

Conflict of interest in the activities of judges in Ukraine and the European Union: a comparative legal study

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Abstract

The article examines certain problems of legal regulation of preventing conflicts of interest in the activities of judges in Ukraine, ways to resolve it, and foreign experience of individual EU countries in this area. The methodology of scientific work is based on a system of methods of general scientific and special legal methods of cognition. The analysis of the concept of "conflict of interest" in the scientific literature, national and international legal documents, in the legislation of individual EU countries was carried out. The definition of "conflict of interest in the activities of judges" is proposed. It is argued that the public interest in the activities of judges is the public interest in ensuring that persons working in the judicial system exercise their powers and make decisions impartially, objectively and fairly. Attention is focused on the peculiarities of the application of the system of voluntary disclosure and registration by judges of a list of private interests regarding a conflict of interest. The principles, signs, types and features of the presence or absence of a conflict of interest in the activities of judges are revealed, their content is specified. The procedure for disclosing information about a conflict of interest in the activities of judges is indicated. Two ways of resolving a conflict of interest in the activities of judges are established, their problematic issues are disclosed. The types of responsibility of judges in cases of violation of legislation on conflict of interest are determined. Separate directions for improving the legal regulation of preventing and resolving conflicts of interest in the activities of judges are proposed, taking into account the positive experience of legal regulation of individual EU countries in this area.

Keywords: justice, judiciary, conflict of interest, public interest, private interest, foreign experience of EU countries.

JEL Classification: K14, K24

DOI: 10.24818/TBJ/2023/13/2.06

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1. Introduction

The introduction of effective anti-corruption standards to ensure the integrity of the judiciary, the introduction of ethical standards, the prevention of conflicts of interest, and the development of anti-corruption programs, as well as the creation of an institutional mechanism for ensuring their observance are among the main tasks of the Anti-Corruption Strategy of Ukraine⁶. Ukraine and the European Union cooperate in the fight against corruption in both the private and public sectors (Article 22)⁷ also in the area of the judiciary. These Agreements between the parties impose mandatory requirements on the judiciary of Ukraine, in particular, on the introduction of effective prevention and settlement of conflicts of interest in the activities of judges. An urgent problem remains that a conflict of interest in the field of activity of the judiciary can arise directly in the exercise of powers by a judge and lead to a violation of the principles of independence and impartiality of the judiciary, fair trial, objectivity in decision-making⁸. In addition, the lack of control over conflicts of interest can lead to the dominance of private interests over public ones and therefore it is important to prevent and manage conflicts of interest⁹. Emphasizes the relevance of the study that the conflict of interest in the activities of judges is one of the most acute problems of judicial management, the unresolved nature of which discredits justice as an effective means of protecting rights, negatively affecting the efficiency and effectiveness of judges, and becomes a potential source of corrupt practices.

2. Literature review

There is a large number of studies in scientific sources on the prevention of corruption in the judiciary, and only a few of them consider the prevention and management of conflicts of interest in the activities of judges. In particular, Yurevich I.V., Mkhitarian L.E. studied the principles of combating corruption and the ethical aspects of resolving conflicts of interest in court¹⁰; Mostova I. clarified the specifics

⁶ On approval of the State Program for the implementation of the principles of state anti-corruption policy in Ukraine (Anti-Corruption Strategy) for 2015-2017. Resolution of the Cabinet of Ministers of Ukraine of April 29, 2015 № 265. Available at: <https://zakon.rada.gov.ua/laws/show/265-2015-%D0%BF#Text>, consulted on 12.11. 2022.

⁷ Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. Available at: https://zakon.rada.gov.ua/laws/show/ru/984_0111.

⁸ Yurevich I.V., Mkhitarian L.E. *Settlement of the Conflict of Interests in Court: Anti-Corruption Principles and Ethical Aspects*. Forum Prava, 2017. (5), p. 460. Available at: <https://forumprava.pp.ua/files/460-465-2017-5-72-.pdf>.

⁹ Lewicka-Strzańska A. *Teoretyczne i praktyczne aspekty identyfikacji i ograniczania konfliktu interesów*. Instytut Filozofii i Socjologii PAN w: A.Węgrzecki (red.) *Konflikt interesów – konflikt wartości*. Available at: <https://www.antykorupcja.gov.pl/ak/analizy-i-raporty/raporty-sytuacyjne/3470,Konflikt-interesow-Teoretyczne-i-praktyczne-aspekty-identyfikacji.html>, consulted on 12. 11.2022.

¹⁰ Yurevich I.V., Mkhitarian L.E. *op. cit.*, p. 461.

of resolving a conflict of interest in the activities of judges¹¹; Nesterchuk L.P. investigated the emergence of a conflict of interest in the activities of judges and the analysis of means for its prevention and settlement¹²; Andrushchenko O. Yu. explored the conflict of interest in justice from the perspective of the philosophy of law¹³. The conflict of interest in the activities of judges was also studied by foreign scientists. In particular, Guninchard S. explored certain features of the "status of a judge" and the category of "virtue" in relation to the management of a judge's conflict of interest. The author notes that it is these two concepts that form the basis for understanding the management of a judicial conflict of interest: the more the independence of a judge is guaranteed by his status, the less need to appeal to their virtue and, conversely, the less protected their status is, the more demanding they will have to be about one's personal ethics¹⁴. Huppé L. drew attention to institutional conflicts of interest within the courts¹⁵. Franková L. conducted an EU study on institutional arrangements for the enforcement of conflict of interest¹⁶ and others. However, the study of the problems of legal support for the prevention and settlement of conflicts of interest in the activities of judges in Ukraine has not been sufficiently studied in the legal literature, which indicates the scientific novelty and relevance of this work.

3. Materials and methods

The article used a system of general scientific and special methods to achieve the goal of the study. The methodological basis of the work is the dialectical method of scientific knowledge, which made it possible to consider certain issues of legal support for the prevention and settlement of conflicts of interest in the activities of judges. Instrumental and axiological methods were also used to study the subject of the work. With the help of system-functional and comparative methodological methods, the content of "conflict", "conflict of interest" was analyzed, the legal structure "conflict of interest in the activities of judges" was established, the principles were analyzed, signs were established, types of conflict of interest in the

¹¹ Mostova I. *Conflict of interests in the activities of judges: features of the settlement*. 2019. Legal Gazette. Available at: <https://yur-gazeta.com/publications/practice/inshe/konflikt-interesiv-u-diyalnosti-suddiv-osoblivosti-vregulyuvannya.html>, consulted on 12.11. 2022.

¹² Nesterchuk L.P. *The emergence of a conflict of interest in the activities of judges and the analysis of means for prevention and settlement*. Scientific Bulletin of Public and Private Law. 2020. Iss. 2, p. 262.

¹³ Andrushchenko O. Yu. *Conflict of interest in justice: philosophical and legal study*: PhD thesis in Law. Khmelnytskyi University of Management and Law named after Leonid Yuzkov under Khmelnytskyi Regional Council, Khmelnytskyi, 2020, p. 151.

