



MODERN TRENDS AND CHALLENGES IN THE DEVELOPMENT OF JUDICIAL SELF-GOVERNANCE IN THE CONDITIONS OF NEW UZBEKISTAN

Nikonov Ivan

Independent Researcher Of Tashkent State University Of Law, Uzbekistan

ABOUT ARTICLE

Key words: Judicial self-governance bodies, judicial self-governance, judiciary, judicial independence, Supreme Judicial Council, personal independence, institutional independence.

Abstract: In this article, the reforms carried out in Uzbekistan in the last years in order to strengthen judicial self-governance and to expand the powers of the judicial self-governance bodies as well as possible impact of the initiated measures are briefly discussed.

Received: 01.06.2023

Accepted: 05.06.2023

Published: 09.06.2023

INTRODUCTION

During the years of independence, significant work has been done in Uzbekistan aimed at ensuring the implementation of constitutional guarantees of judicial independence, as well as transforming the court into a truly independent branch of state power. At the same time, in order to strengthen judicial self-governance and expand the powers of the judicial self-governance bodies, it is necessary to study possible positive and negative impact of the initiated measures.

THE MAIN CONTENTS

As the experience of foreign countries shows, the transition to judicial self-governance is a complex process, which requires careful examination of internal judicial culture, administrative relationships between senior judges and other judges, as well as a range of formal and informal arrangements that exist between the judiciary and the executive government [1, 14]. In this regard, along with the positive impact of the work of the judicial self-governance bodies on ensuring the independence of the judiciary, it is also necessary to take into account a number of challenges when introducing judicial self-governance.

First, the increase in the responsibility of judges in connection with the assignment of new duties to them. In Uzbekistan, the powers to manage the judiciary, which were previously decided by the government, have been successively transferred to the courts. This is the Ministry of Justice, which until 2000 carried out staffing of courts and advanced training of judges, and until 2017 – provided organizational, including material and technical support of courts. Since 2017, these powers have been

transferred to the judicial self-governance body – Supreme Judicial Council of the Republic of Uzbekistan.

Under such a system, as Tim Bunjuver points out, judges are now responsible not only for their traditional administrative arrangements that focus on case management and legal procedure, they also have assumed the responsibility to act as executive managers and policymakers for the financial, technical, administrative and human resources operations of the entire court system [2, 3].

However, collegial decision-making implies reaching a consensus among the judges. In this regard, the transfer of these powers to the judicial self-governance bodies, acting on a collective basis, may give rise to a number of difficulties. First of all, the process of judicial administration on the most important issues can be hampered. At the same time, the inevitable limitation of the powers of the chairman of the Supreme Court may also affect the progress of reforms in the judiciary. In addition, in the course of participating in the management of the judiciary, the activities of judges as members of the judicial self-governance bodies must comply with clearly defined rules and regulations for the work of these bodies and be subject to “corporate” discipline. Such an approach will correspond to the view that is widespread in science, which considers the judiciary as a corporation. However, as noted by the UN Special Rapporteur on the independence of judges and lawyers, Diego Garcia-Sayan, it is necessary to minimize the risk of corporatism and self-interest in the work of the judicial self-governance bodies [3, 8].

In addition, the judicial self-governance bodies, especially the Supreme Judicial Council, should be empowered to effectively interact with the executive and representative branches of government. Here we are talking about initiating and promoting initiatives related to improving the efficiency of the functioning of the judiciary, ensuring the independence of judges. Therefore, the effective institutional and legal foundations for the interaction of the judiciary with the Government and Parliament within the framework of the system of separation of powers should be formed. Otherwise, according to Tim Bunjuver, the judiciary could face “marginalization” and self-isolation, with unpredictable consequences for judicial independence [4, 43]. David Kosar, in turn, expresses fear about the emergence of political confrontation and the creation of new forms of politicization of the judiciary through the judicial self-governance bodies [5, 1571].

