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## IMMORAL ACTIVITY OF JUDGES IN THE CONTEXT OF “BANAL EVIL”: LEGAL ASPECT

*The article examines the issue of immoral activity of judges, which harms a person seeking salvation and justice in court – which is a vivid illustration of the “banal evil” of our century. The main prerequisites for “banal evil” are human weakness, which allows a person to go against the moral law. Another important prerequisite for the immoral behaviour of judges is the motivation for illegal and easy enrichment against the background of general impunity. Thus, the inner manifestations and inclinations and temptations of the outside world push the judge to commit immoral acts, as a result of which the judge misuses his freedom and inviolability, commits “banal evil”, which should be blamed. The article examines international legal acts relating to the moral conduct of judges and analyzes the current national legislation on this issue, based on which it is concluded that the regulation of moral principles of a judge is only declarative. It was found that the category of “justice of the court” is the main counterweight to the category of “banal evil”. The whole system of European legislation is aimed at the criterion of “fairness of the court”, as evidenced by the numerous decisions of the European Court of Human Rights against Ukraine. The article presents cases of immoral actions of judges, which were established by the Public Integrity Council, which approved the Indicators for determining the non-compliance of judges with the criteria of integrity and professional ethics. Such criteria include the Public Integrity Council: independence of judges and their impartiality, honesty and integrity, observance of ethical norms and diligence. According to the indicators, the Public Integrity Council established several violations, however, as life shows, the judges were not responsible. But here it is not enough to talk only about non-compliance with moral norms or violation of professional ethics by judges, because, behind every decision, action or inaction of a judge is another person’s life, quality of life, property changes and most importantly moral (emotional) concerns. The banality of evil in the actions of a judge, in our opinion, is: any injustice (decisions, actions or omissions) and any untruthfulness (distortion of the truth, not a remark on the truth).*

**Key words:** morality, justice, judges, banal evil, society.

**Formulation of the problem.** Despite the large number of legal documents correcting the conduct of judges, the number of decisions of the European Court of Human Rights in terms of violations of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms is not reduced. The problem of frequent cases of dishonesty and bribery of judges, as well as violations of reasonable time limits for consideration of the case, remains relevant. Because of this, this problem remains relevant and needs constant consideration to improve the situation.

**Analysis of recent research and publications.** Scientists V.D. Tkachenko, S.P. Pogrebnyak, D.V. Lukyanov devoted their works to the issue of ethical behaviour of judges. However, this problem still has not lost its scientific significance in the works of Soviet scientists: M.S. Strogovich, Yu.V. Korenevsky, etc.

**Part of the general problem has not been solved previously.** In modern conditions of society development, issues of law and moral-

ity are focused, first of all, in the space of ensuring human rights and freedoms. Compliance with the high moral standards of the position of a judge is taking into account, in addition to the doctrine of legal normativism, also the social doctrine of morality. Moreover, the immorality of judges, in our opinion, can be considered from the standpoint of “banal evil”.

**Formulating the goals of the article.** Given the above, the purpose of the article is to study the moral and legal approaches in determining the immoral actions of judges as a “banal evil”.

**Presentation of the main research material.**

In this matter, we are primarily interested in evil, not natural, which can happen by itself and does not depend on human actions, but only moral evil, which is always the result of active or passive behaviour of a person to whom all who seek justice resort. The task of evil (illegal decision) to a person seeking salvation and justice in court is a vivid illustration of banal moral evil.