¹⁴ Guninchard S. *La gestion des conflits d'intérêts du juge: entre statut et vertu*. „Pouvoirs”, 2013. 4. 147, p. 79. DOI:10.3917/pouv. 147.0079.

¹⁵ Huppé L. *Les conflits d'intérêts institutionnels au sein de la magistrature*. Revue de Droit RDUS, 2007-2008. Vol. 38, no. 1. p. 135, <https://doi.org/10.17118/11143/11561>.

¹⁶ Franková L. *EU summary research on current institutional enforcement mechanisms of Conflict of interest*. 2014. Available at: https://www.oziveni.cz/wp-content/uploads/2014/08/oziveni_analyza_stret_zajmuEU_en_02.pdf, consulted on 12.11. 2022.

activities of judges were revealed, the types of liability for violation of the rules for preventing and resolving conflicts of interests of judges are established. Using the system-functional method, the authors also had the opportunity to reveal such categories as “public interest in the judicial system”, features of the procedure for applying the “system of voluntary disclosure and registration by judges of a list of private interests”, analyze ways of resolving a conflict of interest, reveal two options, namely (1) a conflict of interest that can be resolved by procedural legislation (2) and a type of conflict in the activities of judges that cannot be resolved by procedural legislation. Methods only in interaction with each other and in synthesis with other scientific methods allowed the authors to draw scientifically based conclusions regarding the settlement of conflicts of interest in the activities of judges. The comparative methodological method also made it possible to identify legal patterns, prevent and resolve conflicts of interest in the activities of judges, identify problems and suggest areas for optimizing legislation, taking into account the positive experience of individual countries of the European Union.

4. Legal basis for the formation of legal support for the prevention and settlement of conflicts of interest in the activities of judges

The professional activity of judges in Ukraine belongs to the elements of public service and is one of the types of service in the judiciary. A single legislative definition of the term “public service” is defined in the Code of Administrative Procedure of Ukraine. This term should be understood as activities in state political positions, in state collegiate bodies, professional activities of judges, prosecutors, military service, alternative (non-military) service, other public service, patronage service in state bodies, service in the authorities of the Autonomous Republic of Crimea, bodies local government (clause 17, part 1, article 4 of the Code of Administrative Procedure of Ukraine)¹⁷. Public service in the judiciary is a politically neutral professional service as a judge in the courts, in other judicial administration bodies, in the state body and institutions of the justice system, with the aim of organizing and ensuring the activities of courts and judges¹⁸. Judges are more likely to encounter cases of conflict of interest than other public servants, as they may consider a case in which their close person is a party in this regard, in violation of the principle of objectivity and impartiality of judges when considering court cases. Note that the prevention and settlement of conflicts of interest in the activities of a judge of the Constitutional Court of Ukraine is not the subject of our work.

Normative legal acts covering the legal provision for the prevention and settlement of conflicts of interest in the activities of judges can be divided into two

¹⁷ *Code of Administrative Procedure of Ukraine*: Law of Ukraine of July 6, 2005 № 2747-IV. Available at: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>, consulted on 12.11. 2022.

¹⁸ Holobutovsky R.Z. *Public service in the judiciary as an administrative and legal category*. „Legal scientific electronic journal”, 2019. 1. 127-129. Available at: http://www.lsej.org.ua/1_2019/34.pdf, consulted on 12.11. 2022, p. 129.

levels (1) legislative and (2) by-law and distinguish two types (a) general and (b) special. The first level should include such legislative acts as the Constitution of Ukraine, the Law of Ukraine "On the Prevention of Corruption", the Law of Ukraine "On the Judiciary and the Status of Judges", the Code of Civil Procedure, the Criminal Procedure Code, the Code of Administrative Procedure of Ukraine, the Law of Ukraine "On Public Service » and international legal documents ratified by the Verkhovna Rada of Ukraine. The subordinate level of legal support for the prevention and settlement of conflicts of interest in the activities of judges includes the following documents: for example, the procedure for monitoring compliance with the law regarding conflicts of interest in the activities of judges and other representatives of the judiciary and its settlement¹⁹, Regulations on the Committee for Ethics, Settlement of Conflicts of Interest and Professional Development of Judges of the Council of Judges²⁰ and others.

The norms of international law have significantly influenced the formation of ways to prevent and resolve conflicts of interest in the activities of judges²¹; therefore, it is necessary to point to the main international documents regulating preventive mechanisms for preventing corruption, namely: Inter-American Convention against Corruption (Article 3: preventive mechanisms); Anti-Corruption Protocol of the Economic Society of West African Countries (article 5: preventive mechanisms); African Union Convention on Preventing and Combating Corruption (Article 7: Corruption and Related Crimes in the Public Service); 1999 Criminal Convention on Corruption; 1999 Civil Convention on Corruption; UN Convention against Corruption in 2003 (Chapter II: Preventive Mechanisms); International Code of Conduct for Public Officials (Article II: Conflict of Interest and Disqualification); documents of the Organization for Economic Development and Cooperation - Guidelines for managing conflicts of interest in the public service - transparency and accountability in the public sector; Council of Europe documents - Model Code of Conduct for Public Officials (Article 13: Conflict of Interest) and others.

Thus, the first anti-corruption tool was the International Code of Conduct for Public Officials, approved by the UN General Assembly Resolution 51/59 of December 12, 1996²². In particular, the Criminal Convention on Corruption of 1999

¹⁹ *Procedure for monitoring compliance with the legislation on conflicts of interest in the activities of judges and other representatives of the judicial system and its settlement*: decision of the Council of Judges of Ukraine of February 4, 2016 № 2. Available at: <https://zakon.rada.gov.ua/rada/show/vr002414-16#Text>, consulted on 12.11. 2022.

²⁰ *Regulations of the Council of Judges of Ukraine on the Committee on Ethical Compliance, Prevention of Corruption and Settlement of Conflicts of Interest*: Decision of the Council of Judges of Ukraine 04.02.2016 № 3 (as amended by the decision of 01.03.2019 № 15). Available at: <https://zakon.rada.gov.ua/rada/show/vr003414-16#Text>, consulted on 12.11. 2022.

²¹ Sometimes special training is needed: "the balance between public and private interests, the proliferation of tribunals, the consistency of the solutions of the arbitral tribunals, the competence of the judges and the answer to the question whether they are really trained in the field of public international law or not" in Cristina Elena Popa Tache, *Introduction to International Investment Law*, Ed. Adjuris International Academic Publisher, 2020 p. 131.

