

DISCIPLINARY RESPONSIBILITY OF JUDGES: THE INTERNATIONAL STANDARDS AND THE NATIONAL LEGISLATION OF UZBEKISTAN

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ABSTRACT

In this paper, the international standards on disciplinary proceedings against judges and comparative-legal analysis of the experience of foreign countries, the prospects of international standards on disciplinary responsibility of judges to the national legislation of Uzbekistan are studied.

KEYWORDS:- Disciplinary Proceedings Against Judges, International Standards, Experience Of Foreign Countries, National Judicial Councils, Composition Of Disciplinary Bodies.

INTRODUCTION

In his preliminary discussions Diego Garcia-Sayan, Special Rapporteur of the UN Human Rights Council on the Independence of Judges and Lawyers, expressed his concern about disciplinary proceedings against judges in Uzbekistan as stated below: the existing grounds for initiating disciplinary proceedings against judges are too general and broad, in particular the one referring to “violation of the rules of ethical judicial conduct”. The grounds and procedure for conducting disciplinary

proceedings against judges should be regulated by law, and the responsibility for carrying out such proceedings should be vested in an independent authority composed primarily of judges, such as a judicial council or a court. Court chairpersons should be deprived of their power to initiate disciplinary proceedings [1].

According to the statistics from the Supreme Council of Judges of the Republic of Uzbekistan, in 2018 and 8 months of 2019, the Supreme Council of Judges initiated a total of 253

disciplinary cases against judges, according to which 123 (48.6%) judges were “excused”. Moreover, 14 (5.5%) judges were subjected to “penal” disciplinary measures, 81 (32%) the disciplinary cases were dismissed, judges were warned, 14 (5.5%) judges were dismissed prematurely, 2 (0.7%) consideration of 19 disciplinary cases that were left without consideration of the decision since the judge’s term was expired [2].

DISCUSSION

Although the current legislation provides for the application of severe and penal disciplinary measures against judges, judicial qualification commissions practice warning judges as a disciplinary sanction and file a petition with the Council for early termination of powers. To solve these problems in practice, considering international standards and the experience of foreign countries, it is proposed to create an effective and efficient system of disciplinary proceedings against judges by introducing the following additional disciplinary measures into legislation: warning, restrict qualifications for up to six

months, a fine of not more than thirty percent of the average monthly salary, early termination of powers of a judge.

As recorded in international standards, the disciplinary responsibility of judges should be consistent with the basic principles of law. In particular, the occurrence of liability as a result of breach of obligations is clearly defined by law. A fair audit should be conducted and the views of the parties, including the judge, should be heard. Punishment should be clearly defined by law. The application of punishment should be based on the principle of proportionality.

A judge should have the right to appeal a disciplinary sanction to a higher court [3]. In its turn, the procedure for instituting disciplinary proceedings against judges also does not fully comply with the principle of judicial independence. Notably, the law states that disciplinary proceedings against a judge may be instituted by the Council and the Chairman of the Supreme Court. Peculiarly, the law stipulates that disciplinary proceedings against a judge may be instituted by the Council and the Chairman of the Supreme

Court. Article 6, paragraph 6 of the Law on the Supreme Council of Judges of the Republic of Uzbekistan clearly stipulates that one of the main tasks of the Council is to consider the issue of bringing judges to disciplinary responsibility, as well as issuing a conclusion to bring them to criminal and administrative responsibility [4]. In accordance with Article 49 of the Regulations on Qualification Boards of Judges, the Chairman of the Supreme Court of the Republic of Uzbekistan has the right to initiate disciplinary proceedings against judges of the courts of the Republic of Uzbekistan.

The authority to review disciplinary proceedings against judges should be vested in an independent body. The independent body may be the Council of Judges or the court itself. International law enforcement mechanisms, including the UN Special Rapporteur on the independence of judges and lawyers, violate the principle of the independence of the judiciary due to the participation of the executive in the work of the body considering disciplinary proceedings against judges [5]. This is to say that the decision of the Council on

disciplining a judge is a guarantee of the independence of the judiciary. Accordingly, Article 7 of the Law on the Supreme Council of Judges of the Republic of Uzbekistan defines the powers of the Council to bring judges to disciplinary responsibility. In the above-mentioned law, the Council:

- Considers the issue of disciplinary proceedings in relation to judges and sends materials to the appropriate qualification commissions of judges;
- Considers the issue of disciplinary proceedings against members of the Council, who carry out their activities on an ongoing basis;
- Gives an opinion on the criminal or administrative prosecution of judges [6].

