

## **Organizational and legal issues of the implementation of international legal Standards in the field of independence of judicial power in Uzbekistan**

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**Abstract:** In the world, special emphasis is paid to ensuring the right to an independent and impartial judiciary to handle a case, problems of implementing international standards on the independence of the judiciary, the introduction of institutional and individual aspects of judicial independence, improvement of international standards of ethics and disciplinary responsibility of judges for the administration of justice as well as the formation of the judicial corps and application of judicial accountability.

The article studies international and regional standards for enhancing the role of the Supreme Council of Judges of the Republic of Uzbekistan in ascertaining the independence of the judiciary. In addition, conclusions and recommendations were set in accordance to the Constitution and laws of the Republic of Uzbekistan with international standards.

**Keywords:** judiciary, judges, the Supreme Council of Judges, independence of judicial power, international and regional standards, selection and appointment of judges, judicial community.

**Introduction** The issue of the independence of judicial power and the achievement of fair trial in the world remains a significant and urgent problem in an increasingly globalized era. According to the UN Office of the High Commissioner for Human Rights, the independence of judicial power and the free implementation of judges' activities are still in danger. Judges are exposed to threats, interference, intimidation and arbitrary arrests in the conduct of their professional activities<sup>1</sup>. From this view point, the improvement of organizational-legal issues of the implementation of international standards on the independence of the judiciary was evaluated as a means to achieve

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<sup>1</sup> The Special Rapporteur on the Independence of Judges and Lawyers.// <https://www.ohchr.org/en/issues/judiciary/pages/annual.aspx>

effective access to justice which is the theme of actual importance for conducting the research.

In the world special emphasis is paid to ensuring the right to an independent and impartial judiciary to handle a case, problems of implementing international standards on the independence of the judiciary, introduction of institutional and individual aspects of judicial independence, improvement of international standards of ethics and disciplinary responsibility of judges for administration of justice as well as formation of the judicial corps and application of judicial accountability.

In Uzbekistan the implementation of international standards related to the independence of the judiciary, increasing the efficiency of justice, improving the position of our country in international rankings are considered a priority as well. To confirm, the Government of the Republic of Uzbekistan invited the UN Human Rights Council Special Rapporteur on the Independence of Judges and Advocates to Uzbekistan in 2019 and presented its report on the achievements and current problems of judicial independence in Uzbekistan at the 44th session of the UN General Assembly Human Rights Council<sup>2</sup>. Besides, the Resolution of the President of the Republic of Uzbekistan №PR-4210 “On measures to improve the position of the Republic of Uzbekistan in international rankings and indices” was adopted<sup>3</sup>.

Diego Garcia-Sayan, Special Rapporteur of the UN Human Rights Council on the Independence of Judges and Advocates, stated in his initial remarks that the Supreme Judicial Council: The procedure for the election and appointment of members of the Supreme Council of Judges does not fully meet the standards of international law. It is to say that the procedure of selection and appointment of members of the Supreme Judicial Council is not fully consistent with international legal standards. In particular, the discretionary power given to the President to appoint the Secretary of the Supreme

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<sup>2</sup> Visit to Uzbekistan Report of the Special Rapporteur on the independence of judges and lawyers// <https://undocs.org/en/A/HRC/44/47/Add.1>

Council of Judges and seven members should be invalidated<sup>1</sup>. With this statement, he expressed his concern over the procedure for selection and appointment of members of the Supreme Council of Judges in Uzbekistan.

In the legal literature (Bell John, John Owen Haley) it is noted that the concept of the Judicial Council began to be used in France at the end of the XIX century and was intended to protect the independence of judicial power. The first modern judicial council was established in France (Conseil Supérieur de la magistrature) in 1946 year. Later, in 1948, in Italy (Consiglio Superiore della magistrature) was established, but this institution began its activity in 1958 year, today the entry of 22 national councils into the network of European Judicial Councils was recorded in the research.

The content of Articles 11, 106, 111 of the Constitution of the Republic of Uzbekistan has been analyzed in the research on the legal basis of the distribution of powers enshrined in the Constitution of the Republic of Uzbekistan.