²² *International Code of Conduct for Public Officials*: International Document dated 23.07.1996 № 995_788. Available at: https://zakon.rada.gov.ua/laws/show/995_788#T, consulted on 12.11. 2022.

notes that corruption threatens the rule of law, democracy and human rights, destroys good governance, honesty and social justice, hinders competition and economic development, threatens the stability of democratic institutions and the moral principles of society²³. The Civil Convention on Corruption of 1999 establishes the right to initiate legal proceedings in order to obtain compensation for harm caused as a result of an act of corruption or failure to take reasonable measures to prevent the commission of a corrupt act (Article 3 Civil Convention on Corruption)²⁴. The United Nations Convention against Corruption (New York, 2003) provides that each State Party shall endeavor, in accordance with the fundamental principles of its domestic law, to establish, maintain and strengthen systems that promote transparency and prevent conflicts of interest (art. 4, 7 "Public Sector")²⁵. In the International Code of Conduct for Public Officials, to which the mentioned Convention refers, the mechanisms for preventing and resolving conflicts of interest are regulated in such provisions of Chapter II "Conflicts of Interest and Waiver"²⁶. Article 8 of Recommendation No. R (2000) 10 of the Committee of Ministers of the Council of Europe to member states on codes of conduct for civil servants, adopted at the 106th session of the Committee of Ministers on 11 May 2000, states that a civil servant must not allow his personal interests to be in conflict with his or her public office. It is his or her duty to avoid such conflicts, real, potential or possible. A civil servant should not abuse his position in favor of his personal interests. Article 21, paragraph 2, states that "a public official shall not attempt to influence for private purposes any person or organization, including other public officials, by taking advantage of his official position or offering them personal benefits"²⁷.

In the legal provision for the prevention and settlement of conflicts of interest in the activities of judges, documents such as the Basic Principles on the Independence of the Judiciary, which were approved by General Assembly resolutions 40/32 and 40/146 of November 29 and December 13, 1985, have an important influence, which indicate, that the judiciary decides cases referred to them impartially, on the basis of facts and in accordance with the law, without any restriction, undue influence, inducement, pressure, threats or interference, direct or

²³ *Criminal Convention on Corruption*: International Document of 27 January 1999 № ETS173. Available at: https://zakon.rada.gov.ua/laws/show/994_101#Text, consulted on 12.11. 2022.

²⁴ *Civil Convention on Corruption*: International Document of 04.11.1999 года 994_102. Available at: https://zakon.rada.gov.ua/laws/show/994_102#Text, consulted on 12.11. 2022.

²⁵ United Nations Convention against Corruption: international document of October 31, 2003 No. 995_c16. Official Bulletin of Ukraine. 2010. No. 10. No. 44. 2006, Art. 2938. Art. 506.

²⁶ *International Code of Conduct for Public Officials*: International Document dated 23 July 1996 № 995_788 Available at: https://zakon.rada.gov.ua/laws/show/995_788#, consulted on 12.11. 2022.

²⁷ *Recommendation № R (2000) 10 of the Committee of Ministers of the Council of Europe to member states on codes of conduct for civil servants*: adopted by the Committee of Ministers at its 106th session on 11 May 2000. Available at: http://www.dridu.dp.ua/cpk/Lib/7_Zapobigannya%20ta%20protydiya%20proyavam%20korup/Legislation/Legislature/Rekomend_poved_DS.pdf, consulted on 12.11.2022.

indirect, from any side and for any reason²⁸. In the "Recommendations for the Effective Implementation of the Basic Principles on the Independence of the Judiciary", approved by the resolution of the UN General Assembly of December 15, 1989, in which it is proclaimed, that no judge may be appointed, elected or otherwise involved in the exercise of his office on terms or for purposes inconsistent with the basic principles of the independence of the judiciary. No judge should enter court on terms or for a purpose inconsistent with the Basic Principles on the Independence of the Judiciary (recommendation 2)²⁹. The Bangalore Principles of Judicial Conduct states that a judge not only excludes any relationship, inappropriate position or interference from the legislative and executive authorities, but also does it in such a way that it is clear even to an outside observer (paragraph 1.3), and also that the judge not only excludes any relationship that does not correspond to the position or interference from the legislative and executive authorities, but also does it in such a way that it is clear even to an outside observer (paragraph 2.5)³⁰, the European Charter on the Law "On the Status of Judges" states that judges must refrain from acts, actions or statements that could undermine confidence in their impartiality or independence (paragraph 4.3)³¹, Recommendations CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member states regarding judges: independence, efficiency and duties state that judges may engage in activities outside their official functions. In order to avoid actual or perceived conflicts of interest, such activities must be compatible with their impartiality and independence (art. 22)³².

The Constitution of Ukraine mentions a "conflict of interest" in the context that there are grounds for the dismissal of a judge.... violation by the judge of the requirements for incompatibility (Article 126, part 6, paragraph 2)³³. The conflict of interest is considered most widely in the Law of Ukraine "On the Prevention of Corruption" dated October 14, 2014, No. 1700-VII. One of the advantages of the Law is that it distinguishes between such categories of conflict of interest as "real" and "potential". According to Article 3 of the Law of Ukraine "On the Prevention of

²⁸ *Basic principles of judicial independence*: General Assembly resolutions 40/32 and 40/146 of 29 November and 13 December 1985. International document dated 13.12.1985 995_201. Available at: https://zakon.rada.gov.ua/laws/show/995_201#Text, consulted on 12. 11.2022.

²⁹ *Recommendations for the effective implementation of the Basic Principles on the Independence of the Judiciary*: General Assembly Resolutions 40/32 and 40/146 of 29 November and 13 December 1985. Available at: <http://www.judges.org.ua/article/d4.htm>, consulted on 12.11. 2022.

³⁰ *Bangalore Principles of Court Conduct* dated 19 May 2006: Economic and Social Resolution of the UN 27.07.2006 N 2006/23: International Document dated 19.05.2006 No. 995_j67. Available at: https://zakon.rada.gov.ua/laws/show/995_j67#Text, consulted on 12.11.2022.

³¹ *European Charter on the Status of Judges*: international document of 10 July 1998 № 994_236 Available at: https://zakon.rada.gov.ua/laws/show/994_236#Text, consulted on 12.11.2022.

³² *Recommendation CM/Rec (2010) 12 of the Committee of Ministers of the Council of Europe to member states on judges: independence, efficiency and responsibilities*: International document of 17.11.2010 № 994_a38 Available at: https://zakon.rada.gov.ua/laws/show/994_a38#Text, consulted on 12.11. 2022.

³³ *Constitution of Ukraine*: Law of Ukraine No 254к/96 of 28 June 1996. Information of the Verkhovna Rada of Ukraine. № 30. Art. 141.

Corruption", judges are subjects to which the requirements of this Law apply, including the prevention and settlement of conflicts of interest³⁴. In Ukraine, the rules for preventing and resolving conflicts of interest in the activities of judges are determined by laws that regulate the status of judges and the basis for organizing the activities of courts. Such a normative legal act for judges is the Law of Ukraine "On the judiciary and the status of judges"³⁵.

