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The worldview influence on the internal beliefs of law enforcement agents in the context of exercising their discretionary powers

Roman Vandzhurak*

Doctor of Philosophy in Law, Doctoral Candidate

National Academy of Internal Affairs,

03035, 1 Solomianska Sq., Kyiv, Ukraine

<https://orcid.org/0000-0002-8474-2276>

Abstract

Despite many years of attempts by scholars and practitioners to determine the reason for the extremely low level of public trust in the judiciary and law enforcement agencies in Ukraine and ways to strengthen it, this level is still critical, and therefore there is a need to identify new ways to overcome such a crisis. Seeing such public distrust in the legal right of procedural decision-makers to make decisions based on their internal conviction, the study aims to review and analyse the scientific developments in the field of procedural decision-making by law enforcement agencies based on their internal conviction and to identify the factors which influence such conviction. Analysis, synthesis, and generalisation methods were used in the study of the outlined issues, which were used to process the bibliography of the issues, whereas deductive logical analysis, inductive generalisation and analogy were used to substantiate the results and formulate the conclusions of the study. Based on the study results, it is established that scholars have studied the concepts of worldview and internal conviction of procedural decision-makers separately. It is proved that any internal conviction is based primarily on a person's values and worldview orientations which are formed throughout life, primarily in childhood and adolescence. Regardless of the position held by a person, when faced with a problem in professional activity on which the law enforcement entity has already formed an opinion, the latter may make a procedural decision contrary to the actual circumstances of the case and the evidence available in it. The practical significance of this study is that the results obtained may become the basis for changes in the current legislation on the assessment of candidates for positions with discretionary powers, which involves focusing on their value beliefs and worldview

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*Corresponding author



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Introduction

The modern government is facing an acute issue of finding out the reasons for the low level of public trust in law enforcement and judicial authorities and creating a way to strengthen it in the countries of Eastern and Central and Eastern Europe. The study of worldview and value orientations through the prism of their influence on the internal conviction of law enforcement agents can be a start towards finding the causes of such distrust and ways to eliminate it. Although the issue of understanding and characterising various aspects of worldview (including legal worldview) and the issue of internal conviction can be traced in the works of many scholars, the impact of worldview on the internal conviction of law enforcement officials is studied indirectly. In this regard, the coverage in the scientific literature of certain aspects related to the discretionary powers of law enforcement officials is relevant and will contribute to the establishment of further empirical research.

In a verdict process, according to A. Barak (2022), a judge must act objectively, even though no choice but to resolve the case based on personal experience and worldview are available, while O. Minchenko (2018) focused on the distinction between legal and juridical worldviews and insisted on the formation of a personality with self-determination through true legal values, and O. Kuznetsov (2019) explained worldview as a system of views and perceptions of a person about the world, albeit from a psychological point of view. Furthermore, studying the problem of internal persuasion, R. Dvorkin (2021) believed that each legal problem has one correct solution, leaving no room for judicial discretion, V. Kostytskyy (2019) noted that the idea of justice should not be supplanted by judicial arbitrariness, and S. Hopta (2017), in the context of studying the issue of discretion, focused on the problem of professional deformation of a judge and suggested ways to solve it.

S. Shulgin (2019) revealed the role and significance of doubt in the internal conviction of the investigator, and prosecutor when assessing evidence in criminal proceedings at the pre-trial investigation stage, while D. Shcherbanyuk (2018) studied the issue of forming an internal conviction in a forensic expert in the context of exercising the right to expert initiative. In addition, O. Chuchman (2022) covered the discretion of the investigating judge in proving the exercise of judicial control, and Z. Dilna (2018) studied the psychology of a juror's internal conviction when making a judgement.

After all, the issues of worldview, internal conviction, discretion, discretionary powers, etc. were dealt with at different times by many scholars, which indicates the exceptional relevance of this topic. However, the subject of this study and its scope do not allow for a detailed analysis of all developments on this topic, without in any way diminishing their importance.

Given that not only the moral qualities of a law enforcement officer and a high culture of thinking are

important for an official with discretionary powers, the study aims to highlight how the scientific discourse treats the issue of the influence of such officers' worldview, and in this regard, there is always a risk that a procedural decision may be made contrary to the actual circumstances of the case (evidence) and the rule of law. To achieve the goal set by this study, several tasks were formulated, in particular, to consider the definition of the concept and nature of the formation of the worldview and internal conviction of law enforcement agencies when making procedural decisions; to study the coverage in the scientific literature of certain aspects of the impact of the worldview on the internal conviction of law enforcement agencies when making procedural decisions in general and in the context of possible negative consequences in particular.