As pointed out in Article 111, the Supreme Judicial Council of the Republic of Uzbekistan acts as a body of court community and render support in observation of the constitutional principle of independence of the judiciary in the Republic of Uzbekistan<sup>2</sup>.

According to Article 5. paragraph 1 of the Law of the Republic of Uzbekistan "On the Supreme Council of Judges", "The Council includes the Chairman, Deputy Chairman, its members and the Secretary - a total of twenty-one members, including judges, representatives of law enforcement agencies, civil society institutions and highly qualified legal experts<sup>3</sup>".

According to international standards, it is not advisable for such councils to include representatives of the executive and legislative branches, including law enforcement agencies<sup>4</sup>.

It is stated in Paragraph 2 of Article 5 of the Law that the Chairman of the Council is appointed by the Senate of the Oliy Majlis of the Republic of Uzbekistan upon

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<sup>3</sup> The Resolution of the President of the Republic of Uzbekistan No. "On measures to improve the position of the Republic

nomination by the President of the Republic of Uzbekistan<sup>5</sup>. The law does not specify the procedure for selecting a candidate for the presidency of the Council and the criteria for which a candidate must meet the requirements.

Paragraph 4 of this article points out that eleven members of the Council are approved by the President of the Republic of Uzbekistan from among the judges upon nomination by the Chairman of the Council, but the question of if the President has the right not to approve remains open<sup>6</sup>. Similarly, as referred in paragraph 3 of this article, the Deputy Chairman of the Council is approved by the President of the Republic of Uzbekistan<sup>7</sup>. However, the president's right not to approve is left open by law. At the same time, the law leaves open the question of who will nominate the Deputy Chairman of the Council to the President and the procedure for nomination.

Although paragraph 5 of this article states that the Secretary of the Council and its seven members are approved by the President of the Republic of Uzbekistan from among law enforcement officials as well as civil society institutions and highly qualified legal professionals, the law does not specify the criteria for selecting these specialists and call for clarification<sup>8</sup>. The remaining eight members of the Council, including the Deputy Chairman of the Council, are assigned to hold public office. Similarly, the criteria for community-based professionals are not set out in the law.

In its turn, failure to clearly define the criteria for selecting community-based professionals may result in professionals who do not have sufficient skills and qualifications to become members of the Board. In accordance with international standards, it is recommended that the election of members of the Council, acting on a community basis, be delegated to a non-political body whenever possible. Under no circumstances may these members be elected or appointed by the executive<sup>9</sup>.

The law limits the participation of the judiciary in the formation of the Supreme Council of Judges. We can see that the President of the Republic of Uzbekistan has been

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of Uzbekistan in international ratings and indices". <https://www.lex.uz/docs/4215422#undefined>.

given significant authority in forming the composition of the Council. As pointed out in Article 89 of the Constitution of the Republic of Uzbekistan, "The President of the Republic of Uzbekistan is the head of state and ensures the coordinated functioning and cooperation of public authorities<sup>10</sup>".

According to this article of the Constitution, the President is not part of the executive and legislative branches, so the President, as the head of state, is given great authority in forming the judiciary.

Several international instruments do not support the participation of representatives of the executive and legislative branches at any stage in the formation of the judiciary<sup>11</sup>.

In the research based on international standards and experience of foreign countries in the field of strengthening the role of judicial corps, it is proposed to form Supreme Council of judges elected by judicial Corps based on democratic principles.

Similarly, it is argued that is reasonable that the Chairman of the Supreme Council of Judges shall be elected by the members elected on the basis of democratic principles.

As international instruments state, members of the Council of Judges should be elected by judges<sup>12</sup>. As noted above, the judiciary does not participate in the formation of members of the Council in Uzbekistan. In accordance with the law, the election of members of the Council is the exclusive prerogative of the Chairman of the Council. Only the Chairman of the Council decides who will be a member of the Council and submits it to the President. In particular, the role of the judiciary is not included in the election of the Chairman of the Council. The election of the Chairman of the Council and his nomination to the Senate is also an absolute right of the President. As it is clear, these cases are contrary to democratic principles.

