

## EVALUATION OF THE COURTS EFFECTIVENESS IN THE CONTEXT OF DEVELOPING AN ORGANIZATIONAL AND LEGAL MECHANISM TO STRENGTHENING THE AUTHORITY OF THE JUDICIARY



**Nazar Hdanskyi**

*lecturer, Institution of Higher Education «Lviv University of Business and Law»,  
Lviv, Ukraine*

ORCID ID: <https://orcid.org/0000-0003-2347-0622>

**JEL Classification: K1**

**Abstract.** The article examines the issue of assessing the effectiveness of the courts in the context of developing an organizational and legal mechanism to strengthen the authority of the judiciary. A review of the current level of authority of the judiciary indicates that in the absence of a unified strategy for strengthening the authority at the state level, the main burden of such activities rests with the courts. This statement is confirmed, in particular, by the well-known pattern of significant differences in the public assessment of the quality of court work by respondents who applied directly to the court and other respondents who did not have personal experience. This pattern encourages an in-depth study of the relationship between the authority of the judiciary and the authority of a particular court.

According to the results of the study, it is established that the evaluation of the efficiency of courts and purposeful work to improve the key indicators measured during such evaluation is an important condition for strengthening the authority of the judiciary in general. The proposed approach will help to clarify the methodological basis for assessing the effectiveness of the courts by shifting the emphasis from economic efficiency to social efficiency in the context of strengthening the authority of the judiciary. The importance of improving the methodology for assessing the effectiveness of courts and wider coverage of relevant data sets is emphasized, which will allow to applying the methods of legal statistics for their analysis. A promising area of further research is to substantiate ways to strengthen the authority of the judiciary at the judge level.

**Keywords:** *judicial power, authority of the judiciary, court, efficiency of court activity, assessment of court efficiency.*

### Introduction

A review of the current level of authority of the judiciary indicates that in the absence of a unified strategy for strengthening the authority at the state level, the main burden of such activities rests with the courts. This statement is confirmed, in particular, by a long-known pattern of significant differences in public assessment of the quality of court work by respondents who applied directly to the court and other respondents who did not have personal experience. Let's pay attention to the results of the survey within the USAID New Justice Program, conducted in October 2018 (Results of the second all-Ukrainian survey of the population of Ukraine on trust in the judiciary, judicial reform and perception of corruption USAID's New Justice Program, 2018, pp. 12–15).

This survey showed a general level of trust in the judicial defect of 16%, a level of distrust – 59%, which was the highest after distrust in the Verkhovna Rada, the President, the government, and political parties. However, as it turns out in the further analytical study, the level of trust in the judiciary among the participants in court proceedings is more than twice as high (34%)! This pattern was observed during previous periods when similar measurements were performed.

This pattern encourages an in-depth study of the relationship between the authority of the judiciary and the authority of a particular court. It is important to clarify the conceptual foundations and study the possibilities and prospects of such differentiation is to find the nodes of the distinction between the authority of the judiciary and the authority of the court.

The issue of implementing the concept of the authority of the judiciary at the court level in recent years has not been studied in scientific papers. Therefore, the **purpose** of the study is to generalize the features of reproducing the concept of the authority of the judiciary at the court level.

**Literature review.** According to Part 1 of Art. 3 of the Law, the courts of Ukraine form a single system. Yurevych I. V. emphasizes that the unity of the judiciary is an integral part of its status, which is established and enshrined in the Constitution of Ukraine, and the powers, establishment and operation, organizational support of bodies and institutions belonging to the judiciary should be established by one law. Regarding the organizational aspects of unity, the scholar notes that neither the organization of the judiciary nor any process within it can contradict the uniform principles of structure and functioning of the judiciary (Yurevych 2012, p. 1116). Prylutskyi S. V. emphasizes that "the unity of the judiciary lies in the integrity of its organization and activities, which ensures its external independence and, among other things, is embodied in the subordination of all court cases to the supreme cassation supervision of one court" (Prylutskyi, 2012, p. 26). We should also take into account the opinion of Serdiuk V. V. that the lack of a holistic, comprehensive, scientifically sound concept of the unity of the judiciary leads to unsystematic, ill-considered reform of both courts of general jurisdiction and other state institutions that do not directly administer justice but work closely with the judiciary. in resolving issues of organizational, logistical, and personnel support (Serdiuk, 2007, p. 25).

One of the obvious areas of research on the implementation of the concept of the authority of the judiciary at the court level is the efficiency of work. The efficiency of the court is directly related to its formal and informal authority. Thus, Moskvych L. M. considers the authority of the court as one of the criteria for the effectiveness of the judicial system, which allows for the assessment of the level of legitimacy of the institution of the court in society. According to the scientist, the standard of judicial authority will assess the status of the judiciary in the transformation of society, and the perception of the judiciary as an independent, independent institution for dispute resolution, awareness of the binding nature of court decisions will contribute to the formation and establishment of a truly

effective judicial system (Moskvych, 2010, p. 35).