The analysis, synthesis and generalisation methods were used in the course of the research to process scientific publications, research of scientists and primary sources containing significant theoretical information on the subject of the study. To properly substantiate the results obtained and formulate conclusions, the methods of deductive and logical analysis, as well as inductive generalisation and the use of analogies were used. This provided for a deeper understanding and systematisation of the available scientific information and allowed for the drawing of reasonable conclusions based on logic and analytical methods.

Interaction of judicial conviction, worldview, and discretionary powers in legal decision-making

Investigating the psychological properties of judicial discretion, I. Serkevych & Yu. Lisitsina (2022) concluded that a judge's internal conviction is a subjective-objective category, where the subjective side, according to scientists, is a purely individual result of the cognitive activity of a particular person. At the same time, N. Savchyn & V. Bobryk (2017), when discussing the problem of a miscarriage of justice, did not consider the internal conviction, and even more, so the one dictated by the value and worldview orientations, among the possible causes of such a miscarriage of justice, while I. Tutulych (2019) considers legal awareness to be a component of the judge's internal conviction.

It is worth noting that foreign and domestic scholars have conducted research that, although not relevant to the subject matter of this study, is at the same time close to it. These include, among others, L. Fuller (2021), who spoke about the concept of law based on morality as the most effective determinant of worldview culture; P. Rabinovich & T. Bachinsky (2014) studied the analysis of the phenomenon of legal worldview and insisted on avoiding the identification of legal and legal worldviews; I. Gioane (2018) emphasised the worldview basis of the spiritual determinant in making

political choices, and O. Zayats (2021) analysed the worldview features of professional advocacy. It is worth mentioning the study by N. Shaptala (2019), which thoroughly reveals the concept of internal conviction in the assessment of evidence in constitutional litigation, whereas O. Torbas (2021) analysed in detail the concept of judicial discretion in criminal proceedings.

Several domestic scholars have also separately studied the issue of discretionary powers of public authorities, among which the study of M. Onishchuk (2021) is noteworthy, in which the scholar addressed the problematic issues of judicial control over the discretionary powers of public authorities, the dissertation of A. Gryn (2019) on the discretionary powers of executive authorities and their implementation and O. Bilostockiy (2023) on the problems of the theory and practice of judge's discretionary powers, research by O. Kharenko (2018) on administrative discretion in the activities of public administration entities and O. Gubska (2020) on the peculiarities of exercising discretionary powers by public authorities and the choice of remedies by courts in administrative proceedings. It is worth highlighting the study by V. Rudyuk (2019), in which the scholar raised the issue of the regularity of the formation of the worldview of judges and the domestic judicial system, works by S. Glubochenko (2015) and L. Grindey (2018) on the formation of worldview as a guarantee of legal thinking of a judge, research by V. Gevko (2018), who in the course of his scientific research found out the importance of moral qualities of a candidate for a position with discretionary powers, and the views of Yu. Melikhova (2018), who in her research proved the influence of the culture of thinking on the internal conviction of the judge. At the same time, the above-mentioned developments were mostly limited to disclosing, to a greater or lesser extent, the concepts of worldview (primarily legal) and internal conviction (to a greater extent, judicial), as well as discretion (usually judicial) and discretionary powers (in particular, of subjects of power), while no studies have been conducted on their interrelation, let alone the influence of the former on the latter, when making procedural decisions by law enforcement agencies (not only judges).

Internal beliefs of law enforcement agents and their worldview: concept and interaction in the procedural decision-making context

The legal right of procedural decision-makers to decide upon internal convictions requires not only deep knowledge and understanding of the law (legal consciousness) but also competence, psychological stability, high moral qualities, etc. However, it is unlikely that a person can

develop these qualities in the absence of clear worldview beliefs, within the orbit of which the individual is formed, lives, feels, and cognises. Procedural decisions made by law enforcement officials are dictated not only by the requirements of the law and the actual circumstances of the case (evidence) but also by their inner convictions, i.e. the worldview and value guidelines by which these people live. Existing in the paradigm of their views and beliefs shaped by upbringing, education, and life experience, belonging to a particular cultural, national or religious identity, and guided by their inner convictions, law enforcement agents may consciously or unconsciously allow bias (impartiality) in the application of discretion due to their worldview.

Despite the constant innovation of law to meet the current globalisation processes (openness, accessibility) (Vandzhurak, 2022), there remains an element of conservatism, even obsolescence, in law, including procedural law, which makes the institution of procedural law enforcement, as it has been throughout its existence, unpredictable and sometimes arbitrary (Kostyt'skyy, 2019). This unpredictability of procedural law is cultivated by the legitimate ability of procedural decision-makers to decide based on their inner conviction, i.e. to use discretion without clear criteria for such use¹.