Section 7 of the law defines the powers of the Council with respect to disciplinary proceedings. The Council considers the issue of disciplinary proceedings in relation to judges, and then send the materials to the relevant qualification boards of judges. In such case, the Supreme Council of Judges decides whether to prosecute the judge or not, and then sends the

materials to the appropriate qualification boards. Next, qualification boards apply an appropriate disciplinary action.

Article 70 of the Law of the Republic of Uzbekistan "On Courts" establishes the procedure for bringing a judge to criminal and administrative liability. This means that a criminal case against a judge can be initiated only by the Prosecutor General of the Republic of Uzbekistan. A judge may not be prosecuted or arrested without the conclusion of the Supreme Council of Judges of the Republic of Uzbekistan and without the consent of the Plenum of the Supreme Court of the Republic of Uzbekistan. It is defined that a judge cannot be brought to administrative responsibility unless the Supreme Council of Judges of the Republic of Uzbekistan concludes so [7].

The conclusion and consent of the judiciary to bring a judge to criminal and administrative liability is in line with international standards. This is an important factor in ensuring the independence of the judiciary. The Supreme Council of Judges of the Republic of Uzbekistan should play an important role in the fulfilment of disciplinary sanctions on judges.

At the same time, in practice, the disciplinary case instituted by the chairman of the Supreme Court is not referred to the Council, but is sent directly to the qualification commissions of judges who decide the issue of disciplinary action against a judge.

In particular, the Chairman of the Supreme Court initiated 23 disciplinary cases against judges in 2018 and 2 in the first 6 months of 2019, and the materials were sent to the qualification boards of the relevant judges [8].

As the experience of foreign countries depicts, the President of the Supreme Court of the Republic of Kazakhstan submits a proposal to the Supreme Council of Judges to consider disciplinary proceedings against all judges, the Chairman of the Supreme Court of Georgia sends materials on disciplinary proceedings in relation to all judges to the Supreme Council of Justice; In the case of lower court judges, only the President of the Supreme Court may initiate disciplinary proceedings against judges of the Supreme Court and send the materials to the Ethics Court, which is a separate body. In Armenia, the Minister of Justice, the chairman of the Court of Cassation

and the Disciplinary Commission initiate disciplinary proceedings against judges and send materials to the Council of Justice.

With the aim of eliminating the current contradictions in the legislation, limiting the subordination of judges to the leadership of the Supreme Court and ensuring their true independence in practice, it is proposed to legislate the right of the Chairman of the Supreme Court to submit a disciplinary case to the Council.

In agreement with Article 50 of the Regulations on Qualification Boards of Judges, the Chairman of the Supreme Court of the Republic of Uzbekistan, who initiated a case on disciplinary liability of a judge, must analyze in advance the information on the grounds for bringing a judge to justice and demand a written explanation. A judge against whom disciplinary proceedings have been instituted is acquainted with the case materials before they are sent to the panel of judges. In this case, the judge has the right to provide additional explanations or to request a further investigation [9].

Article 7 of the Law on the Supreme Council of Judges of the Republic of Uzbekistan states that the Council considers disciplinary proceedings in relation to judges[10]. However, this legislation does not state that judge has the right to participate in the process of disciplinary proceedings by the Council or the Qualification Board of Judges, to exercise the right to defense, and to express his opinion.

In the Russian Federation, a judge has the right to participate in the disciplinary proceedings against him, while in Ukraine, Belarus, Georgia, and Kazakhstan, the participation of a judge in disciplinary proceedings is mandatory.

In order to safeguard the observance of the principle of independence of judges in the process of disciplinary proceedings, to ensure impartial and fair consideration of disciplinary cases by the Council and the Judicial Qualifications Commission, it is proposed to establish in law the obligation of a judge.