The basic procedures for resolving conflicts of interest are also set out in articles 23-25 of the Civil Procedure Code of Ukraine³⁶, Articles 75-76 of the Criminal Procedure Code of Ukraine³⁷. In addition, the Civil Procedure Code of Ukraine and the Criminal Procedure Code of Ukraine contain grounds for disqualifying a judge, which is understood as a definition of a procedural conflict of interest. Articles 20-21 of the Civil Procedure Code of Ukraine contain the following signs of a procedural conflict of interests of a judge: (1) preliminary participation in a case; (2) family ties to the parties and other interested parties in the proceeding, including panel judges; (3) direct or indirect interest in the outcome of the case; (4) doubts about objectivity and impartiality³⁸. It should be emphasized the importance in the field of legal support for the prevention and settlement of conflicts of interest in the activities of judges of the provisions of the Code of Judicial Ethics, which states that the professional activities of judges oblige them to have high moral qualities in society. The Code of Judicial Ethics proclaims that such behavior should be not only in the courtroom, but also outside it. In particular, the judge should serve as an example of strict adherence to the requirements of the law and the rule of law, the oath of the judge, as well as high standards of conduct in order to strengthen citizens' confidence in the honesty, independence, impartiality and fairness of the court (Art. 1). He does not have the right to use his official position for personal interests or in the interests of others and must not allow others to do so (Ar. 2)³⁹.

5. Conflict of interest in the activities of judges, the concept, principles and features, as well as problems of legal support

According to Article 3 of the Law of Ukraine "On the Prevention of Corruption", judges are subjects for the settlement of conflicts of interest⁴⁰.

³⁴ *On Prevention of Corruption*: Law of Ukraine of October 14, 2014 № 1700-VII. Information of the Verkhovna Rada of Ukraine. 2014. № 49.

³⁵ *On the Judiciary and the Status of Judges*: Law of Ukraine of June 2, 2016 № 1402-VIII. Information of the Verkhovna Rada of Ukraine. 2016. № 31. Art. 545.

³⁶ *Civil Procedure Code of Ukraine*: Law of Ukraine of March 18, 2004, № 1618-IV. Information of the Verkhovna Rada. 2004. № 40-41. 42. Art. 492.

³⁷ *Criminal Procedure Code of Ukraine*: Law of Ukraine of April 13, 2012 № 4651-VI. Information of the Verkhovna Rada of Ukraine. 2013. № 9-10. № 11-12. № 13. Art. 88.

³⁸ *Civil Procedure Code of Ukraine*: Law of Ukraine of March 18, 2004, № 1618-IV. Information of the Verkhovna Rada of Ukraine. 2004. № 40-41. 42. Art. 492.

³⁹ *Code of Judicial Ethics*: approved by the XI Regular Congress of Judges of Ukraine on February 22, 2013 Available at: <https://zakon.rada.gov.ua/rada/show/n0001415-13#Te>, consulted on 12.11. 2022.

⁴⁰ *On Prevention of Corruption*: Law of Ukraine of October 14, 2014 № 1700-VII. Information of the Verkhovna Rada. 2014. № 49. Art. 2056.

Stakeholders who may have a conflict of interest in a judge's decision include: (1) the judge; (2) jurors; (3) court clerks; (4) experts; (5) scientists; (6) translators⁴¹. Concerning such court employees as: secretaries of the court session, court bailiffs, archivists and others who are subject to the Law of Ukraine "On the judiciary and the status of judges"⁴² does not apply, the issue of preventing and resolving conflicts of interest of this circle of employees must be resolved in accordance with the legislation on public service. Judges are officials holding a responsible and especially responsible position (note to Article 50 of the Law of Ukraine "On the Prevention of Corruption" dated October 14, 2014, No. 1700-VII). The Law of Ukraine "On the Prevention of Corruption" defines two types of conflict of interest, namely: (1) potential and (2) real. Thus, the Laws of Ukraine "On the Prevention of Corruption" and "On the Judiciary and the Status of Judges" are the main legislative acts for preventing and resolving conflicts of interest in the activities of a judge.

In the legal provision for the prevention and settlement of conflicts of interest in the activities of a judge, its legislative definition and relevant signs and principles play an important role⁴³. Regarding the concept of "conflict of interest in the activities of a judge", there is no single understanding both in scientific sources, and it is not defined in legislative acts. According to Article 1 of the Law of Ukraine "On the Prevention of Corruption" dated October 14, 2014 No. 1700-VII, the definition of "potential conflict of interest" is defined - the presence of a private interest in a person in the area in which he exercises his official or representative powers, which may affect the objectivity or impartiality of his decisions, or the commission or non-commission of actions in the exercise of these powers; and the term "real conflict of interest" - a contradiction between the private interest of a person and his official or representative powers, which affects the objectivity or impartiality of decision-making, or the commission or non-commission of actions in the exercise of these powers⁴⁴. According to Art. 13 of the Model Code of Conduct for Civil Servants, a conflict of interest arises in a situation where a civil servant has an influential personal interest or can influence the impartiality and objectivity of the performance of his official duties⁴⁵. According to the OECD, a conflict of interest is a conflict between public duties and the private interests of a public official when he

⁴¹ Tilman H. *Managing conflict of interest in the Ukrainian judiciary*. 2017. NJ_Conflict_of_Interest_Judiciary_Report_2017_ENG-1.pdf, p.16.

⁴² *On the Judiciary and the Status of Judges*: Law of Ukraine of June 2, 2016 № 1402-VIII. Information of the Verkhovna Rada. 2016. № 31. Art. 545.

⁴³ Busato, P. C. (2023), *La Crisis De La Verdad y de La Ciencia En El Derecho Penal: The Crisis of Truth and Science in Criminal Law*, „Cadernos de Dereito Actual”, (21), pp. 167 et seq. Available at: <https://www.cadernosdedereitoactual.es/ojs/index.php/cadernos/article/view/935> (Accedido: 19 junio 2023).

⁴⁴ *On Prevention of Corruption*: Law of Ukraine of October 14, 2014 № 1700-VII. Information of the Verkhovna Rada. 2014. № 49. Art. 2056.

⁴⁵ Recommendation № R (2000) 10 of the Committee of Ministers of the Council of Europe to member states on codes of conduct for civil servants: adopted by the Committee of Ministers at its 106th session on 11 May 2000. Available at: http://www.dridu.dp.ua/cpk/Lib/7_Zapobigannya%20ta%20protydiya%20proyavam%20korup/Legislation/Legislature/Rekomend_poved_DS.pdf, consulted on 12.11.2022.

has private interests that may inappropriately affect the performance of his official duties and powers⁴⁶. Regarding the term "conflict of interest" in the legislation of individual EU countries. Thus, in the Czech Republic, Law No. 159/2006 of March 16, 2006 "On Conflict of Interest" determines that a public official is obliged to refrain from any actions in which his personal interests may affect the performance of his functions. For the purposes of this Conflict of Interest Law, personal interest means an interest that brings a public official, a person close to a public official, a legal entity controlled by public officials, or a person close to a public official, to an increase in property, property or other benefits, preventing a possible reduction in ownership or other benefit or other benefit⁴⁷. In France, the term "conflict of interest" is defined in Article 7-1 of the Law "On the status of the judiciary", this term means any situation of interference between the public interest and the public or private interests which may affect or appear to affect the independent, impartial and objective performance of the function⁴⁸.