The procedural codes of virtually all modern states provide for the right of law enforcement agencies to resolve legal issues based on their internal conviction. For example, in the Criminal Procedure Code of Ukraine¹ (Article 94), the court is empowered to evaluate documents, things, witness statements, etc. based on its internal conviction in terms of their admissibility, reliability and sufficiency, giving them the status of evidence, and then, based on the same evidence, make a final decision upon internal conviction (Vandzhurak, 2023). As such, the court makes a decision only if the evidence is sufficient, while the latter is considered sufficient if it allows the court to decide the case (Gvozdk & Koshchynets, 2016). At the same time, the court itself is empowered to qualify the evidence as sufficient or insufficient at its discretion (in the absence of clearly defined criteria for such an assessment) (Hryshchuk, 2007).

By the requirements of the aforementioned Article 94 of the Criminal Procedure Code of Ukraine, investigators (inquirers, detectives) and prosecutors are also authorised to evaluate evidence and make procedural decisions based on internal conviction². Thus, the currently proposed form of determining the conditions for the sufficiency of evidence implies an almost unlimited range of subjective freedom in making procedural decisions, and this is ensured by law enforcement officials using their internal convictions when making such decisions (Vandzhurak, 2023). Since the essence

¹ Criminal Procedure Code of Ukraine. (2012, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/4651-17#Text>.

² Judgment of the US Supreme Court in the Case No. 60 U.S. 393 "Dred Scott v. Sandford". (1857, March). Retrieved from <https://supreme.justia.com/cases/federal/us/60/393/>.

of discretionary powers is reduced to the impossibility of the law to cover all possible variations of the issues faced by the law enforcement agency and law enforcement agencies are guided by evidence, law and internal conviction when making their decisions, independently determining the sufficiency of such evidence and applying internal conviction mostly when the law is not able to fully regulate the situation, it turns out that any decision is made based on the law enforcement agency's internal conviction only. This raises the question of what the basis of such an internal conviction is.

An internal conviction, as a result of the evaluation of evidence and the state of confidence in the correctness of one's conclusions about the relevance, admissibility, reliability and sufficiency of evidence, as well as the correctness of the conclusion made based on evidence about the presence or absence of certain factual circumstances (Articles 246, 281 of the CPC of Ukraine¹), is, among other things, a worldview formed by upbringing, education, life experience, cultural identity, religious affiliation and even political preferences.

Exploring the issue of worldview, the definition from the Great Ukrainian Encyclopedia was used to define this concept, as it is the most appropriate to the topic of this study, according to which it is a complex system of views and ideas about the world, a person's self-awareness of their place, environment, and basic connections in the universe, which is reflected in assessments, principles, knowledge, behavioural stereotypes, etc. However, there is no single definition of this concept, and different sources interpret it in their way.

A worldview is based on answers to general questions about a person's relationship with the world, and depending on these answers, a person can interact with it. Structurally, the worldview is divided into several levels, systems, and types. E. Durkheim (2002), for instance, emphasises the mass worldview and S. Pogrebnyak (2005) singles out the legal worldview, the framework of which, according to the scientist, is "justice, equality, freedom, good faith and other principles" (Pogrebnyak, 2005).

Therefore, if a law enforcement officer has discretionary powers, it ensures certain personal freedom to resolve issues that do not have unambiguous answers in the law, but there is no guarantee that in such cases a destructive worldview will not prevail over legal consciousness. Therefore, the ability of the procedural decision-maker to separate personal problems, moods, or beliefs from the objective application of the law and the resolution of cases based on evidence and the rule of law is necessary.

History is full of instances when judges made decisions based on their inner convictions, which were

dictated by their worldview. The most famous of these is the 1857 decision of the US Supreme Court in *Dred Scott v. Sandford*¹, in which the court ruled that African Americans were not US citizens and that Congress had no right to regulate slavery in certain territories. Subsequently, this decision was criticised by civil society and recognised as the most illegal in US history. This case is an example of how judges, making decisions based on their inner convictions, can go beyond the Constitution simply because they are of a different race². Some judges in Germany during the Nazi regime, according to L. Trepak (2019), also deliberately applied racist and anti-Semitic laws, making anti-human and politicised decisions. According to V. Hryniuk (2012), Soviet-era judges also disregarded the rule of law, sending people to hard labour or execution, guided by socialist legal consciousness.

