

The Conscience of a Judge in the Administration of Justice: Foreign Experience

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Abstract: This article analyzes issues related to the judge's conscience in the administration of justice. Most importantly, it emphasizes the scientific aspects of problems associated with aligning criminal procedure legislation with moral and ethical norms. This article examines both national and foreign legislation, as well as the opinions of scholars.

Keywords: constitution, criminal procedure, justice, court, legal norms, conscience, moral norms, spirituality, reforms, ethics, fairness, conduct, rights and freedoms.

Conscience allows a person to exercise self-control and evaluate their behavior in accordance with moral norms. In relationships where external control over human behavior is difficult for society, the feeling of conscience manifests itself objectively.

At the stage of administering justice, the judge's conscience, along with all moral and legal awareness, plays a key role; in particular, the sanctions of the articles of the Criminal Code of the Republic of Uzbekistan are equivalent and determine the possibility of imposing various types of punishments. For example, a fine, correctional labor, assignment to a disciplinary unit, assignment to compulsory community service, and the imposition of a minimum and maximum term of imprisonment. In addition, the rules provided for in Article 55, Article 57, Article 571, Article 572, Article 661 of the Criminal Code of the Republic of Uzbekistan and the assignment of punishment taking into account the above-mentioned articles also fully depend on the consciousness and conscience of the judge.¹

If we turn to foreign legislation on the issue of conscience, for example, in the Criminal Procedure Code of the Republic of Kazakhstan, the term "conscience" is given in two articles (one is enshrined as a principle, the other as a separate norm). Article 25 of this Law refers to the assessment of evidence based on internal certainty. According to it, it is enshrined that the subjects of proof evaluate evidence based on their inner conviction, based on the totality of evidence considered, in accordance with the law and conscience.² Article 125 of this Law is cited in the same context. A similar provision can be seen in part two of Article 93 of the Criminal Procedure Code of the Kyrgyz Republic.³ However, issues of conscience have not been formed as a separate principle. We can see the opposite in the Criminal Procedure Code of the Russian Federation. However, the question of conscience is emphasized in the principle of free assessment of evidence.⁴ It states that the subjects of proof evaluate evidence based on their

¹ Ўзбекистон Республикасининг Жиноят кодекси. – Т.: Ўзбекистон, 2024.

² Уголовно-процессуальный кодекс Республики Казахстан. (с изменениями и дополнениями по состоянию на 13.03.2025 г.).

³ Уголовно-процессуальный кодекс Кыргызской Республики от 28 октября 2021 года № 129. (с изменениями и дополнениями по состоянию на 14.03.2025 г.)

⁴ "Уголовно-процессуальный кодекс Российской Федерации" от 18.12.2001 N 174-ФЗ (ред. от 20.03.2025).

inner conviction, based on the totality of evidence available in the criminal case, guided by law and conscience. It should be noted that the term "free" is used in the title of Article 17 of the Criminal Procedure Code of the Russian Federation. We will try to clarify the meaning of the term "erkin" below.

For this purpose, we recommend making a corresponding addition to Article 95 of the Criminal Procedure Code of the Republic of Uzbekistan.

Of course, conscience is an important factor in evaluating evidence and making fair decisions or judgments. However, the judge's independence is also important in making a fair decision or issuing a verdict. The principle of judicial independence and subordination only to the law is not only an external, but also an internal factor.

Resisting any influence (both internal and external) requires great perseverance from the judge. The independence of a judge allows him to deliver a reasoned and fair verdict in accordance with the law.

The principle of independence and subordination only to the law is one of the important moral requirements (Article 14 of the Criminal Procedure Code). A judge, regardless of their high status (immunity, immunity), is not entitled to follow the instructions of officials, public opinion, requests, consultations, interference of agencies, etc. Consequently, in such a situation, the judge, in fulfilling the will expressed in the law, in the interests of the entire people, society, and the state, must be guided by the law, their moral principles, and conscience in carrying out their duties.

This principle consists of protection (ensuring) from horizontal and vertical unlawful interference of the judge in the process of the case, giving the subjects of proof the opportunity to freely assess the evidence and make a decision within their competence (without influence, interference).

The principle of independence of judges and their subordination only to the law is one of the basic (democratic) principles of the administration of justice, and this provision is enshrined in Article 136 of the Constitution of the Republic of Uzbekistan. Guarantees of independence contribute to the free formation of internal trust. Their violation leads to bias among the subjects of proof.

In conclusion, it should be noted that the principle of free assessment of evidence by a judge serves as a guarantee of the independence of the subject of proof. At the same time, the principle of independence is the main guarantee of developing one's own point of view when assessing evidence in a case. The principle of free assessment of evidence by a judge is the starting point for the formation of internal conviction.

Thus, concluding the study of the issue of the judge's conscience, the role of the judge in the free assessment of evidence, it can be noted that the norms of law and morality, which create the necessary conditions for the correct formation of the judge's inner conviction, are one of the main factors and guarantees of the mechanism of free assessment of evidence.

Conscience is the judge's great responsibility for their actions and decisions, which serves as a thorough, comprehensive, complete, and objective examination of all circumstances that must be proven in the case.

As we can see, there are no obstacles in the criminal procedure legislation to indicate the observance of both the law and legal consciousness and conscience in the free assessment of evidence in a criminal case.

It should be noted that although conscience does not have its own official concept, moreover, conscience belongs to the category of difficult socio-ethical phenomena, it has its own internal moral guidelines. This will give them the strength to take certain actions (when making

decisions) with a consciousness of their specific responsibility to the participants in the process and the state. The main goal of this principle is to ensure the independence of the subject of proof (in the formation of inner conviction) in the process of searching for truth.

It is recommended to name Article 95 of the Criminal Procedure Code and make a corresponding amendment to its first part:

Article 95. Free evaluation of evidence

The investigator, the inquiry officer, the prosecutor, the investigative judge, and the court, based on a thorough, complete, comprehensive, and objective examination of all circumstances in the case, guided by their conscience, law, and legal consciousness, freely assess the totality of evidence based on their inner convictions.

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