Having entered into a academic discussion with Professor M.Mamasiddikov's view that according which "at least half of the Supreme Council of Judges should consist of elected judges, as well as other members of the Judicial Council should be

elected by the parliament in order to avoid corporatism and maintain balance, they should consist of lawyers, representatives of civil society”, the election of members, it is based on the expediency of his/her election by the judicial community in order to protect him/her from political influences<sup>4</sup>.

The research concludes that it is necessary to exclude from the council representatives of law enforcement bodies specified in Article 5 of the Law “On the Supreme Council of Judges of the Republic of Uzbekistan”, in accordance with international standards it is not desirable to have in the composition of such councils representatives of executive and legislative authorities, including representatives of law enforcement bodies.

Similarly, opinions were put forward that the criteria for the selection of specialists working on a public basis are not clearly established, which can lead to the fact that specialists who do not have sufficient skills and qualifications to become members of the Council.

The research investigated the international standards (OSCE Kiev recommendations, the European Charter on the status of judges) and legislation of foreign countries (Moldova, Slovenia, Slovakia, Lithuania, Ukraine, Bulgaria, Spain, Hungary, Greece) related to the role of the Supreme Council of judges in ensuring the independence of judicial power.

Section 7 of the Kiev Recommendations stipulates that the Chairman of the Council is elected by a majority vote of the members of the Council<sup>13</sup>. According to the Venice Commission, the composition of judicial councils may vary, but it is generally accepted that half-members of the council should be judges and that they be elected by their colleagues<sup>14</sup>. The Committee of Ministers of the Council of Europe recommends that at least half of the members of such councils ought to be elected by all members of the judiciary in accordance with the principle of pluralism<sup>15</sup>.

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<sup>4</sup> Mamasiddiqov M.M. Strategy of actions: ensuring the rule of law and a radical turn in improving judicial reform // Priorities for further rule of law and

To illustrate in the sample of foreign countries, six of the twelve members of the Higher Masters Council in Moldova are elected by their colleagues<sup>16</sup>. In Slovenia, six of the eleven members of the council are elected by judges<sup>17</sup>. In Slovakia, nine out of eighteen members of the council are elected by judges<sup>18</sup>. In Lithuania, twenty of the twenty-three members of the council are elected by their colleagues<sup>19</sup>.

In accordance with Article 27 of the Law "On the Supreme Council of Judges of the Republic of Uzbekistan", a member of the Council is appointed (approved) for a term of five years. It is defined that a permanent member of the Council may not be appointed (approved) for more than two terms<sup>20</sup>. It is not stated in the law that community-based representatives of the Council can be reappointed for the next term.

The issue of reappointment of a member of the Council acting on a permanent basis for the next term may reflect the loyalty of the members of the Council to the body to which he is appointed, so this system is not acceptable. A long-term appointment is preferable rather than a reappointment because a long-term appointment better ensures the independence of the Board member. Section 76 of the Venice Commission's List of Control Questions for Assessing the Rule of Law states that "the limited or renewed term of office of judges will depend on the body which appoints or re-appoints them for a further term<sup>21</sup>".

In the experience of several foreign countries, we can see that a member of the Council, who carries out its activities on a permanent basis, cannot be elected for more than one term. For instance, members of the Ukrainian Council of Justice are elected for a four-year term without the right to be re-elected for a new term<sup>22</sup>. In Bulgaria, members of the Council of Judges are elected for a term of five years without the right to be elected for two consecutive terms<sup>23</sup>. In Hungary, members of the National Council of Judges are elected for a term of six years without the right to be reelected<sup>24</sup>. In Spain,

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further reform of the judicial system (collection of articles) / Editor-in-Chief Yu.f.d., prof. M.M.Mamasiddiqov. T.: "Publishing Light" -2017. -P.8.

members of the General Council of the Judiciary are elected for a five-year term without the right to be reelected<sup>25</sup>.