According to the statistics of the European Court of Human Rights (Violations by Article and by State, 2022), despite the consistent legal position of this Court on the inadmissibility of excessive detention of a person without a court decision on guilt, in 2022 alone, the European Court of Human Rights adopted 141 decisions on violations of the right to liberty and security of person by Ukraine, i.e. courts, despite this, continue to make decisions to this day, giving consent to the detention of persons without a court verdict of guilt, which often reaches five years or more (Statement of the Council of Judges of Ukraine..., 2023). It seems that in the above examples, the judges did not act under the pretext of fear, a desire to please the authorities, or because of their incompetence. Such decisions were made based on internal conviction, most likely shaped by their worldview.

Therefore, worldview and inner conviction are constantly interconnected, as a worldview is a general system of ideas, values, beliefs, and views of a person about the world and place in it, while inner conviction is determined based on worldview, personal experience, upbringing, cultural environment, and other factors. Thus, it is extremely important to assess the situation and make objective decisions based on a constructive legal outlook, especially if one's professional duty is to ensure that human rights and freedoms are respected. However, such decisions are primarily influenced by the worldview of an ordinary person (not limited by professional duties) as a member of the community and a participant in social processes.

The influence of worldview on internal persuasion in the context of exercising discretionary powers

The former Chief Justice of the Supreme Court of Israel A. Barak (2022) argues in his "Judicial Discretion" book that although judges must act objectively when making

¹ Judgment of the US Supreme Court in the Case No. 60 U.S. 393 "Dred Scott v. Sandford". (1857, March). Retrieved from <https://supreme.justia.com/cases/federal/us/60/393/>.

² Judgment of the US Supreme Court in the Case No. 576 U.S. 644 "Obergefell v. Hodges". (2015, June). Retrieved from <https://supreme.justia.com/cases/federal/us/576/644/>.

judgements, they are forced to base their decisions on their personal experience and worldview. The judge knows what is happening in the home-country, knows the problems of that country, reads its literature, listens to its songs, etc. All of this is assimilated by the judge and embodied in the judge's discretion. All these factors, according to the judge, "in a certain way affect the expression in the judge's discretion ..." (Barak, 2022). A similar opinion was expressed by Yu. Groshevoy (2005), notes that the professional legal consciousness of a judge includes both a system of legal ideas that express the interests of society in the field of justice and the judge's system of legal views and beliefs, such as an assessment of fairness or unfairness of legal norms, the effectiveness of legal regulation and the compliance of legal norms with the nature of the social relations they regulate.

O. Minchenko (2018) also argued that the legal worldview determines how a person understands and realises personal behaviour through the prism of emotions, feelings, views, and beliefs, based on personal capabilities. However, along with this, it is important not only to understand the legal worldview but also to work on the formation of a personality and citizen for whom self-determination takes place through true legal values – justice, equality, freedom, assessment, and readiness of a citizen to be active in the field of knowledge, application, and implementation of the law. At the same time, O. Kuznetsov (2019) argues from a psychological point of view that the formation of a worldview begins in childhood and is associated with the process of consciousness formation, which lasts throughout a person's life, but the main period of such formation is childhood, especially adolescence. Therefore, it is obvious that a person's worldview is a certain guideline in life, which is formed in childhood and adolescence and through which this person personally lives, understands the world, feels justice, understands equality and is aware of the law, regardless of what position this person holds in adulthood.

From the psychological point of view, the issue of internal conviction was also covered by I. Serkevych & Yu. Lisitsina (2022), concludes that a judge's internal conviction is a subjective-objective category and, according to scientists, the subjective aspect is a purely personal result of the cognitive activity of a particular person. This process involves all personal characteristics that give the conviction an emotional colouring, such as a person's spirit, interests and views, way of thinking, moral ideals, volitional qualities, character traits and temperament.

In the context of the scientific debate on the expediency of discretionary powers as an instrument of law enforcement agencies, exploring the concept of possible miscarriages of justice, V. Savchyn & V.I. Bobryk (2017) believe that it is necessary to separate the causes of a miscarriage of justice from the conditions which led to such a miscarriage. Since a legal cause is something that

gives rise to a legal phenomenon, and a condition is a circumstance that stimulates its occurrence and existence but does not give rise to it. In their opinion, the causes of judicial errors are inconsistency and unclear legislation, numerous legal contradictions and gaps, heavy workload, insufficient material, and technical support of courts, as well as obstruction of judges' activities by persons interested in resolving cases.

While agreeing with the authors that the above reasons and conditions may lead to a miscarriage of justice, the authors perhaps missed that one of such reasons may be the virtually unlimited range of judicial discretion, which is expressed in making a court decision based on the judge's internal conviction, which, as noted above, is formed, among other things, under the influence of the value and ideological beliefs of the subject of law enforcement. M. Kharchenko (2022; 2023), compiling a list of problems that may occur in the process of exercising the judge's discretion, noting the action or inaction, poor quality of the law, etc., also missed the reason for such an error in the use of discretion based on the judge's internal conviction formed based on personal worldview.