In the legal encyclopedia, the concept of "conflict" is considered as a collision, a serious discrepancy, a dispute. There is no common understanding of the concept of "conflict of interest" in scientific sources. So, some scientists, considering the concept of "conflict of interest", connect its occurrence with a person's lack of freedom of choice and argue that "even formally independent persons, which we all are, in some cases are forced to face a choice, and often this choice is not in favor of those interests that need legal protection (public interests)"⁴⁹, there are opinions that a conflict of interest in the field of public service is a situation in which a public person, in the performance of his duties, has a private interest (personal interest), which, although not necessarily leads to the adoption of an unlawful decision or the commission of an unlawful act in the field of public service, but capable of leading to this⁵⁰. Franková L. believes that the essence of the "conflict of interest" is the violation of the socially acceptable balance between the personal interests of officials and the public interest. Importantly, situations of conflict of interest that are not properly managed can lead to corruption⁵¹. There is also an opinion of researchers

⁴⁶ *Managing Conflicts of Interests*. OECD Guidelines and Country Experiences"2003. Available at: <https://www.oecd.org/gov/ethics/oecdguidelinesformanagingconflictsofinterestinthepublicservice.htm>, consulted on 12.11.2022.

⁴⁷ Zákon č. 159/2006 Sb. Zákon o střetu zájmů. Available at: <https://www.zakonyprolidi.cz/cs/2006-159>, consulted on 12.11.2022.

⁴⁸ *Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000339259>, consulted on 12.11.2022.

⁴⁹ Dedov D.I. *Legal method: a scientific essay*. M.: "Wolters Kluwer", 2008, p. 231.

⁵⁰ Shevchuk O. *Conflict of interests in the public services in Ukraine: administrative and legal regulation and problems of realization*. in Collective monograph, *Institutionalization of public relations in the fight against corruption: the experience of countries of Eastern and Western legal traditions (universal theoretical framework for the relevant anti-corruption law of Ukraine)*, Volume 2. Tallinn: Izdevnieciba "Baltija Publishing", 2019, p. 405 – 427.

⁵¹ Franková L. *EU summary research on current institutional enforcement mechanisms of Conflict of interest*. 2014. Available at: https://www.oziveni.cz/wp-content/uploads/2014/08/oziveni_analyza_stret_zajmuEU_en_02.pdf, consulted on 12.11.2022.

that a conflict of interest is a moral category, as well as a corruption-legal one, and therefore its settlement should also be carried out through ethical standards⁵². Consequently, a conflict of interest in the activities of judges is a contradiction between the private interests of judges as a public servant and his official duties, the presence of which may affect the objectivity and impartiality of decision-making, as well as the commission or non-commission of actions in the course of his official activities. In order to prevent and resolve conflicts of interest, a judge must: (1) avoid any situations that may cause a conflict of interest in his activities; (2) take actions that may be beneficial to any of the parties to the case or lawyers involved in the process; (3) not use his official position. In the future, we will pay attention to the principles of preventing and resolving conflicts of interest in the activities of a judge and disclosing its signs.

In scientific sources, he highlights the general principles for preventing and resolving conflicts of interest as a way to prevent corruption, namely: (1) the rule of law, (2) legality, (3) democracy, (4) efficiency, (5) virtue, (6) transparency, (7) social orientation, (8) patriotism, (9) planning, (10) complexity, (11) stability, (12) controllability not for personal gain or in the private interests of others⁵³. Such principles as the rule of law, virtue, legality, transparency, controllability, independence can be attributed to the basic principles of preventing and resolving conflicts of interest in the activities of a judge. We do not deny the existence of additionally other principles in this area.

Andrushchenko O. Yu. to the signs of a conflict of interest in the field of justice, he proposes to attribute, namely: (1) a conflict of interest is a consequence of the existing contradictions between the personal (material and non-material) interests of a judge and the principles of the administration of justice, its content; (2) its derivativeness from social and moral conflicts; (3) three levels of existence of a conflict of interest (microgroup, mesogroup, macroenvironment); (4) a real threat of misconduct by the person who has it; (5) a moral basis that allows us to consider it as an intrapersonal conflict of a judge, arising from a contradiction between personal interests and the fundamental foundations of the administration of justice, which in the course of his professional activity can influence the commission or non-commission of actions, decision-making, generating distrust and condemnation from civil society parties⁵⁴. Nesterchuk L.P. the main signs of a conflict of interests of judges include (1) the presence of a private interest of a judge, (2) the official powers

⁵² Yurevich I.V., Mkhitarian L.E., *op. cit.*, p. 463.

⁵³ Rivchanenko S.V. *Prevention and settlement of conflicts of interest as a way to combat corruption*: PhD. thesis of law, 2017, p. 63, available at: http://phd.znu.edu.ua/page/dis/07/Rivchachenko_diss.pdf, consulted on 12.11.2022.

⁵⁴ Andrushchenko O. Yu. *op. cit.*, 2020, p. 5. See also Correia, P. M. A. R., Mendes, I. de O., & Lopes, J. R. S. (2018). *A identificação das dimensões da gestão da qualidade na reforma dos sistemas judiciais: o caso dos tribunais portugueses*. „Lex Humana” (ISSN 2175-0947), 10(2), 72 et seq. Recuperado de <https://seer.ucp.br/seer/index.php/LexHumana/article/view/1595>.

of a judge⁵⁵. From our point of view, the main signs of a conflict of interest in the activities of a judge include: (1) the private interest of the judge, (2) the public interest of the judge, (3) the official powers of the judge.

The public interest in the judiciary is the public interest in ensuring that persons working in the judiciary exercise their powers and make decisions impartially, objectively and fairly. Signs of public interest as a legal category are: (1) the public nature of public interests (appointment of public interest); (2) connection with mass character (quantitative aspect); (3) recognition by the state and provision with law (normatively fixed, represent significant social values, or are generally allowed by law as a certain manifestation of concern on the part of the state about the stability of the rule of law); (4) the possibility of their implementation with the help of state-power measures⁵⁶. Therefore, the public interest in the field of activity of a judge is the public interest in ensuring that judges working in the judiciary exercise their powers and make decisions based on the principles of independence, fair trial and objectivity in making judicial decisions. The Law of Ukraine "On the Prevention of Corruption" dated October 14, 2014 No. 1700-VII defines the concept of "private interest" as any property or non-property interest of a person, including those caused by personal, family, friendly or other outside relationships with individuals or legal entities, including those arising in connection with membership or activities in public, political, religious or other organizations. In fact, the definition of the category of "private interest" at the legislative level does not cover, for example, cases of hostile relations, which may develop from official relations, in cases of direct subordination in the service, or a long period of joint work in a small team...⁵⁷ In the legal literature, this type of conflict of interest in the activities of a judge is distinguished as "imaginary". By it is meant the presence of certain circumstances that an outside observer can regard as affecting the impartiality and objectivity of the judge's performance of his official powers, although in fact this influence does not exist for objective reasons. As an example of an "imaginary conflict of interest in the activities of a judge", one can cite the case when a judge, during the exercise of his powers, started on behalf of a state body business relations with a legal entity in which he was previously a founder, but for a long time does not maintain with its officials persons and founders no relationship.

⁵⁵ Nesterchuk L.P. *The emergence of a conflict of interest in the activities of judges and the analysis of means for prevention and settlement*. Scientific Bulletin of Public and Private Law. 2020. Iss. 2, p. 264.