At the same time, it is necessary to clearly delineate the powers and responsibilities between the two constitutional bodies: Supreme Court and Supreme Judicial Council. In particular, it is proposed to give the Supreme Judicial Council the right of legislative initiative on such issues as judiciary, independence of judges, procedure for the selection and placement of judicial personnel, their training, legal responsibility of judges. The prerogative of the Supreme Court should remain, first of all, the issues of applying the norms of procedural law, as well as other issues directly related to the implementation of legal proceedings and ensuring access to justice. The proposed measure will prevent “opposition” between the Supreme Court and the judicial self-governance bodies in the management of the judiciary. Despite the fact that this initiative was not reflected in the updated Constitution of the Republic of Uzbekistan, nevertheless, it has not lost its relevance and can be resolved in the future.

Secondly, it is necessary to ensure the effective work of the judicial self-governance bodies, their independence from external influence and objectivity in the management of the judicial system. Among the factors negatively affecting the effectiveness and independence of the work of the judicial self-governance bodies is the continued dominance of the executive power in managing the internal affairs of the judiciary. As the experience of foreign countries (Spain, Turkey, and Slovenia) shows, this is

primarily due to the political influence on the appointment of members of the judicial self-governance bodies by the executive branch [6, 14].

In Uzbekistan, the factor of possible influence on the work of the judicial self-governance bodies, especially the Supreme Judicial Council, cannot be ruled out. This is due to the retention of powers to form the Council for the President of the Republic of Uzbekistan (approves the members of the Council) and the Senate of the Oliy Majlis of the Republic of Uzbekistan (approves the chairman of the Council and his deputy on the proposal of the President). In this regard, the issue of exclusion of political influence on the work of the Council continues to be relevant in our country. This requires expanding the powers and role of judges in the independent formation of the Council.

This issue is also raised by the UN Special Rapporteur on the Independence of Judges and Lawyers Diego Garcia-Sayan, who believes that in practice a number of interferences continue to undermine both the independence of the judiciary from other branches of Government (institutional independence) and the independence of individual judges to adjudicate the cases before them impartially and autonomously (personal independence). In his opinion, in order to insulate the Council from external political interference, the involvement of political authorities, such as the President, at any stage of the selection process should be avoided [7, 8].

In European countries, for example, in Ireland and the Netherlands, there are mechanisms that allows the court system to be harmoniously in the sphere of responsibility of the Government and the judiciary. For example, in Ireland, the Judicial Council submits a three-year strategic development plan to the Ministry of Justice for approval. A similar requirement is established in the Netherlands. In this country, the Ministry of Justice has the right to determine the general directions of the activities of the Judicial Council, necessary for the proper functioning of the courts. In other words, the Ministry of Justice in these countries bears political responsibility, primarily to the Parliament, for the proper functioning of the judiciary, the limits of responsibility of which are strictly defined by law [8, 38]. Without interfering in the activities of the judiciary, parliamentary control over its work is ensured.

Thirdly, effective mechanisms must be introduced to ensure a high level of trust in the judicial self-governance bodies, both among judges and outside the judiciary.

Today, the issue of ensuring the proper level of transparency and establishing effective control over the activities of the judicial self-governance bodies itself remains unresolved. In the European Union countries, especially among its new members, the judicial self-governance bodies are criticized for lack of transparency and accountability in their activities. At the same time, we are not talking about the personal accountability of judges, but about the entire judicial system represented by its governing bodies. In this case, it is the availability of information about the structure, the procedure for the formation and operation of the judicial self-governance bodies, the procedures for considering issues and making decisions on them. In this regard, it is necessary to consolidate the rules on public access to meetings of the judicial self-governance bodies and the publication of their decisions, as required by international standards. In addition, in order to prevent excessive concentration of powers in the hands of one judicial self-governance body and prevent so-called corporatism, international standards recommend delimiting the powers with the creation of several independent bodies responsible for specific issues of judicial administration [9].

Fourthly, it is necessary to ensure the individual independence of judges, which is necessary for the impartial and independent decision of cases. In this case, we are talking about both intra-system independence and the independence of a judge from external influences. The limitation of the individual

independence of a judge within the judiciary can be caused by a number of factors, the first of which is the dominance of judges of the older generation. Thus, some European countries, for example, Italy and Slovakia, faced the problem of internal pressure on judges due to the dominance narrow group of judges of the older generation [10, 14]. The next factor is the possibility of abuse of their powers by the chairmen of the courts. In Uzbekistan, according to the UN Special Rapporteur on the independence of judges and lawyers, Diego Garcia-Sayan, threat to judicial independence comes from the pyramidal structure of the justice system and the extremely broad powers that court chairmen have with regard to the selection, promotion, evaluation and discipline of judges. Court chairmen can interfere with trials in lower-level courts by giving instructions to the judge concerning the outcome of the trial or demanding progress reports from the judge [11, 7].