Most researchers did not mention such a component of internal conviction as a worldview in their conclusions. However, I. Tutulych (2019) believes that legal consciousness is one of the main criteria that forms a judge's internal convictions and influences law enforcement decision-making. L. Melech (2015) noted that a judge's internal conviction is based on legal consciousness and worldview, which is a set of legal principles, ideas, theories, doctrines, and provisions based on the study of the laws of emergence, formation, functioning and development, which are the result of theoretical and rational analysis and reflection of legal reality.

This position is shared by Yu. Melikhova (2018), believes that the ability of the justice system to develop in a humanistic direction and focus on more progressive values, and therefore the internal convictions of a judge are changing and will continue to change. According to the author, "internal conviction in the context of pluralism of ideologies reflects the features of certain social worldview positions and the level of moral and professional development of judges" (Melikhova, 2018). The researcher concluded that a judge's internal conviction should be viewed not as a state of affairs, but as the quality of moral and legal consciousness, which determines the application of certain ideological, political, and moral principles, ideals, and guidelines in professional activities. The subjectivity of a judge's opinion is reflected by the formulation of it by a particular judge based on a personal level of moral and professional culture, including consciousness and worldview. Therefore, the culture of thinking, which depends on the level of analytical and synthetic abilities and a high level of knowledge, has a great influence on judicial conviction (and not only on judicial conviction). According to the

scientist, this “defines the importance of the cognitive abilities of a human judge, not a legal professional – natural human logic, common sense, that is, a culture of thinking based on life experience about the world around us...” (Melikhova, 2018). Choosing a narrower aspect of the impact on judges’ internal beliefs in the form of a culture of thinking, the researcher also showed that worldview as a factor of a high culture of thinking also has a significant impact on a judge’s internal beliefs.

S. Glubochenko, in his dissertation “Formation of Worldview as a Guarantee of Legal Thinking of Judges: A Theoretical and Legal Study” (2015), argues, by the mere title of his work, that the worldview plays a significant role in the law enforcement activities of a judge and proves that the legal thinking of judges should be considered as a continuation of the judge’s worldview. Thus, the conclusions drawn by the scholar leave virtually no chance to question the fact that worldview influences internal conviction, since – if a worldview is the key to a judge’s thinking, then it is also the key to personal internal conviction since few would dare to deny that internal conviction is a process of thinking.

Apart from the above-mentioned authors, V. Gevko (2018) argues that by summarising all the components and factors that influence the formation of judges’ internal convictions, it is possible to state with certainty that it is impossible to develop legal safeguards that would completely prevent the influence on judges. Therefore, in the author’s opinion, the only reliable guarantee that does not affect the formation of a judge’s internal convictions is high moral qualities. Therefore, the researcher concludes that a judge can be independent and impartial only if he or she has high moral qualities and unquestionable authority. However, he fears that the current system of selection, appointment, evaluation, and responsibility of judges in our country does not give grounds for such expectations. In the end, the scholar believes that improvement of the current legislation and regulations governing the system of selection of candidates for the position of judge and disciplinary liability of judges is necessary and natural to achieve a judicial procedure following European standards. However, the current legislation has not yet created sufficient legal mechanisms and conditions to ensure the elimination of all possible factors that negatively affect the internal conviction of a judge. The author believes that in this regard, the system of selection of judges, their disciplinary responsibility, etc. and, as one of the most important factors, the moral qualities of a judge are important. In the researcher’s opinion, the current legal acts do not pay enough attention to this factor. Therefore, both at the stage of selecting candidates for the position of judge and in the process of administering justice, the legislation should ensure that judges are persons with high moral qualities and a significant level of public trust.

It is difficult to disagree with this statement of the researcher. Even though the above-mentioned views of

the scholar are mainly about moral qualities, it seems that this study is relevant to ours, since no one will question the fact that a person’s moral qualities are formed simultaneously or based on moral and value beliefs and guidelines. The author’s proposal to address the situation of low trust in law enforcement and judicial authorities in our country by improving the procedure for selecting candidates for positions with discretionary powers, paying more attention to the moral qualities of candidates, not only judges but also other subjects of procedural decision-making, seems extremely valuable.

The measures proposed by V. Gevko (2018) for assessing the moral qualities of candidates for positions with discretionary powers are extremely necessary, as after analysing the legal framework for discretion, it is possible to conclude that in almost any case, based on their internal conviction, procedural decision-makers can make several opposite decisions in the same case based on the same evidence. It is obvious that with such procedural tools, at some points, the procedural decision-maker will be inclined to choose the option (within the limits of discretion) that best appeals to personal moral qualities values and worldview.