⁵⁶ Berestova I. E. *Legal category "public interest" from the standpoint of a systematic approach*. „Legal government”, No. 33. (2019). pp. 19-28. Available at: <http://pd.onu.edu.ua/article/view/162015>, consulted on 12.11.2022.

⁵⁷ Malyshyva Yu., Zaichenko, O. Baranyuka, Bazyliivska O. *Analytical report on the results of evaluating the effectiveness of the application of the laws of Ukraine on conflict of interest*. 2021. Available at: https://www.undp.org/sites/g/files/zskgke326/files/migration/ua/PRP_PLS_Conflict_of_interests_UKR.pdf, consulted on 12.11.2022.

6. Ways to prevent and resolve conflicts of interest in the activities of a judge and types of responsibility

According to the provisions of Part 1 of Article 35 of the Law of Ukraine “On the Prevention of Corruption”, the rules for preventing and resolving conflicts of interest in the activities of judges are determined by laws regulating the status of judges and the principles for organizing the activities of courts⁵⁸. Such a regulatory legal act of Ukraine regarding the activities of judges includes the Law of Ukraine “On the judiciary and the status of judges”. This legislative act provides that control over compliance with the requirements of the legislation on the settlement of conflicts of interest in the activities of judges (in the event that such a conflict cannot be resolved in the manner prescribed by the procedural law) (paragraph 6 of part 8 of article 133 of the Law of Ukraine “On the judiciary and status of judges”)⁵⁹. Thus, the regulation of the “extra-procedural conflict of interest” in the activities of judges and the implementation of control over compliance with the requirements of the legislation on the settlement of conflicts of interest is carried out by the Council of Judges of Ukraine. Thus, the Decision of the Council of Judges of Ukraine dated February 4, 2016 No. 2 approved the Procedure for monitoring compliance with the law regarding conflicts of interest in the activities of judges and other representatives of the judiciary and its settlement⁶⁰, a Decision of the Council of Judges of Ukraine dated February 4, 2016 No. 3 approved the Regulations on the Committee for Ethics, Settlement of Conflicts of Interest and Professional Development of Judges of the Council of Judges⁶¹.

The peculiarities of legal support for the prevention and settlement of conflicts of interest in the activities of judges include “a system of voluntary disclosure and registration by judges of a list of private interests”, the presence of which may affect objectivity and impartiality in decision-making. Judges have the right to submit a voluntary declaration of private interests. The declaration contains the personal data of the declarant, his/her place of work, data on ties with individuals (data on family members, relatives and other persons with whom a conflict of interest may arise), ties with legal entities, individual (teaching, scientific and creative) activities, transactions. For the purpose of proper registration of submitted voluntary declarations and information on private interests, the Council of Judges of Ukraine

⁵⁸ *On Prevention of Corruption*: Law of Ukraine of October 14, 2014 № 1700-VII. Information of the Verkhovna Rada. 2014. № 49. Art. 2056.

⁵⁹ *On the Judiciary and the Status of Judges*: Law of Ukraine of June 2, 2016 № 1402-VIII. Information of the Verkhovna Rada. 2016. № 31. Art. 545.

⁶⁰ *Procedure for monitoring compliance with the legislation on conflicts of interest in the activities of judges and other representatives of the judicial system and its settlement*: decision of the Council of Judges of Ukraine of February 4, 2016 № 2. Available at: <https://zakon.rada.gov.ua/rada/show/vr002414-16#Text>, consulted on 12.11.2022.

⁶¹ *Regulations of the Council of Judges of Ukraine on the Committee on Ethical Compliance, Prevention of Corruption and Settlement of Conflicts of Interest*: Decision of the Council of Judges of Ukraine 04.02.2016 № 3 (as amended by the decision of 01.03.2019 № 15). Available at: <https://zakon.rada.gov.ua/rada/show/vr003414-16#Text>, consulted on 12.11.2022.

may maintain a Register of Private Interests of Subjects of a Conflict of Interest⁶². The submission by judges of a voluntary declaration of private interests does not relieve them from the obligation to take actions to prevent the emergence of a real conflict of interest, to refrain from taking actions or making decisions in conditions of a real conflict of interest, to promptly report the presence of a real conflict of interest in accordance with Part 10 of Article 133 "On judiciary and the status of judges in Ukraine"⁶³.

A conflict of interest in the activities of a judge can be resolved by such measures as: (1) external and (2) self-settlement, and also through "disclosure of information about a conflict of interest." There may be two options for resolving a conflict of interest in the activities of judges: (1) the first - by procedural legislation (2) and such a type of conflict of interest that cannot be resolved by procedural legislation. Thus, the Law of Ukraine "On the Prevention of Corruption" identifies the following measures of external and independent settlement of a conflict of interest, namely: (1) removal of a person from performing a task, taking actions, making a decision or participating in its adoption in conditions of a real or potential conflict of interest; (2) the application of external control over the performance by the person of the relevant task, the performance by him of certain actions or decision-making; (3) restricting a person's access to certain information; (4) reconsidering the size of a person's job opportunities; (5) transfer of a person to another position; (6) dismissal of the individual.

From the point of view of Mostova I., the Council of Judges of Ukraine also refers to the ways of resolving a conflict of interest as "disclosure of information about a conflict of interest", if after such disclosure by the parties to the process or other interested parties, he was not challenged⁶⁴. If a judge has a case in which the court sees signs of a conflict of interest, he must take the following actions. At the court session, at the beginning of the consideration of the case, the judge, explaining to the participants in the process their right to challenge, discloses information that, in his opinion, may indicate the presence of signs of a conflict of interest. If the parties to the process or other interested parties have not challenged him, the conflict of interest is considered to be settled independently⁶⁵.

Recall that the settlement of a conflict of interest in the activities of judges can be divided into two options (1) by procedural legislation (2) another option in

⁶² *Procedure for monitoring compliance with the legislation on conflicts of interest in the activities of judges and other representatives of the judicial system and its settlement*: decision of the Council of Judges of Ukraine of February 4, 2016 № 2. Available at: <https://zakon.rada.gov.ua/rada/show/vr002414-16#>, consulted on 12.11.2022.

⁶³ On the Judiciary and the Status of Judges: Law of Ukraine of June 2, 2016 № 1402-VIII. Information of the Verkhovna Rada. 2016. № 31. Art.545.

⁶⁴ Mostova I. *Conflict of interests in the activities of judges: features of the settlement*. 2019. Legal Gazette. Available at: <https://yur-gazeta.com/publications/practice/inshe/konflikt-interesiv-udiyalnosti-suddiv-osoblivosti-vregulyuvannya.html>, consulted on 12.11.2022.