According to I. Kant, the category of “evil” is the maxim that does not agree with the moral law. Relevant in this regard is also another view of Kant, when he argues that in any single object of grounds for evil does not exist, just as there is no evil in the natural attraction to the object, and evil exists only in the rule, which a person establishes for the application of his arbitrary will [1]. Therefore, the main reason for an immoral act is human weakness, which allows a person to go against the moral law. Another important reason for the immoral behaviour of judges is the motivation for illegal and easy enrichment, received from others (judges, lawyers, etc.), which against the background of general impunity turns into a commitment to “evil”. Thus, we can assume that the cause of evil lies in the misuse of the judge’s freedom. Internal manifestations, inclinations and temptations push the judge to commit immoral acts, and thus we can say that we are dealing with a “banal evil” that must be blamed. According to researchers, “banal” or “radical evil” is characteristic and fully revealed only within a totalitarian state [2], because where there is state responsibility to man and guarantee the right of access to a fair trial of “banal evil” can not exist. To prevent “banal evil” in the judiciary, the rule of law sets up management systems, control, create appropriate legal cultures, have generated a huge array of demotivators for immoral acts. Therefore, starting to understand the issue of motivation for immoral acts, it is necessary to identify demotivating factors and find methods to eliminate them. In this regard, Ukraine has already taken many steps to overcome barriers to such a shameful motivation: raising judges’ salaries, bonuses and allowances, the system of personal protection of judges, the implementation of the Code of Judicial Ethics, etc., but this in the realities of today is not enough.

So, following Art. 1 of the Code of Professional Ethics of Judges, a judge must be an example of obedience to the law, strictly abide by the oath and always act in such a way as to strengthen the faith of citizens in honesty, independence, impartiality and justice of the court [3]. Unfortunately, this Code only regulates moral principles and norms, but according to the preamble to it “these norms cannot be used as a basis for disciplinary liability of judges and determine the degree of their guilt”, which means that judges should only strive to comply with them and privacy, but are not responsible for their violations. Also, the term “justice” – as the main moral postulate of the idea of creation and operation of the court occurs only once in the above Article 1. However, justice is, first of all, the human right to a fair trial, which following Art. 6 of the Convention for the Pro-

tection of Human Rights and Fundamental Freedoms include: independence and impartiality of the court, a reasonable time for consideration of the case, treatment of a person as innocent until proven guilty, providing a person with professional protection [4]. The fairness of the court as the main guarantee of equality before the law and timely, impartial consideration of the case is reflected in the International Covenant on Civil and Political Rights [5]. The Bangalore Principles on the Conduct of Judges of 19 May 2006 also emphasize the need for independence, the impartiality of judges, which is important for courts to fulfil their role in upholding constitutionalism and the rule of law, establishing public confidence in the judiciary in matters of morality, honesty and integrity, without which it is impossible to build a democratic state governed by the rule of law. A judge must perform his judicial function solely based on a factual assessment, following a conscious understanding of the law, regardless of outside influence, motivation, pressure, threats or interference (direct or indirect), demonstrating his conduct as impeccable, even from the point of view of an outside observer [6]. The European Charter on the Law on the Status of Judges, which aims to ensure the moral principles of incorruptibility and impartiality of judges “which everyone lawfully counts on when going to court”, is also aimed at fairness, and the state is obliged to provide judges with funds for the proper performance of their duties and for consideration of the case within a reasonable time [7]. Accordingly, Art. 7 of the Law of Ukraine “On the Judiciary and the Status of Judges” obliges judges in addition to fair, impartial and timely consideration of cases to adhere to the rules of judicial ethics, including to identify and maintain high standards of conduct in any activity to strengthen public confidence in the court, ensuring public confidence in the honesty and integrity of judges; submit a declaration of integrity of the judge and a declaration of family ties of the judge [8]. Thus, it turns out that the Law of Ukraine “On the Judiciary and the Status of Judges” obliges judges to adhere to the rules of judicial ethics, which, as noted above, are only declarative.

The category of “justice” includes the category of “truthfulness”. The problem of “moral evil” is also in the degree of truthfulness of the court, which today, on a real general scale, gives an impressive understanding of the general moral collapse. Truthfulness covers all the objective aspects of the trial, as well as the human ability to judge, which prevents “blindness” and “deafness” of the trial, and the will of the judge must always coincide with the moral norms of the law. In other

words, such behaviour of a judge would be ideal if his behaviour, qualities and “practical reason” could and should become the norms of moral law. In this case, the law of morality for judges would be written by the judges themselves in the process of life and their professional activities. That is why true morality is a manifestation of a person’s character, and its realization should be manifested only freely and consciously.

