

Taking everything into consideration, it is worth saying that the legislation has provided guarantees for the employer in the case of the violation of a labour discipline. The Labour Code of Ukraine does not define the procedure of dismissal but it has been developed by the practice.

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## **IMPARTIALITY OF THE COURT IN TERMS OF THE RIGHT TO A FAIR TRIAL**

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According to the Art. 6 Par. 1 of the European Convention on Human Rights (here and after - ECHR), in the determination of his/her civil rights and obligations or of any criminal charge against him/her, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [1]. Impartiality of the court is considered to be an essential part of the right to a fair trial according to the above mentioned article of the ECHR and case-law of the European Court of Human Rights (here and after - ECtHR). Nowadays the impartiality of judges seems to be one of the most significant inherent principles of Ukrainian procedural law as well as the international standards of justice aimed at providing effective protection of human rights and freedoms.

In its case-law the ECtHR proposed a unique approach to interpretation of this guarantee of the right to a fair trial. For instance, in the case “*Kyprianou v. Cyprus*” and “*Whitfield and Others v. the United Kingdom*” ECHR identified subjective and objective criteria of judges’ impartiality. Thus, there are two aspects to the question of “impartiality”: the tribunal must be subjectively free of personal prejudice or bias and must also be impartial from an objective viewpoint, in that it must offer sufficient guarantees to exclude any legitimate doubt in this respect [2;

3]. This fact enables us to consider the interpretation of this principle as consisting of two components.

Subjective impartiality is linked to the judge's personality and his or her personal beliefs. Therefore, the tribunal must be subjectively impartial, that is, no member of the tribunal should hold any personal prejudice or bias. A judge is duty-bound to decide cases on their merits, be open to persuasion, and not be influenced by improper considerations. It should be noted, that according to "*Hauschildt v. Denmark*" case, the personal impartiality of a judge must be presumed until there is proof to the contrary [4].

Under the objective test, it must be determined whether there are ascertainable facts, which may nevertheless raise doubts as to their impartiality. In this respect even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and, above all, in the parties to the proceedings. Objective impartiality is the parties' and public's belief that a court is impartial as an institution in democratic society.

If a judge is not impartial, judicial disqualification, also referred to as recusal, is called to ensure the parties get a fair hearing by affording them an opportunity to challenge the judge in their case. Procedural codes of different countries contain different grounds for the recusal. The most frequent among them are: 1) the judge is a party of dispute; 2) the judge is related to the party of dispute or his/her attorney or other participants of a trial; 3) the judge has previously acted in the case as an attorney, prosecutor or other participants of the case; 4) the judge of the higher court has previously acted as a judge of lower court in the case; 5) the judge has financial, personal or other interest in the results of the case.

The Civil Procedure Code of Ukraine also contains norms devoted to the recusal. According to Art. 36 of the Civil Procedure Code of Ukraine a judge can not participate in the trial and should be disqualified if he/she is a family member or immediate relative of the parties or other persons involved in the case; or he participated in the case as a witness, expert, specialist, translator, representative, attorney, secretary of the court session, or provided the party or other participants with legal aid in this or another case; or he/she is directly or indirectly interested in the results of the case; the procedure of appointing a judge in this case was violated; there are other circumstances that raise a doubt on the objectivity and impartiality of judges. Also Art. 37 of the Civil Procedure Code stresses that the same person can not be a judge of the same case during proceedings in court of first instance and, then in court of appeal or cassation.

As we can see, the national legislation reflects subjective as well as objective criteria of judges' impartiality. In spite of this fact, in our opinion, there are some problems connected with the realization of these notions of legislation. One of them is connected to the procedure of the recusal. According to Art. 40 of Civil Procedure Code the motion for the recusal should be adjudicated by the same judge who adjudicates the case. If the judge allows the motion, another judge reviews the case. If the judge doesn't allow the motion, another judge of the court adjudicates

this motion in order to ensure the absence of bias. If there are no other judges in this court then such motion should be transferred to another court where another judge will adjudicate this motion. In practice such situations can cause unreasonable delays of the trial especially taking into account the fact that now there are a lot of courts in our country where the power of judges is limited because they waiting for the qualification exams. In our opinion, the recusal procedure should be improved.

So, impartiality of the court is an important element of the right to a fair trial. Judges are public officials who together comprise the separate and independent branch of government, whose constitutional role is to serve as impartial guardians of law. The requirement of the impartial judiciary embraces both subjective and objective elements. The public opinion that justice is impartial creates the foundation for the confidence which citizens must have in their judicial system.

#### **References:**

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## **TRADE UNIONS AND THEIR LEGAL STATUS IN LABOUR RELATIONS**

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The development of market relations leads to a deterioration in the level of social and legal guarantees of employees. Therefore, the activity of the bodies and organizations, which can provide protection of the rights and interests of working people, becomes more important. These organizations are trade unions.

The right to unite in trade unions is one of the most important right in a civilized society, and realization of this right shows the level of democracy in society.

The purpose of the research is to analyze the legal status of trade unions, their rights and responsibilities in the field of labour relations.

The legal status of trade unions is defined by the Constitution of Ukraine, the Laws of Ukraine "On Public Associations", "On Trade Unions, Their Rights and Guarantees of Activities", "On Collective Contracts and Agreements", the Code of Labour Laws of Ukraine, and other legislative acts.