the Code of Civil Procedure of the Republic of Turkmenistan).

**2.2.3. Logic.** The text of a legal document should be drawn up taking into account the laws of logic (exclusion of the third, double negation, etc.), as well as the methods of logical thinking (deduction and induction, analysis and synthesis, etc.). When making decisions, judges may draw up truth tables or otherwise check the sequence of the arguments underlying the decision. For example, when establishing the invalidity of a contract, the judge must logically deduce the nullity of all provisions of this contract and refuse to satisfy claims based on such provisions. So, if, along with the recognition of the loan agreement as invalid, a demand is made to pay interest on the loan amount provided for by this agreement, satisfaction of the claim regarding the invalidity of the agreement logically entails a refusal to collect interest under this agreement. Also, in the event of a conflict of norms of law, the judge must choose one norm applicable to the disputed legal relations in accordance with the conflict rules (*lex specialis*, *lex posterior*, *lex superior*) and refuse to apply other norms that conflict with it (for example, choose the highest legal norm). Sometimes a judge may need to analyze the priority of these conflict rules if they diverge in relation to specific rules of law (for example, a rule of a special law clashes with a later rule of a general law). This analysis

should be carried out taking into account applicable legal provisions and uniform jurisprudence.

**2.2.4. Reliability.** This criterion in practice entails the greatest number of difficulties.

Reliability should be understood as the compliance of the decision, on the one hand, with the actual circumstances in connection with which the disputed legal relations have developed, and the compliance of the judge's interpretation of the norms of law and the provisions of legal documents with the will of the persons who created these norms and documents, on the other.

In fact, the credibility of a judgment thus presupposes that the court has established with certainty all the facts in the case and has distinguished between significant and insignificant facts, between facts of primary and secondary importance. This puts before the court the task of verifying the truth of the statements of the parties about the facts and the task of making a judgment on the legal significance of the facts proved by the parties. Therefore, in fact, the court's decision will be reliable not only if the court establishes the circumstances of the case, but also on the condition that the court correctly determines the significance of these circumstances, as well as the relevance and admissibility of the evidence presented by the parties.

**2.2.5. Correctness.** This indicator of quality can be understood as both linguistic and terminological correctness of a judicial act. These indicators may not seem central to the work of drafting judges, but they should also be given special attention.

Erroneous or ambiguous wording in court decisions can lead to these decisions being perceived as bad, which in turn will not strengthen the authority of the judiciary and the rule of law. Even if the distortion of the meaning of certain phrases in the decision does not affect how the

judge decided the case on the merits, such a decision will not fully fulfill the functions of restoring social peace and strengthening the rule of law, which were discussed above. Moreover, such mistakes will give the public a reason to doubt the professionalism of judges, which can indirectly cast a shadow on the entire judiciary of a given state. Of course, grammatical and spelling errors can also create obstacles to ensuring the motivation and consistency of a court decision, since the wrong linguistic form of decisions will in no way accompany their better understanding. Therefore, these errors should be avoided at all costs.

Let's analyze the example of Kazakhstan. The protocol decision of the Commission on the Quality of Justice under the Supreme Court of the Republic of Kazakhstan dated September 16, 2019 No. 7-3-1 / 1136a (as amended on October 21, 2019, November 18, 2019) approved the Methodological Guide for Assessing the Professional Activities of a Judge. In accordance with clause 8 of the Methodological Guide:

«8. The professional activity of a judge is assessed according to the following groups of criteria: 1) professional knowledge and ability to apply it in the administration of justice; 2) results of judicial activities; 3) business qualities; 4) moral qualities for compliance with the requirements of the Code of Judicial Ethics».

According to paragraph 9 of the Methodological Guide:

9. Professional knowledge and the ability to apply it in the administration of justice are evaluated on the basis of the following criteria: 1) The quality of judicial acts. 2) The quality of trials.

The reasons for cancellations and changes are assessed by the Commission, based on the grounds established by the procedural legislation and the degree of their materiality.

19. Analysis of the quality of drawing up

judicial acts is carried out by studying by the members of the Commission three or more decisions, sentences and final decisions of the assessed judge, with the exception of judges participating in the competition for the position of a judge of a higher instance, the chairman of the court and the chairman of the judicial board.