In the practice of some foreign states we can see the practice of reappointment of members of the Council of Judges, but in all of them the nomination of members is nominated by the judges. In Lithuania, all 23 members of the council are judges, 20 of whom are elected by their colleagues and can be reelected for a new term<sup>26</sup>. In Greece, all members of the Supreme Judicial Council are judges who can be re-elected for a new term<sup>27</sup>.

According to Article 30 of the Law "On the Supreme Council of Judges of the Republic of Uzbekistan", early termination of powers of a member of the Council is provided. According to this article, early termination of the powers of a member of the Council may take place in the following cases: when applying for resignation, loss of citizenship of the Republic of Uzbekistan, occurrence of diseases or physical defects that prevent him from carrying out his activities, when he is declared incompetent or incapacitated in accordance with the established procedure, dies or is declared dead by a court decision, when a court conviction comes into force against him, and when he commits acts that damage his honor and dignity<sup>28</sup>.

Article 30, paragraph 3, of the Law provides for the early termination of the powers of a member of the Council "in the event of illness or physical disability that prevents him from carrying out his activities." A similar procedure is provided in Article 20 of the Law as a basis for exclusion from the reserve of candidates for judicial positions. In this case, it is not specified precisely what diseases and physical disabilities cause the early termination of the powers of a Board member. Article 23 of the law points out that a candidate for the position of a judge must undergo a medical examination. Accordingly, a candidate for the position of a judge must undergo an initial medical examination to confirm that he or she does not have any diseases or physical defects that prevent him or her from administering justice. The list of diseases and

physical defects that impede the administration of justice is approved by a joint decision of the Council and the Ministry of Health of the Republic of Uzbekistan. Besides, the form of the document confirming the absence of diseases and physical defects that impede the administration of justice is approved by the Ministry of Health of the Republic of Uzbekistan. The expression “in the event of acts which violate his honor and dignity” referred to in the last paragraph of Article 30 is a broad and general concept, and the law does not specify the criteria for its definition. In its turn, this ambiguity can be used as a means of interpreting this paragraph as desired and exerting pressure on the Council member.

**Conclusions and suggestions** on the analysis of the Constitution of the Republic of Uzbekistan, the Law "On the Supreme Council of Judges of the Republic of Uzbekistan", the Law "On Courts" and the Regulations of the Supreme Council of Judges:

- It is important to guarantee the full participation of the judiciary in the formation of the Council. The composition of the Supreme Council of Judges must be composed of members elected by the judiciary based on democratic principles;

- It is rational that the Chairman of the Supreme Council of Judges be elected by the judiciary from among the members elected based on democratic principles;

- Representatives of law enforcement agencies mentioned in Article 5 of the Law "On the Supreme Council of Judges of the Republic of Uzbekistan" should be excluded from the Council. According to international standards, it is not advisable for such councils to include representatives of the executive and legislative branches, including law enforcement agencies;

- The composition of the Council and its formation do not determine the criteria established for members of the Council by law, it is necessary to develop clear criteria, on the basis of which they will be elected;

- Similarly, the absence of clear criteria for the selection of specialists at the community level can lead to the fact that professionals who do not have sufficient skills and qualifications might become members of the Council. In accordance with international standards, it is recommended that the election of community-based Council members should be delegated to a non-political body whenever possible. Members of the Council acting on a public basis may not be appointed or elected by the executive or legislature;

- In order to ensure the independence of the members of the Council, it is expedient to cancel the reappointment (approval) of the members of the Council who carry out their activities on a permanent basis. The same procedure should apply to members of the Council at the community level. The reappointment of a member of the Council, which carries out its activities on an ongoing basis, for the next term may demonstrate its loyalty to the body to which it is appointed, therefore this system is not considered acceptable;

- It is advisable to specify in the law a list of diseases and physical defects that are the basis for the early termination of powers of a member of the Council established by law, and for removal of candidates from the reserve;

- It is rational to clearly define in the law the grounds for the early termination of powers of a member of the Council, avoiding ambiguous expressions or broad definitions.

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