Speaking of external influence, we can single out the influence of not only the executive, but also the representative branches of power on the activities of judges. In this case, it is the obligation of the court chairmen to report annually to the local Kengashes of people's deputies. According to experts from the Organization for Economic Cooperation and Development, this obligation limits judicial independence. Although of course courts must act openly and provide information about their activities through web resources or the media. In addition, external influence can be exerted by the bodies of preliminary investigation by using the procedural powers granted to them. For instance, prosecutors have the right to file an appeal or cassation protest against a court decision, as well as to demand a case if there is a complaint from a party, which may affect the quality of a judge's work [12, 105 and 131].

CONCLUSION

In general, the studied scientific works in the field of judiciary independence, carried out by domestic scientists, do not reflect the possible problematic aspects of the transfer of authority to the judicial self-governance bodies to manage the affairs of the judiciary, the analysis of the role and place of the judicial self-governance bodies in the system of mechanisms for ensuring the independence of the judiciary. In this regard, it is necessary to continue the study of the theoretical, organizational and legal foundations of judicial self-governance, as well as the functioning of the judicial self-governance bodies. Concepts from corporate governance can be taken as a basis for the first stage of research. For example, such well-known structures from corporate law as the Board of Directors – the Supreme Judicial Council, the General Assembly – the Congress of Judges, etc. At the same time, of course, the different legal nature of these institutions of private and public law should be taken into account. In particular, the legal nature of the judicial self-governance bodies as a public legal entity should remain unchanged. As Tim Bunjuver points out, the transition to judicial self-governance is a complex process, which requires careful examination of internal judicial culture, administrative relationships between senior judges and other judges, as well as a range of formal and informal arrangements that exist between the judiciary and the executive government [13, 7]. This issue is fully relevant for Uzbekistan as well. As in any other country, Uzbekistan needs to create a system that would ensure effective judicial administration based on the principle of “self-government”, as well as the institutional independence of the judiciary and the personal independence of judges in the administration of justice.

REFERENCES

1. Tim Bunjuver. The Rise of the Judicial Self-Governance in the New Millennium. Melbourne University Law Review. 2021. Vol. 44(3).
2. Ibid.

3. Diego Garcia-Sayan. Report of the Special Rapporteur on the independence of judges and lawyers. UN Human Rights Council. A/HRC/44/47/Add.1.
4. Tim Bunjuver. The Rise of the Judicial Self-Governance in The New Millennium. Melbourne University Law Review. 2021. Vol. 44(3).
5. David Kosar. Beyond Judicial Councils: Forms, Rationales and Impact of Judicial Self-Governance in Europe. German Law Journal. 2018. Volume 19. № 07.
6. Tim Bunjuver. The Rise of the Judicial Self-Governance in The New Millennium. Melbourne University Law Review. 2021. Vol. 44(3).
7. Diego Garcia-Sayan. Report of the Special Rapporteur on the independence of judges and lawyers. UN Human Rights Council. A/HRC/44/47/Add.1.
8. Tim Bunjuver. The Rise of the Judicial Self-Governance in The New Millennium. Melbourne University Law Review. 2021. Vol. 44(3).
9. Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia – Kyiv. 2010. // <https://www.osce.org/odihr/KyivRec>.
10. Tim Bunjuver. The Rise of the Judicial Self-Governance in the New Millennium. Melbourne University Law Review. 2021. Vol. 44(3).
11. Diego Garcia-Sayan. Report of the Special Rapporteur on the independence of judges and lawyers. UN Human Rights Council. A/HRC/44/47/Add.1.
12. Organization for Economic Cooperation and Development. Anti-Corruption Reforms in Uzbekistan: 4th Round of Monitoring of the Istanbul Anti-Corruption Action Plan. 2019.
13. Tim Bunjuver. The Rise of the Judicial Self-Governance in the New Millennium. Melbourne University Law Review. 2021. Vol. 44(3).