⁶⁵ Shapovalova, O. A., Trofimova, L. V., Zdebskyj, O. S. *Preventing Question-and-Answer Corruption: A Guide for Judges*. Vaite, K., 2017, p. 123. Available at: <http://www.nsj.gov.ua/files/1526979943Anti-Corruption%20Handbook.pdf>, consulted on 12.11.2022.

which it cannot be settled by procedural legislation⁶⁶. In the first option, when a conflict of interests of judges can be resolved in a procedural way (recusal, self-recusal), then the judge regulates it independently without notifying the Council of Judges of Ukraine about such. In the event of a conflict of interest that cannot be settled in a procedural way, it is seen that they relate to most issues of work in one judicial institution of judges and their relatives (the chairman of the court - a judge, an assistant, an employee of the court apparatus, a judge - a judge, an assistant, an employee court apparatus)⁶⁷. If it is impossible to resolve the conflict of interest on his own, the judge applies to the Council of Judges of Ukraine for the purpose of its external settlement in accordance with Article 29 of the Law of Ukraine "On the Prevention of Corruption". But also, judges are obliged to apply to the National Agency for the Prevention of Corruption (or its territorial bodies)⁶⁸ on this issue, since the current version of this Law of Ukraine "On the Prevention of Corruption" does not contain exceptions to this rule for any entities that are subject to requirements for the prevention and settlement of conflicts of interest.

Concerning the peculiarities of legal support for the prevention and settlement of conflicts of interest in the activities of judges in certain EU countries. The EU countries have adopted separate basic laws covering the prevention and resolution of conflicts of interest. For example, in Croatia it is the Law "On the Prevention of Conflict of Interest", in the Czech Republic and Serbia - the laws "On Conflict of Interest", in Latvia - the Law "On the Prevention of Conflict of Interest in the Work of Officials", similar laws exist in other countries. In Poland, these are the Laws "On Public Service" and "On Restrictions on the Business Activities of Persons Performing Public Functions", in Austria - the Code of Public Service, in Iceland - the Law "On Public Administration" and others. Consider the prevention and settlement of conflicts of interest in the activities of judges in France and the Republic of Austria.

Thus, the legal support for the prevention and settlement of conflicts of interest in the activities of judges in France is based on the Law "On the status of the judiciary"⁶⁹, which provides for the procedure and which entities should submit declarations of their interests. Thus, the issue of the interests of the judges of France is also provided for in the "Circular on the declaration of interests of judges of arbitration courts", which provides for the requirements for the content of the declaration of interests filed by judges. The bodies authorized to consider the said

⁶⁶ Nesterchuk L.P. *The emergence of a conflict of interest in the activities of judges and the analysis of means for prevention and settlement*, „Scientific Bulletin of Public and Private Law”, 2020. Iss. 2, p. 265.

⁶⁷ Regarding the clarification of the presence or absence of a conflict of interest in the activities of judges: Decision of the Council of Judges of Ukraine № 36 of 12.05.2016. Available at: https://court.gov.ua/konflikt_interesiv/RSU_7, consulted on 12.11. 2022.

⁶⁸ On Prevention of Corruption: Law of Ukraine of October 14, 2014 № 1700-VII. Information of the Verkhovna Rada. 2014. № 49. Art. 2056.

⁶⁹ *Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000339259>, consulted on 12.11. 2022.

declarations are indicated⁷⁰.

In particular, Law "On the status of the judiciary", the duty of the judge to provide "an exhaustive, accurate and sincere right to his interests" to a large list of subjects, among which in Art. 7-2 of the aforementioned act, provides, in particular: (1) to the president of the court, for magistrates, the location of the court of first instance; (2) to the prosecutor attached to that court, for the magistrates of the prosecutor's office of the court of first instance; (3) the first president of the court of appeal, the magistrates of the seat of the court of appeal, and the presidents of the courts of first instance within the jurisdiction of that court; (4) the public prosecutor of that court, the masters of public prosecution of the court of appeal, and the public prosecutors of the courts of first instance within the jurisdiction of that court; (5) the first president of the Court of Cassation, the magistrates of the seat of the court, the court counselors in emergency service and the first presidents of the courts of appeal; (6) to the public prosecutor in the Court of Cassation, for magistrates of the public prosecutor's office, for attorneys general in the court of emergency service and for public prosecutors in the courts of appeal⁷¹. The submission of a declaration of interests of judges in France triggers an ethical discussion between the judge and the authority to which the declaration is submitted, with the aim of preventing any possible conflict of interest and inviting, if there is room, to put an end to the situation of conflict of interest. After the end of the interview, the judge can change the declaration. The interview may be resumed at any time at the request of the magistrate or authority. Any significant change in interests is the subject of an additional declaration within two months in the same form and may be the subject of an ethical discussion. A declaration of interest shall be attached to the magistrate's file in a manner that guarantees its confidentiality, provided that it is read by persons authorized to have access to it⁷².

Concerning the prevention and settlement of the conflict of interests of the Republic of Austria in the activities of judges. Thus, according to the norms of the Federal Law of the Republic of Austria on the employment of judges, prosecutors and judge candidates⁷³ judges of the Republic of Austria must strictly comply with the legal system in force in the Republic of Austria, in particular article 59 of this Law states that gifts are prohibited, and article 63 establishes that a judge cannot engage in any secondary work that is contrary to the dignity of his office or may

⁷⁰ *Circulaire relative à la déclaration d'intérêts des juges des tribunaux de commerce*. SJ-18-58-RMH3/16.02.2018 Available at: <http://www.justice.gouv.fr/bo/2018/20180228/JUSB1805096C.pdf>, consulted on 12.11.2022.

⁷¹ *Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000339259>, consulted on 12.11.2022.

⁷² *Ordonnance n° 58-1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature*. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000339259>, consulted on 12.11.2022.

⁷³ Bundesrecht konsolidiert: Gesamte Rechtsvorschrift für Richter- und Staatsanwaltschaftsdienstgesetz. Available at: <https://www.ris.bka.gv.at/Gelten.deFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008187>, consulted on 12.11.2022.

interfere with the performance of his official duties or raise suspicion of partiality in the performance of his duties, or jeopardize other essential official interests. Similar prescriptions for the prevention of conflicts of interests of judges are contained in the Federal Law of the Republic of Austria "On Civil Service"⁷⁴.

In addition, back in 2003, the Association of Austrian Judges initiated a discussion process in Wels, in which all Austrian judges were able to take part regarding the further development of the principles of the Salzburg Resolutions of 1982, which led to the next Declaration of Principles, which was adopted on November 8, 2007. The Austrian judges declare that they are guided by ethical principles in their actions. The Declaration of Principles states that Austrian judges carefully and critically check whether acts or expressions threaten addiction or even create such an appearance. This also applies to private conduct, as trust as judges can be questioned publicly. The membership of a judge in a political party or party-political activity can interfere with the credibility of an independent judiciary that is not influenced by party politics and is not tied to interest groups⁷⁵. Also, the Welser Declaration has one of the ethical principles under the title "Social Influences" in the content of which indicates that the office of judge is a fundamental part of society. Judicial work influences this structure, but is also influenced by it, as well as having a profound effect on people's living conditions. Therefore, judges pay attention to these connections in the performance of their official duties and conscientiously treat their duties. According to the Wels Declaration of Ethics, one of the ethical principles is the principle of independence (Article 2). The essence of this principle is that the adoption of a judicial decision occurs solely on the basis of statutory law and the free inner conviction of judges. Reject judges from any form of illegal influence, invitations and gifts and disclose all attempts to interfere with their activities. When selecting and evaluating fellow judges, judges are guided by the criteria of the Austrian Law on Judicial Services, their professional and social abilities and reject any patronage⁷⁶. Thus, based on the above, we can distinguish two approaches in the EU legislation regarding the prevention and settlement of conflicts of interest in the activities of judges. The first option is the existence of programs to prevent conflicts of interest in the activities of the court as part of the strategy for preventing and combating corruption in general. The second option is as an integral part of the strategy of guaranteeing and raising the ethical standards of professional behavior of civil servants and judges.