Law enforcement, as a phenomenon of social reality based on the relevant ideological principles, which ensure human rights and freedoms, honour and dignity, justice, and equality, includes respect for laws, traditions, and customs, as well as intolerance to any violations of law and order. However, with a destructive legal outlook on the subject of law enforcement, constitutional guarantees of human rights and freedoms, the rule of law, etc. may be threatened.

Given that each case is the fate of a particular person, modern law cannot tolerate subjective decision-making (not exclusively erroneous, even if rarely) based on the internal conviction of the law enforcement officer, contrary to the evidence available in the case. Otherwise, trust in the judicial and law enforcement systems will remain at the same level as it is now. Therefore, scholars should not only identify, understand, and study this problem, but also find a tool that could prevent the influence of a destructive worldview on the adoption of decisions that are negative in terms of human rights protection and the rule of law. This, perhaps, can be achieved through a detailed study of the worldview and value orientations of candidates when selecting them for the positions of judges or other subjects of procedural decision-making, by introducing certain tests or tasks into the selection procedure for such positions with discretionary powers that would allow for a thorough assessment of candidates in terms of their worldview and value beliefs and orientations.

Conclusions

The concepts of worldview and internal conviction of procedural decision-makers have been sufficiently covered in the scientific literature, however, neither

domestic nor foreign authors have identified any works on the influence of worldview on the internal conviction of law enforcement officers, although both indirectly indicated the existence of such an influence. Scholars have sufficiently proved the importance of worldview for law enforcement in general and a particular law enforcement officer in particular, the importance and role of internal conviction in making procedural decisions, and even the relationship between worldview and internal conviction, while no research has been conducted on the influence of the former on the latter (including negative). The issue of attempts to increase public trust in law enforcement and judicial agencies by studying the value beliefs and worldviews of candidates for positions with discretionary powers at the stage of their selection has not been raised before.

The study has shown, among other things, that in contrast to legal innovations to meet modern challenges, law, in particular procedural law, retains an element of an almost unlimited range of subjective possibilities, which is expressed in the ability of a subject with discretionary powers to make decisions based on inner conviction, contrary to the case file (evidence) and the

law. Since any internal conviction is primarily based on the values and worldview of a person, which are formed throughout life, especially in childhood and adolescence, regardless of the position held, when faced with a problem in their professional activities on which law enforcement officer has already formed an opinion, the latter may be biased in making a procedural decision and make a decision contrary to the actual circumstances of the case and the evidence available in it.

Given that scholars and practitioners face an urgent need to determine the reasons for low public trust in law enforcement and judicial authorities and identify ways to strengthen this trust, the study subject is relevant and requires further in-depth research and implementation of a thorough assessment of their value beliefs and worldview during the selection of candidates for positions with discretionary powers.

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Conflict of Interest

None.

References

- [1] Barak, A. (2022). *Judicial discretion*. Kyiv: Centre of educational literature.
- [2] Bilostockiy, O. (2023). *Discretionary powers of a judge: Problems of theory and practice*. (Doctoral thesis, Mechnikova Odesa National University, Odesa, Ukraine).
- [3] Chuchman, O. (2022). Discretion of the investigative court for evidence under current judicial control. *Scientific Newsletter of the International Humanitarian University*, 56, 98-101. doi: 10.32841/2307-1745.2022.56.21.
- [4] Dilna, Z. (2018). *Psychology of a juror when accepting a court decision*. *Scientific Newsletter of the Lviv State University of Internal Affairs. Series Legal*, 3, 211-221.
- [5] Durkheim, E. (2002). *Primitive forms of religious life: The totemic system in Australia*. Kyiv: Univers.
- [6] Dvorkin, R. (2021). *The empire of law*. Kyiv: Publishing "KNT".
- [7] Fuller, L. (2021). *Morality is right*. Kyiv: Center for Educational Literature.
- [8] Gevko, V.V. (2018). Formation of the judge's internal conviction on the basis of independence and impartiality. *Scientific Works of the Interregional Academy of Personnel Management. Legal Sciences*, 2(56), 24-32. doi: 10.32689-2522-4603-2018-02-24-32.
- [9] Gioane, I.M. (2018). *Worldview as the main spiritual determinant of the current political choice*. *Gileas: Science News*, 132, 187-190.
- [10] Glubochenko, S.M. (2015). *Formation of the light as a guarantee of the legal understanding of judges: Theoretical and legal research*. (Doctoral thesis, National University "Odessa Law Academy", Odessa, Ukraine).
- [11] Grindey, L.M. (2018). *Formation of worldview as a guarantee of legal thinking of judges*. *Law and Society*, 1(2), 9-15.
- [12] Groshevoy, Yu. (2005). *Professional legal awareness of a judge and legal capacity of court decisions: Criminal-procedural aspect*. *University Scientific Papers*, 4(16), 248-255.
- [13] Gryn, A. (2019). *Discretionary powers of the executive authorities of Ukraine and their implementation*. (Doctoral thesis, National Academy of Sciences of Ukraine, Kyiv, Ukraine).
- [14] Gubska, O. (2020). Peculiarities of implementation of discretionary powers by subjects powers and the choice by the courts of the method of protection during the exercise of administrative justice. *Speech of the National School of Judges of Ukraine*, 4(33), 58-75. doi: 10.37566/2707-6849-2020-4(33)-5.
- [15] Gvozdik, O.I., & Koshchynets, V.V. (2016). *Logic of proof in the jurisdictional process: Study guide*. Kyiv: National Academy of the Prosecutor's Office of Ukraine.
- [16] Hopta, S.F. (2017). *Internal conviction of a judge as a basis for making judicial decisions*. *Almanac of Law. People-Centeredness in Law: Theoretical and Legal Foundations*, 8, 397-400.
- [17] Hryniuk, V. (2012). *Court of the Soviet era*. *Journal of the National University "Ostroh Academy". "Law" Series*, 2(6).