As pointed out in Article 76 of the Rules of Procedure of the Supreme Council of Judges of the Republic of Uzbekistan, the Council considers the issue of disciplinary proceedings

against a judge, including a special ruling against a judge(s) [11].

The statistics from the Supreme Council of Judges demonstrates that in 2018, 40 of the 136 disciplinary cases against judges were initiated as a result of private rulings issued by the courts, while in the first 8 months of 2019, the figure was 60 respectively [12].

It is stated in Article 73 of the Law on Courts, the annulment or modification of a court decision does not in itself constitute liability for a judge who participated in the issuance of a court decision in case he did not intentionally violate the law or cause dishonesty with serious consequences [13].

Within the framework of the OSCE on disciplinary proceedings against judges, Copenhagen 1990 and Moscow 1991 documents, Kiev recommendations and the European Charter "on the status of judges" and the experience of foreign countries were investigated.

Kiev recommendations on the independence of the judiciary also point out that disciplinary measures in relation to judges can only be

instituted if they have made gross and unforgivable mistakes that could damage the reputation of the entire judicial community.

At the same time, the assessment of judges' professional performance should include an assessment of their professional and social skills. And this should not affect the independence of judges [14].

As recorded in Article 66 of the Council of Europe Committee of Ministers' recommendations, "the application of the law by judges, the assessment of facts and evidence shall not be grounds for civil or disciplinary action, except for acts or omissions committed by them intentionally or as a result of gross negligence [15]."

Nevertheless, there is a practice of making some decisions against judges without observing the above requirements in cases where decisions of lower courts are canceled or amended by higher courts. The main reason for this is that the procedural law does not establish clear grounds and criteria for special decisions against judges.

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legislation does not set clear grounds and criteria for issuing special rulings against judges. In particular, the Law of the Republic of Uzbekistan “On Courts”, the Administrative Procedure Code and the Economic Procedure Code do not include a special decision regarding a judge. It is difficult to determine whether it is possible to issue a separate ruling on judges from the content of article 496 of the Code of Criminal Procedure, but article 379 of the Code of Civil Procedure provides that the law has been violated to such an extent that there are no grounds for cancellation. It is stated that the courts of appeal, cassation and supervisory jurisdiction believe that violations of the law by the court that examined the case are not grounds for cancellation, amendment or adoption of a new decision [16].

As a result, of the 63 private decisions submitted to the Council for the 9 months of 2019, 42 (66.7%) were deemed suitable for disciplinary proceedings against a judge, and 21 (33.3%) were rejected [17].

It is proposed to amend the Law on Courts and all procedural codes in order to ensure the independence of judges in the administration

of justice, to legislatively regulate the grounds and procedure for making special decisions regarding judges, as well as to unify judicial practice in this regard.

“In accordance with the Regulation on the Qualification Bodies of Judges, appeals against decisions of the qualification collegium of judges are considered by the High Qualification Commission of Judges [18], and appeals against decisions of the Higher Qualification Council of Judges are examined by it.

The lack of impartiality in the trial gave the judges the impression that their decisions were unjust.

In the research the consideration of disciplinary proceedings against judges in international documents and the legislation of foreign countries, a number of violations and the application of appropriate penalties to them as well as the their procedures should be carried out by an independent body or a court and the main principles on the fair trial proceedings and the right to appeal should be ensured.

The research work shows that in the

experience of foreign countries there are three main systems, which differ from each other in the cases of disciplinary liability of judges: the first system, the National Judicial Council (special committee or special body under it) (Albania, Bulgaria, Croatia, France, Georgia, Italy, the Ukraine and Spain); the second system, decisions on disciplinary liability are independent collegiums that are not part of the); the third system, decisions on disciplinary liability issues are taken by the courts (Austria, Germany, Bulgaria, Croatia, France, Georgia).

In countries such as Kazakhstan, Ukraine and Moldova, appeals against decisions of the qualification collegiums of judges are considered by the High Council of Judges.

Decree of the Supreme Council of Judges of the Republic of Uzbekistan No. 490-III of January 29, 2018 amended and supplemented the Judicial Code of Ethics and approved its new edition. This Code is mandatory for all judges in Uzbekistan, including judges whose powers were suspended on the grounds provided by law. In accordance with paragraph 6 of the decision of the High Council of Judges of the

Supreme Council of Judges of January 29, 2018 No. 490-III, judicial officials must also comply with this code [19].