Thus, the banality of evil in the actions of the judge is:

- any injustice (decisions, actions or omissions);
- any untruth (distortion of the truth, not remarks on the truth).

Thus, the European Court of Human Rights considers unfair “excessive length of the contested process”, “unreasonable terms of the trial” (cases “Voitenko vs Ukraine”, “Zhovnir vs Ukraine”, “Naumenko vs Ukraine”, “Shmalko vs. Ukraine”, “Poltorachenko vs Ukraine”, “Sokur v. Ukraine”, “Piven vs Ukraine”, “Romashov vs Ukraine”, etc.

In January 2019, the Public Integrity Council (PIC) approved the Indicators for Determining Judges’ Non-Compliance with Integrity and Professional Ethics Criteria [9]. Among the criteria for the integrity of the GRD included:

- independence of judges. GRD investigates violations of the principle of political neutrality by a judge; receiving incompatible with the position awards; illegal interference in the work of the automated document management system of the court; support for aggressive actions of other states against Ukraine; using family, friends, and other informal connections to pursue a career or gain unjustified preferences; admission by a judge of actions or inaction, or decision-making due to political motives, corporate solidarity, manipulating circumstances or legislation, or having economic, corruption or other personal interest in making or not making a decision [10, p. 6–11];

- impartiality. The GRD provides a list of rulings in favour of a certain person, other than in other similar cases, or taking action to unduly complicate or delay the case; consideration of the case in the illegal composition of the court, about which the judge could not but know; consideration of the case received in violation, selective evasion of consideration of cases by declaring self-recusal in some, and failure to declare in other similar cases [10, p. 12–13];

- honesty and incorruptibility. The GRD indicates intentional or due to manifest negligence in the performance of its duties the reporting of inaccurate, incomplete information in the declaration of integrity; failure to notify

the existence of a conflict of interest and failure to take measures to prevent it; arbitrary imposition of restrictions on the exercise of the right to peaceful assembly; participation in the adoption of a court decision, consideration of the case that led to the repeated loss of Ukraine in the European Court of Human Rights; involvement in decisions that have caused damage to cultural heritage or created a significant risk of such damage; abnormally fast consideration of the case despite a clear legal prohibition and without the participation of the parties, the use of dubious methods of acquiring property; tax evasion, action or omission that led to the avoidance of lustration of him or another person; involvement in the abuse of procedural powers or rights, other actions that negatively affect the authority of justice, and failure to make efforts to eliminate the negative consequences of these actions [10, p. 13–20];

- observance of ethical norms. The GRD establishes cases of violation of the rules of ethics in professional activities or in private life, for example: the judge insulted the participants of the process, other persons or exerted unjustified pressure on them; violated the rights of journalists, allowed unethical communication with them; did not perform or dishonestly performed his/her parental or family responsibilities, in particular, tried to reduce their scope through the court by means of a fictitious lawsuit agreed with the other party; allowed gross violations of traffic rules; used the court form for correspondence for personal purposes, disseminated knowingly false information; allowed academic dishonesty (for example, used the results of someone else’s scientific or creative work on his own behalf); used his status to satisfy his own interests or the interests of others or allowed his actions or inaction to others to use his status to obtain illegal benefits or unjustified and unfair advantage; unreasonably failed to declare in time his property or family member, which is a liquid asset, income, or significantly underestimated its amount and (or) value, or unreasonably did not provide information for declaration by a family member; did not take sufficient measures to clarify the property status of the persons in respect of whom he must submit a declaration of a person authorized to perform the functions of state or local self-government, as a result of which he stated a false (including incomplete) information; did not convincingly explain the origin of liquid assets, expenses, benefits received (him, family members or relatives) or legal income, in the opinion of a prudent observer, raise doubts about the adequacy to acquire such assets, the implementation of such costs, the receipt of benefits; received property, income or benefit,