- [18] Hryshchuk, O.V. (2007). *Human dignity in law: Philosophical problems*. Kyiv: Atika.
- [19] Kharchenko, M.V. (2022). Problems of exercising the judge's discretion during the consideration of cases in administrative proceedings and ways to solve them. *Legal Scientific Electronic Journal*, 11, 849-856. doi: 10.32782/2524-0374/2022-11/208.
- [20] Kharchenko, M.V. (2023). *Discretion of a judge during the consideration of cases in administrative proceedings*. (Doctoral dissertation, Zaporizhzhia National University Ministry of Education and Science of Ukraine, Ukraine).
- [21] Kharenko, O. (2018). *Administrative discretion in the activities of public entities administration*. *Journal of the Kyiv University of Law*, 3, 119-124.
- [22] Korol, O.D. (2020). *Worldview. Great Ukrainian Encyclopedia*. Retrieved from <https://vue.gov.ua/Svitoglyad>.
- [23] Kostytskyy, V. (2019). *Limitation of power and expansion of discretionary powers as two trends in the development of the modern state*. In *Issues of discretionary powers in the functioning of public authorities* (pp. 10-14). Kyiv: Taras Shevchenko National University of Kyiv.
- [24] Kuznetsov, O. (2019). Worldview of personality as a psychological problem. *Scientific Bulletin of Kherson State University. Series "Psychological Sciences"*, 1, 41-48. doi: 10.32999/ksu2312-3206/2019-1-6.
- [25] Melech, L.V. (2015). *Evaluation of evidence as the final stage of the evidence process*. *Bulletin of the Luhansk State University of Internal Affairs Named After E.O. Didorenko*, 1(2), 132-142.
- [26] Melikhova, Yu.A. (2018). *The influence of the judge's culture of thinking on the quality of his inner conviction*. *Gilea: Scientific Bulletin*, 133, 146-148.
- [27] Minchenko, O.V. (2018). *Legal worldview as one of the factors in the construction of the national legal system*. *Comparative and analytical law is an electronic scientific publication of the Faculty of Law of the Uzhhorod National University*, 3, 38-41.
- [28] Onishchuk, M. (2021). Problematic issues of judicial control at the discretion of the subject of authority. *Word of the National School of Judges of Ukraine*, 2, 35. doi: 10.37566/2707-6849-2021-2(35)-3.
- [29] Pogrebnyak, S. (2005). *The fairness of the content of normative legal acts as a condition for their legality*. *Bulletin of the Academy of Legal Sciences of Ukraine*, 2(41), 41-59.
- [30] Rabinovich, P., & Bachinsky, T. (2014). *Legal light (socio-natural interpretation)*. *Newsletter of the National Academy of Legal Sciences of Ukraine*, 2, 5-17.
- [31] Rudyuk, V. (2019). Worldview level of the vision of the transformation of the judiciary in Ukraine. *Philosophical and Methodological Problems of Law*, 17(1), 112-116. doi: 10.33270/01191702.112.
- [32] Savchyn, N.M., & Bobryk, V.I. (2017). *Procedural-legal nature of judicial errors in civil justice of Ukraine*. Chernivtsi: City.
- [33] Serkevysh, I.R., & Lisitsina, Yu.O. (2022). Psychological features of the internal conviction of a judge. *Bulletin of the Lviv University of Trade and Economics. Legal Sciences*, 11, 51-57. doi: 110.36477/2616-7611-2022-11-08.
- [34] Shaptala, N. (2019). The internal conviction in the evaluating evidence in the constitutional judicial process. *Scientific Journal of the National Academy of Internal Affairs*, 1, 22-28. doi: 10.33270/01191101.22.
- [35] Shcherbanyuk, D. (2018). *Formation into a ship expert of internal negotiations about the extent of implementation of the right to expert initiative*. *Legal Novels*, 4, 295-300.
- [36] Shulgin, S. (2019). The role of the internal investigator and prosecutor during their assessment of evidence from criminal investigators is questionable. *Entrepreneurship, Government and Law*, 9, 251-256. doi: 10.32849/2663-5313/2019.9.43.
- [37] Statement of the Council of Judges of Ukraine on the incident in Shevchenkivskyi District Court of Kyiv. (2023). Retrieved from <https://rsu.gov.ua/ua/news/zaava-radi-suddiv-ukraini-sodo-podii-u-sevcenkivskomu-rajonnomu-sudi-mista-kyeva>.
- [38] Torbas, O. (2020). *Discretion in the criminal in the criminal procedure of Ukraine*. Odesa: Juridical literature.
- [39] Trepak, L. (2019). *Formation, structure and powers of the German occupation authorities in the District of Galicia (1941-1944)*. *Lviv University Bulletin. Legal Series*, 68, 125-131.
- [40] Tutulych, I.Yu. (2019). *Internal conviction of the judge when evaluating the evidence*. Retrieved from <https://archer.chnu.edu.ua/xmlui/handle/123456789/3372>.
- [41] Vandzhurak, R. (2022). Traditions and innovations in Ukrainian jurisprudence: Ancient Greek roots. *Social and Legal Studies*, 5(4), 9-17. doi: 10.32518/2617-4162-2022-5-4-9-17.
- [42] Vandzhurak, R. (2023). *The influence of ancient Greek philosophy of law on modern Ukrainian jurisprudence*. Kyiv: Vistka.
- [43] Violations by Article and by State. (2022). Retrieved from https://www.echr.coe.int/documents/d/echr/Stats_violation_2022_ENG.
- [44] Zayats, O.S. (2021). Intentional analysis of luminous signs of professional advocacy. *Scientific Journal of the Drahomanov National Pedagogical University*, 35, 32-37. doi: 10.31392/NPU-nc.series18.2021.36.05.