23. In the course of studying judicial acts, members of the Commission evaluate:

1) compliance of the judicial act with the requirements of the law, as well as the requirements of the normative decisions of the Supreme Court;

2) referee skills:

– determine and evaluate the circumstances that are important for making a decision on the case;

– determine and apply the rules of law governing legal relations in a particular case;

– formulate a legal position for the relevant category of cases;

– clearly express thoughts, logically reason and analyze;

– state the text of the procedural document clearly and competently, in an official business style;

3) compliance with the rules of spelling and style (paragraph 23 of the Methodological Guide).

### **The specifics of judicial proceedings in the Russian Federation**

In the Russian Federation, according to the Institute for the Rule of Law, part of the European University at St. Petersburg, counting the number of revoked judicial acts is the main method for assessing professionalism and is cited as a central argument in assessing the performance of courts. This is directly stated in the generalizations of the work of arbitration courts and courts of general jurisdiction. There is no alternative to this method today. Any other situation, when anything

other than an actual appeal is used to assess the quality of a judge's work, will raise suspicions of violating the principle of judicial independence. This does not exclude the conduct of internal monitoring and extra-procedural audit of the work of a judge.

Extra-procedural checks of the quality of judges' work do not correspond to the essence of modern justice, where a judge has already gone through a complex selection procedure and has a special status. In 2001, when there was an active search for solutions to improve the work of judges, the Council of Judges spoke out against the introduction of special positions of judge-auditors.

Under these conditions, reliance on the results of the appeal represents the ideal and only solution for public evaluation of the quality of work. In part, this issue was disclosed in the legal position of the Constitutional Court, set out in the Resolution of October 18, 2011 No. 23-P, according to which it is not allowed to raise the question of the presence in the actions of a judge of the corpus delicti under Article 305 of the Criminal Code of the Russian Federation “Issuance of a knowingly unjust sentence, decision or other judicial act”, when the relevant judicial act issued by this judge has entered into force and has not been canceled in the manner prescribed by the procedural law. Following the position of the Constitutional Court, the High Qualification Board of Judges (hereinafter referred to as BKKC - the High Qualification Board of Judges) noted that the powers of the qualification boards do not include verification of the legality and validity of judicial acts, it can only be carried out in special procedures established by the procedural law (through consideration of the case by higher courts), and another procedure for the revision of judicial acts is fundamentally unacceptable.

If the annulment and amendment of judicial acts is the central criterion for the profes-

sionalism of a judge, then the methodology for calculating these indicators is important. The most common practice is to calculate the share of cancellations and changes from all appealed judicial acts. In some courts, they concentrate only on cancellations, and ignore changes. There are options when they are limited to counting the cancellations of only judicial acts issued on the merits of the case, without taking into account “service” decisions. There are situations when decisions that are not on the merits of the case form an additional indicator. In some regions, the number of cancellations is taken into account in relation to the same indicator of the previous year, and somewhere the share is estimated in comparison with other courts / judges. It happens that when evaluating the quality of work of a particular judge, the reasons for cancellations are filtered. Both cases and persons or judicial decisions can be taken into account. In some cases, it is not spelled out which calculation method was used. Only a general indicator of quality/stability is indicated. There are cases when, in addition to canceled and amended judicial acts, they take into account as a negative indicator cases in which the proceedings were terminated, or complaints that were left without consideration.

In other words, in Russia there is no single rule for assessing the quality of the work of judges, which creates great opportunities for manipulating the practice of disciplinary responsibility. The rules for taking into account the quality of the work of a judge do not have a single criterion, they are diverse and represented by many practices, and at the same time they are not legitimized, that is, they were developed informally on the ground.

The popularity of assessing the quality of a judge's work through the number of cancellations and changes is combined with the uncertainty of the methodology used. In

each specific case, the mechanisms of individual sorting of indicators are activated. If you wish, you can count all the cancellations, plus mention changes in judicial acts, or you can focus only on the cancellations of judicial acts that consider the case on the merits. You can choose the reasons why some cancellations should not be regarded as negatively characterizing the judge, but you can, on the contrary, follow the path of a formal approach and count each cancellation and even change as evidence of the judge's unprofessionalism.