**Research methodology.** The research methodology is formed within the framework of theories of the judiciary, judicial law and the concept of the authority of the judiciary. The research uses methods of critical analysis of scientific sources, structural-logical and formal-dogmatic methods. The conclusions of the study were formed using the methods of generalization and abstraction.

The source base of the study was regulations and scientific works on jurisprudence.

**Research results.** It should be noted that the functioning of the judiciary of Ukraine based on unity and adherence to key principles by all courts does not preclude different efficiency of the courts. As stated in the CREC Opinion № 18 (2015), "The judiciary (like the other two branches of government) is a civil service body. It must report (in the sense outlined above) to the people she serves. The judiciary must exist in the interests of the rule of law and those in need of protection and justice. Therefore, the judiciary is faced with the need to demonstrate to other authorities and society as a whole the exercise of power, authority, and independence that have been entrusted to it. Demands for the efficiency of the judicial system on the part of litigants have increased. Simplified access to justice has grown. Efficiency and accessibility are aspects that determine "responsibility" (Conclusion № 18 (2015) of the Advisory Council of European Judges (CCJE) "The position of the judiciary and its relationship with other branches of government in a modern democracy").

Martianova S. M. notes the existence of different approaches to the interpretation of the concept of efficiency of the judiciary. The scientist notes that in the narrow sense the efficiency of justice is seen as making a lawful and reasonable decision in a particular case, while in a broad sense the efficiency of the judiciary is understood as the ability of justice as a state activity to achieve its goals (Martianova, 2018, p. 97). Moskvych L. M. under the term "efficiency of the judiciary" suggests understanding its ability to have a real beneficial effect on certain legal relations, resulting in

resolving social conflict and achieving social justice. The scientist distinguishes between the upper and lower limits of the efficiency of the judicial system, where the upper is a situation of complete agreement between the results of its operation and the goal, and the lower - the threshold of efficiency at which the judicial system loses its optimality, becomes less manageable and eventually loses its meaning (Moskvych, 2010, p. 31).

As rightly points out Chupryna Yu. Yu., Proper implementation of the function of justice is based on the effective implementation of tasks and functions assigned to the judiciary, created on the principles of territoriality, specialization, and instance, provided they provide a fair and impartial hearing within a reasonable time (Methodology of analysis of court activity: approved by the Order of the SJA of Ukraine dated 07.06.2018 № 286, p. 1).

It should also be noted that the Conclusion of the CJEU № 18 (2015) emphasizes that "the function of the judiciary is to resolve disputes between members of society and the state and directly between members of society. The judiciary is often involved in resolving disputes between two or even three branches of government. All this must be done according to the principle of the rule of law. An independent and efficient judiciary is the cornerstone of the rule of law. The goal of any independent and effective judicial system must be to guarantee a fair, impartial settlement of legal disputes while respecting the rights and freedoms of all people seeking justice" (Conclusion № 18 (2015) of the Advisory Council of European Judges (CCJE) "The position of the judiciary and its relationship with other branches of government in a modern democracy").

At the present stage, the assessment of the effectiveness of local and appellate courts of general jurisdiction is carried out by the State Judicial Administration of Ukraine based on the Methodology of analysis of courts, approved by the SJA of Ukraine dated 07.06.2018 № 286.

According to the Methodology, the analysis of court activity "is aimed at making objective management decisions to improve the status of court proceedings and the rational use of budget funds". According to the results of the assessment, the courts are given ratings: "AA" - the court considers court cases promptly, effectively using labor and financial

resources; "AB" - the court considers court cases on time, but uses resources inefficiently due to excess labor and financial resources (measures should be taken to limit labor and financial resources); "BA" - the court does not cope with the consideration of court cases while using resources efficiently (indicates a lack of labor and financial resources, measures should be taken to select staff and increase financial security); "BB" - the court does not cope with court proceedings and uses available resources inefficiently (urgent measures should be taken to improve the work of the court) (Methodology of analysis of court activity: approved by the Order of the SJA of Ukraine dated 07.06.2018 № 286).

Open access as of the fourth quarter of 2020 is available to assess the effectiveness of local and appellate courts of general jurisdiction for 2017 – the first half of 2020. Besides, it should be noted that the data are incomplete – for 2019 and 2020 there is no information about the efficiency of local general courts. So, first of all, let's analyze the effectiveness of local general courts.

Demianenko I. V. emphasizes that local general courts occupy a central place in the judicial system of Ukraine and bear the main burden of considering and resolving legally significant cases. The researcher emphasizes that in the context of ongoing judicial reform, the problems of organization and operation of local courts need priority attention (Demianenko, 2016).

As Chycherska M. I. rightly points out, the efficiency of the judiciary in Ukraine depends on many factors, in particular, the quality of judicial reform and the optimization of the work of the lowest judicial level – local courts. In the study of the functioning of local courts, the researcher emphasizes that "the fact that today it is a defining link in the judicial system, there is no doubt, as well as no doubt that local courts are extremely overloaded with court cases, and the effectiveness of organizational and functional support their work is extremely low" (Chycherska, 2016, p. 142).