It is concluded that in accordance with international standards, the task of sorting out cases within the framework of the issue of disciplinary responsibility or on the prohibition of receiving complaints, consideration and decision-making shall be carried out by the same body or by the same persons.

Also, disciplinary liability cases can be provoked in such cases where, in accordance with the offenses expressed in the national legislation, a judge is charged or suspected of committing an offending act, as a rule, the initiation of such a case is carried out only for the behavior in which there is a violation of diyanatism, which has serious consequences. It is based on the fact that the violation of the rules of such codes of conduct, taking into account the sufficiently common goals and rules provided for by the code of ethics of judges, should not be the basis for provoking the case of disciplinary responsibility.

In the research work the conclusion was made according to which that judges cannot be held to criminal or disciplinary responsibility for commenting on the law on the performance of a case, assessing evidence or evidence, except in cases of negligence which has resulted in intentional or serious consequences. In addition, proposals were made on the fact that it is not possible to bring personal responsibility for the decisions of the judges that were canceled or changed in the appellate.

When it comes to a clear indication of what actions in the dissertation lead to the application of certain punitive measures, it is concluded that the punishment should provide for a wide range of coverage, that is, types of punishment, from the simplest to the most serious, such types of punishment should be in proportion to the degree of severity of the offense.

The issue related to the implementation of international standards on disciplinary responsibility of judges to the national legislation of Uzbekistan was investigated, in which international standards on disciplinary responsibility of judges (recommendations of

OSCE Kiev, recommendations of Ministers of the Council of Europe) and legislation of foreign countries (Armenia, Russian Federation, Belarus, Georgia, Lithuania Kazakhstan, the Ukraine, Moldova) were analyzed.

The research work is based on suggestions that the competence of the court chairmen in accordance with international standards should be limited to representation and administrative functions, they should not be involved in the selection of judges as well as in the discussion of disciplinary liability cases against judges.

Also, in line with international standards, the conclusion is based on the fact that judges should be subject to disciplinary responsibility only by the court or other independent body for fair and proper conduct established by law, conduct disciplinary proceedings against judges should be regulated on the basis of the law, and the responsibility for carrying out such a process should be.

In the research suggestions were made on the need for the judge to participate in the process

of reviewing the disciplinary case against him/her and ensure the right to have his/her representative, on the need to ensure the right of the judge to appeal to the Council over this decision, which was brought to disciplinary responsibility by the decision of the higher.

Based on the above-mentioned regulations, with the aim of introducing international standards of judicial discipline into national legislation, the following conclusions and recommendations are accepted:

CONCLUSION

Due to international standards, the powers of court presidents should be limited to representative and administrative functions. They should not participate in the election of judges or in the discussion of disciplinary proceedings against judges; According to international standards, disciplinary proceedings against judges are regulated by law only if they are just and disciplinary in a judicial or other independent body for misconduct established by law, and the responsibility for such proceedings lies primarily with the judges. for example, an

independent body, such as a council of judges or a court. Court presidents should be deprived the right to institute disciplinary proceedings;

- Ensuring the right of a judge to participate in disciplinary proceedings against himself and to have a representative;
- Guaranteeing the right of a judge subject to disciplinary action by a decision of the High Qualification Commission to appeal to the Council;
- Warning about the disciplinary system, a decreasing the qualification level for a period of up to six months, suspending a judge's term of office for a specified period or dismiss with an early termination;
- Clearly indicate what disciplinary action a judge can apply for certain types of crimes;
- Prohibition of the participation of a person who initiated a disciplinary case or investigation as a "judge" in resolving the issue of disciplinary liability;
- The abolition of the disciplinary procedure against a judge for violation of the "Code of Ethics for Judges";

- Revoking the right of the President of the Supreme Court to initiate disciplinary proceedings against judges, giving him the right to submit to the Council a proposal to institute disciplinary proceedings in relation to judges;
- The establishment of standards ensuring the right of a judge to participate in disciplinary proceedings, exercising his right to defense, expressing his opinion and have a representative.

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