In practice, the biased nature of the approach is realized, in which each cancellation is considered as a minus in the work of a judge. With high rates of cancellation of judicial acts, the automatic onset of adverse consequences for both the judge and the whole court is possible. Therefore, in practice, a mechanism was developed to reset too strict accounting rules - this is expressed in the desire of a higher authority to avoid cancellations and changes in judicial acts as far as possible. There is a special terminology for this, "strengthening". This means that in some situations the arguments of the complaint may be valid, but they will not be satisfied. Although the violation indicated by the applicant in the complaint is really present, the decision is made not to cancel or change the judgment. After consideration in the court of second instance, the decision enters into force. Hence the term "strengthening". This has a negative impact on the image of the courts, as citizens do not receive full judicial protection. At the same time, there is a paralysis of the activity of a higher instance, which voluntarily refuses to perform its main function of managing judicial practice. This leads to negative assessments of the work of the courts of the verification instance.

The struggle to maintain indicators causes criticism, reduces the authority of the courts.

The unpredictability of the use of quantitative indicators of cancellations leads to the self-tuning of the judicial system in order to minimize negative costs and dilute the essence of the appeal procedure. The way out is to revise the methods for assessing the quality of judges' work. This requires a reassessment of the essence of procedural activity and a deep differentiation of the reasons for the annulment and amendment of judicial acts.

Thus, to date, neither society nor the judiciary has a clear understanding of the criteria for assessing the quality of a judge's work used in the framework of disciplinary responsibility [13].

### **Conclusions**

The criteria for assessing the quality of a court decision, which we managed to identify when studying foreign experience, are largely repeated, sometimes overly verbose, but on the whole reflect the necessary requirements that must be made to a court decision. We come to the conclusion that these criteria can be used to develop more reasonable and reasoned criteria that can be used as the basis for evaluating the work of judges.

As an option, the following criteria can be proposed: 1. Legality; 2. Validity; 3. Certainty of the decision; 4. Unconditional decision; 5. Completeness of the solution; 6. Logic; 7. Reliability; 8. Correctness; 9. Persuasiveness; 10. Transparency; 11. Clarity and understandability; 12. Clear structure and form of the decision; 13. Clear and distinct announcement of the decision.

Perhaps this is an incomplete enumeration of all the criteria for assessing the quality of a judgment, but it seems to us that if we ignore the verbose and overly abstract enumeration of all criteria, which is typical for European judges, then the bottom line will be exactly those criteria that we have listed.

The most common is the assessment of the quality of a court decision by a quantitative criterion: the number of canceled decisions. Moreover, in Russia, many researchers recognize it as the only possible one. With this we cannot agree.

The study of foreign experience shows that the quantitative criterion cannot be the only criterion for assessing the quality of judicial decisions. The Advisory Council of European Judges emphasizes that it is desirable to combine different methods of evaluation linked by different qualitative indicators and data sources. The Advisory Board stresses that neither the number of appeals nor the number of successful appeals can directly reflect the level of quality of the judgments being challenged.

It should be taken into account that the assessment of the quality of a judgment cannot in any way affect the independence of judges. An important principle is that the life tenure of judges cannot be called into question as a result of an unfavorable assessment. Foreign experience shows that one should not get carried away, as in the doctrine of Russia, only by quantitative criteria for assessing the quality of judicial decisions.

In connection with the above, the following conclusions and recommendations are offered:

1. It should be recognized that the quality of court decisions cannot be properly assessed if only the purely legal significance of a court decision is taken into account. The entire legal system should be assessed as a whole, since both external and internal factors influence the quality of court decisions.

2. Any way of assessing the quality of judicial decisions should not affect either the independence of the judiciary or individual judges.

3. It is recommended to apply various methods of quality assessment: evaluation of the activities of judges, statistical evaluation, evaluation of judges by local public authorities.

4. Judges can evaluate their colleagues and evaluate their own performance.

5. Participation in the evaluation of «external» persons (e.g. lawyers, prosecutors, law professors, citizens, national or international non-governmental organizations) is also allowed, provided that the independence of judges is fully ensured.

6. The first point in assessing the quality of judicial decisions should be to assess whether there is a speedy and effective appeals process.

7. Through their jurisprudence, their appraisal of judicial activities and annual reviews, higher courts can influence the quality of judicial decisions and their evaluation. In such cases, it is most important that the jurisprudence be presented clearly, consistently and sustainably. In their reports and clarifications, higher courts may develop guidelines for lower courts that draw attention to the principles applicable in their case law.

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