According to judicial statistics (Analytical tables on the state of justice in 2019), the average monthly receipt of cases and materials per judge of the local general court was 64.2 and 65.8 in 2018 and 2019, respectively. For district administrative courts, these figures were 28.9 and 30.9, for local commercial – 13.3 and 15.3. For appellate courts, the figures are even lower at 7.0 and

10.7, respectively. According to the above data, it should be assumed that the main point of direct contact between society and the judiciary is the local courts.

Let's take a closer look at the performance indicators of local general courts presented in the data for 2017-2018 (The efficiency of the courts in 2017; The efficiency of the courts in 2017).

In total, the assessment data of 585 courts are presented. Of these, in 2017, 361 received the lowest rating "BB", 82 – "BA", 80 – "AB" and only 62 – the highest rating "AA". In 2018, 323 courts received the BB rating, 210 courts received the BA rating, 8 courts received the AB rating, and only 44 courts received the highest AA rating.

As follows from the above assessment methodology, the most problematic in terms of efficiency and potential impact on the authority of the judiciary are the groups of courts "BB" and "BA". Let's take a closer look at the factors of low efficiency of the courts of these groups. First of all, let's pay attention to the factors that can be directly related to the authority of the judiciary – the percentage of resolved cases and waiting time for consideration of the case. The second group of factors – cost-effectiveness and productivity of the courts, can, in our opinion, affect the authority of the judiciary only indirectly in the case of preparation and publication of relevant critical materials by media or civil society institutions and their widespread dissemination in the media. In our case, it should be recognized that the interest of citizens in public finances and the efficiency of public authorities at this stage is not high enough to form a significant impact of the outlined factors on the authority of the judiciary. On the other hand, these indicators are extremely important for assessing the applied aspects of the formal authority of the judiciary, ie the component that is formed regardless of public opinion.

Thus, referring to the available data, we note the following trends in the efficiency of the courts classified in the group "BB". In 2017, the average deviation of the percentage of resolved cases from the model indicator was -16.5%. The deviation was higher in 143 courts; in 22 courts the deviation was two or more times higher than the average. Particularly low (-73 and -74 percent of the model indicator, respectively) were the indicators of the Karlivsky District Court of Poltava region and Putilsky District Court of

Chernivtsi region. For these courts, the deviation from the model indicator at the time of the case was -1544% and -1235%, respectively, and cost-effectiveness and productivity indicators were low. The average deviation from the model time of the case was -100.8%. The above-average deviation was observed in the case of 137 courts. Deviations above the average of more than ten times were recorded in the already mentioned courts, as well as in the Yaremche City Court of Ivano-Frankivsk region.

According to the data of 2018, the average deviation from the model indicator of the percentage of resolved cases increased and reached -19.1%. The highest deviations were in Shirokivsky District Court of Dnipropetrovsk Oblast and Teplytsky District Court of Vinnytsia Oblast. The average deviation from the model time of the case also increased, it amounted to -168.1%. The largest deviations -2445% and -1378% were observed in Veselivsky District Court of Zaporizhia Region and Shirokivsky District Court of Dnipropetrovsk Region, respectively.

It should be noted that the Karlivsky District Court of Poltava region according to the results of the evaluation in 2018 received a rating of "BA", deviations in the main indicators decreased to -20% and -452%, respectively. A decrease in the deviation with the transition to the group "BA" was observed in the case of Putilsky district court of Chernivtsi region (-49% and -879%, respectively), but Yaremche City Court of Ivano-Frankivsk region remained in the group "BB" with -39% and -894% respectively. A review of Internet resources indicates that there are almost no substantiated critical reviews of their work by the courts.

**Discussion of research results.** It should be noted that the proposed methodology to some extent compensates for the methodological vacuum in assessing the impact of the effectiveness of individual courts on the authority of the judiciary. However, due to the lack of sufficient data for a longer period, it is impossible to study trends in this area in more detail using the methods of legal statistics. We emphasize that the assessment of the effectiveness of courts in the light of developing a mechanism to strengthen the authority of the judiciary can be supplemented by a case study of problems in the field of disorder in court, as well as cases of widespread publicity in the media and social networks.

### Conclusions

According to the results of the study, it is established that the evaluation of the efficiency of courts and purposeful work to improve the key indicators measured during such evaluation is an important condition for strengthening the authority of the judiciary in general. The proposed approach will help to clarify the methodological basis for assessing the effectiveness of the courts by shifting the emphasis from economic efficiency to social efficiency in the context of strengthening the authority of the judiciary. The importance of improving the methodology for assessing the effectiveness of courts and wider coverage of relevant data sets is emphasized, which will allow applying the methods of legal statistics for their analysis.

A promising area of further research is to substantiate ways to strengthen the authority of the judiciary at the judge level.

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