Вплив світогляду на внутрішнє переконання суб'єктів правозастосування в контексті реалізації їх дискреційних повноважень

Роман Ванджурак

Доктор філософії в галузі права, докторант
Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-8474-2276>

Анотація

Попри багаторічні намагання науковців і практиків з'ясувати причину вкрай низького рівня довіри громадян до судових та правоохоронних органів в Україні й віднайти шляхи її зміцнення, цей рівень досі на межі критичного, а тому постала необхідність виявити нові способи подолання такої кризи. Убачаючи таку недовіру суспільства в узаконеному праві суб'єктів прийняття процесуальних рішень ухвалювати їх на основі свого внутрішнього переконання, визначено метою роботи огляд й аналіз наукових напрацювань у галузі ухвалення процесуальних рішень суб'єктами правозастосування на основі їхнього внутрішнього переконання та встановлення факторів, які мають вплив на таке переконання. У межах дослідження окресленої проблематики використано методи аналізу, синтезу й узагальнення, за допомогою яких опрацьовано бібліографію проблематики, а для обґрунтування результатів і формулювання висновків проведеного дослідження застосовано методи дедуктивно-логічного аналізу й індуктивного узагальнення та аналогії. За результатами здійсненого дослідження встановлено, що поняття світогляду та внутрішнього переконання суб'єктів прийняття процесуальних рішень науковці вивчали окремо. Доведено, що будь-яке внутрішнє переконання ґрунтується передусім на ціннісно-світоглядних орієнтирах людини, що формуються протягом життя, насамперед – у дитинстві та юнацькому віці. Незалежно від посади, яку обіймає людина, поставши у своїй професійній діяльності перед проблемою, щодо якої в суб'єкта правозастосування вже сформовано погляд, останній під час ухвалення процесуального рішення може ухвалити його всупереч фактичним обставинам справи й наявним у ній доказам. Практичне значення цього дослідження полягає в тому, що здобуті результати можуть стати основою для змін у чинному законодавстві щодо проведення оцінювання кандидатів на посади з дискреційними повноваженнями, що передбачає зосередження уваги на їх ціннісних переконаннях і світоглядних орієнтирах

Ключові слова:

суб'єкт; процесуальне рішення; розсуд; дискреційні повноваження; філософія права