the legality of the origin of which, in the opinion of a prudent observer, raises reasonable doubts (interest-free loan in significant amounts to the detriment of the lender, receiving as a gift, free use or with a significant discount there is no evidence of the legality of income for the acquisition of such property, understatement of such property, etc.); received official housing as a result of abuse or privatized an apartment that was provided as official, for example, artificially increased the number of registered family members; if you have your own home, you have registered in a dormitory; registered his own real estate for relatives; received in this way the second or third apartment; received an apartment, privatized it and immediately sold it; received an apartment as a service apartment and took steps to privatize it, in particular, removed from office; violated the requirements of incompatibility, for example, did not transfer the right to manage its share in the company; did not react to known cases of dishonest or unethical behavior of colleagues, covered such behavior or known facts of illegal activities of judges, court employees, lawyers, law enforcement officers, neglecting responsibility not only for their behavior but for the justice system in general [10, p. 21–27].

– diligence. GRD proves cases when a judge: allowed obviously negligent execution of documents (decisions, rulings or other documents related to the judge's professional activity; documents submitted for participation in the competition or for evaluation, etc.); ignored the case-law of the European Court of Human Rights; allowed litigation, in particular, if it led to a violation of reasonable time in order to give the party to the process of actual benefits (for example, to take action that will prevent the execution of the decision or deprive it of the subject, avoid liability, etc.); committed a violation of the principle of publicity and openness (for example, prohibited audio recording in open court, as well as video recording by portable technical means); obstructed access to public information; not being at work (for example, was abroad, studying, in the temporarily occupied territory,

etc.), made court decisions; untimely made court decisions or transmitted them for publication, if it was systematic and intentional [10, p. 28–30].

It should be noted that these remarks of the Public Council of Integrity did not gain wide resonance and involvement of the perpetrators of the mentioned immoral violations.

### Conclusions

Thus, the moral principles of judges are mostly declarative, and practical decisions regarding the immoral actions of the “ministers of Themis” may in exceptional cases be only a belated reaction and only as loud speeches or debates.

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### Вероніка Горелова. Концептуальні тенденції сучасної моралі в правовому суспільстві

*У статті досліджується питання аморальної діяльності суддів, що завдає шкоди особі, яка шукає порятунку та справедливості в суді, що є яскравою ілюстрацією «банального зла» нашого століття. Основними передумовами «банального зла» є людська слабкість, що дозволяє особі йти врозріз моральному закону. Іншою важливою передумовою аморальної поведінки суддів можна назвати мотивацію до незаконного та легкого збагачення на фоні загальної безкарності. Таким чином, внутрішні прояви і схильності та спокуси зовнішнього світу штовхають суддю здійснювати аморальні вчинки, внаслідок чого суддя неправильно використовує власну свободу та недоторканість, вчиняє «банальне зло», що повинно ставитися в провину. У статті досліджені міжнародні правові акти, які стосуються моральної поведінки суддів, та проаналізовані норми чинного національного законодавства з цього питання, на підставі чого зроблено висновок про те, що регламентація моральних принципів судді має*

лише декларативний характер. Виявлено, що категорія «справедливість суду» є головною протиположною категорією «банальне зло». На критерій «справедливість суду» націлена вся система європейського законодавства, про що свідчать численні рішення Європейського Суду з прав людини, винесені проти України. У статті наведені випадки аморальних дій суддів, які були встановлені Громадською радою доброчесності, яка затвердила Індикатори визначення невідповідності суддів критеріям доброчесності і професійної етики. До таких критеріїв Громадська рада доброчесності віднесла: незалежність суддів та їх неупередженість, чесність та непідкупність, дотримання етичних норм та старанність. За такими індикаторами Громадською радою доброчесності встановлена численна кількість порушень, утім, як показує життя, відповідальність судді не несли. Але тут замало говорити про лише недотримання моральних норм чи порушення професійної етики суддями, оскільки за кожним рішенням, дією чи бездіяльністю судді стоїть життя іншої людини, якість її життя, майнові зрушення та головне моральні (душевні) хвилювання. Банальність зла в діях судді, на нашу думку, полягає у будь-якій несправедливості (рішеннях, дії чи бездіяльності) та будь-якій неправдивості (спотворення правди, не зауваження на правду).

**Ключові слова:** мораль, справедливість, судді, банальне зло, суспільство.