Regarding the responsibility of judges for violations of the rules for preventing and resolving conflicts of interest in Ukraine. For violation of such rules for judges, the legislation of Ukraine establishes two types of liability - (1) disciplinary and (2) administrative (Article 106 of the Law of Ukraine "On the

⁷⁴ Bundesgesetz vom 27. Juni 1979 über das Dienstrecht der Beamten. Available at: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=1000847>, consulted on 12.11.2022.

⁷⁵ Ethikerklärung. Available at: <https://richtervereinigung.at/ueber-uns/ethikerklaerung/>, consulted on 12.11.2022.

⁷⁶ Ibid.

judiciary and the status of judges"⁷⁷, article 172-7 of the Code of Ukraine on Administrative Offenses). The criterion for delineating the type of liability to which a judge may be held for violating the rules for preventing and resolving conflicts of interest is the nature of the conflict of interest⁷⁸. Violation of the rules for preventing and resolving a conflict of interest by a judge during the administration of justice (a conflict regulated in a manner determined by a procedural law) entails disciplinary liability established by the Law of Ukraine "On the Judicial System and the Status of Judges"⁷⁹. In contrast to the violation of the rules for preventing and resolving conflicts of interest that arise in the activities of a judge outside the administration of justice, and which cannot be resolved in a manner determined by the procedural law, entails administrative liability in accordance with the norms of the Code of Ukraine on Administrative Offenses⁸⁰.

Thus, the peculiarities of resolving conflicts of interest among judges include the fact that the Council of Judges of Ukraine does not have the right to arbitrarily give explanations to judges about the presence or absence of a conflict of interest. Providing clarifications on issues of conflict of interest with judges in accordance with the provisions of the Law of Ukraine "On Prevention of Corruption" refers to the powers of the National Agency for the Prevention of Corruption. To resolve the conflict of interests of judges in a procedural way, such a tool as challenge/self-withdrawal is used, the judge regulates its application independently without notifying the Council of Judges of Ukraine. If a judge has a potential or real conflict of interest that is not related to the administration of justice, the judge is obliged to notify the Council of Judges of Ukraine in writing no later than the next working day from the moment such a conflict of interest arises. After notification, the Council of Judges of Ukraine takes measures to resolve the conflict of interest in accordance with Part 10 of Art. 133 of the Law of Ukraine "On the judiciary and the status of judges". However, representatives of the judiciary support the position that the issue of the internal activities of the courts should be carried out by judicial self-government bodies, which will contribute to the creation of appropriate organizational and other conditions for ensuring the normal functioning of courts and judges, assert the independence of the court, and protect judges from interference in their activities. Thus, the Constitutional Court of Ukraine in Decision No. 13-r/2020 of October 27, 2020 noted that the implementation of the principle of independence of the judicial branch of government, and therefore of judges, consists primarily in its isolation from other branches of state power, which means the

⁷⁷ On the Judiciary and the Status of Judges: Law of Ukraine of June 2, 2016 № 1402-VIII. Information of the Verkhovna Rada. 2016. № 31. Art.545.

⁷⁸ Features of conflicts of interest in the activities of a judge and recommendations for its prevention and settlement in typical situations: a guide to help a judge. 2018. Council of Judges of Ukraine Available at: https://shron1.chtyvo.org.ua/Rada_suddiv_Ukrainy/Osoblyvosti_konfliktu_interesiv_u_diialnosti_suddi_ta_rekomendatsii_schodo_zapobihannia_i_vrehuliuva.pdf?PHPSESS_ID=ps6jlckn02satg00vm9i1j54q1, consulted on 12.11.2022.

⁷⁹ On the Judiciary and the Status of Judges: Law of Ukraine of June 2, 2016 № 1402-VIII. Information of the Verkhovna Rada. 2016. № 31. Art.545.

⁸⁰ Code of Ukraine on Administrative Offenses: Law of Ukraine dated 07.12.1984 No. 8073-X. Available at:<https://zakon.rada.gov.ua/laws/show/80731-10/card2#Card>, consulted on 12.11.2022.

formation of an independent, an autonomous and self-governing judiciary outside the structures of the legislative and executive branches of government. Any forms and methods of control in the form of inspections, monitoring, etc.

7. Conclusion

Judges as public servants in Ukraine more often than other public servants face cases of conflict of interest, in connection with this, the risk of violating the principle of objectivity and impartiality by them when considering court cases increases. Judges in the context of the anti-corruption legislation of Ukraine are officials holding a responsible and especially responsible position and are subjects of preventing and resolving conflicts of interest. Today, an unresolved issue in the anti-corruption legislation of Ukraine remains the availability of powers to monitor compliance with legislation on the prevention and settlement of conflicts of interest in the activities of judges, both in the Council of Judges of Ukraine and the National Agency for the Prevention of Corruption. This problem requires immediate settlement due to the fact that the lack of unity and completeness in resolving the issue of conflict of interest in the activities of a judge at the legislative level makes it difficult to practically prevent corruption in the administration of justice, and as a result hinders the restoration of citizens' confidence in justice.

Important elements of resolving a conflict of interest in the activities of a judge are an effective legal framework, its exact concept, an established list of signs, compliance with the principles of a conflict of interest, common subjects of control, effective ways and types of prevention and settlement of such a conflict of interest, and the existence of responsibility in this area. A conflict of interest in the activities of a judge is a contradiction between the private interests of a judge as a public servant and his official duties, the presence of which may affect the objectivity and impartiality of decision-making, as well as the commission or non-commission of actions in the course of his official activities. The legal acts that cover the prevention and settlement of conflicts of interest in the activities of a judge are divided into (1) general and (2) special. The main principles for preventing and resolving conflicts of interest in the activities of a judge include: independence, the rule of law, virtue, legality, transparency, controllability. The signs of the components of a conflict of interest in the activities of a judge are: (1) the private interest of the judge, (2) the public interest of the judge, (3) the official powers of the judge. A conflict of interest in the activities of a judge can be resolved (1) with the help of procedural law, and (2) cannot be settled by procedural law. For violation of the rules for preventing and resolving conflicts of interests of judges, the current legislation of Ukraine establishes both disciplinary and administrative liability.

In most EU countries, the legal provision for preventing and resolving conflicts of interest in the activities of judges is in two directions: (1) the existence of programs for preventing conflicts of interest in the activities of judges as part of a strategy for preventing and combating corruption in general and (2) as part of a strategy to guarantee and improve ethical standards for the professional conduct of civil servants and judges.

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