

Issues Of Improving The Activities Of The Subjects Participating In The Formation Of The Judges' Corpus In Uzbekistan

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ABSTRACT:

This article analyzes the system of entities involved in the formation of the judges' corpus and some aspects of improving their activities on the basis of national and foreign legislation.

Keywords: Courts, judges, judges' corpus, judges' qualification board, judicial community, selection of candidates for judges, training of judges.

The Senate of the Oliy Majlis of the Republic of Uzbekistan (hereinafter referred to as the Senate) plays an important role in the system of entities involved in the formation of the judiciary in our country. The Senate is only directly involved in the electoral process of forming the judiciary. However, the Legislative Chamber, the lower house of parliament, is not directly involved in the formation of the judiciary. In our opinion, the effective participation of the lower house of parliament in this process is also an important issue in the future.

In the electoral process of forming the judiciary, the Senate and the President embody an interrelated mechanism, without which one cannot fully organize the process. This shows that the election of judges is directly related not only to the Senate, but also to the President of the country in terms of the coordinated functioning of state power. From this point of view, the President plays the most important and fundamental role in the formation and election of the judiciary. Therefore, by law, only a candidate nominated by the President can be elected by the Senate. This power of the President is distinguished by the fact that it does not exist in any other entity involved in the formation of the judiciary. But it does not guarantee that a candidate nominated by the President for election to the judiciary will be unconditionally elected by the Senate. He may therefore organize and discuss a comprehensive examination of the candidate nominated by the Senate, and then elect him in the prescribed manner, or dismiss the candidate for failing to obtain sufficient votes. However, the President may re-nominate these candidates for consideration by the Senate, and if they are rejected again, the President of the Republic of Uzbekistan may nominate other candidates for consideration by the Senate. However, the incomplete aspect of this procedure is that the Constitution and the law do not specify how long it will take for the President to nominate another candidate for the post of judge. In addition, when nominating candidates for election to the judiciary, the grounds and reasons for rejection on the results of the preliminary examination by the relevant committee were not specified until they were discussed in the plenary session of the Senate. Most importantly, as a result of such legal gaps, the candidates nominated by the

President may not be elected, the Constitutional Court of the Republic of Uzbekistan may not be formed, and vacancies in the Supreme Court may not be filled in a timely manner.

The power of the upper house of parliament to elect judges is aimed at ensuring their independence. The experience of foreign countries shows that, in particular, the appointment of judges in the US Federal Courts is made by the President of the United States with the consent of the Senate, in which the Senate has the right to reject the candidate nominated by the President [1]. In countries such as Russia [2] and Kazakhstan [3], judges of the Constitutional Court and the Supreme Court are appointed only by the upper house of Parliament on the recommendation of the President. However, in the experience of some foreign countries, the practice of electing and appointing judges of the Constitutional Court has its own peculiarities. In particular, in Ukraine [4] the formation of the Constitutional Court is made by the President, the upper house of Parliament and the judiciary by a panel of judges, while in Moldova [5] judges of the Constitutional Court are appointed by Parliament, the Executive and the Supreme Magistrate's Council.

The legal literature provides feedback on the procedural procedure for electing judges. However, "the mechanism governing the election of judges is not sufficiently reflected in the laws governing the activities of the Senate and the regulations of this body" [6]. In this regard, in the future, the procedure for electing candidates for the positions of Deputy Chairman and Judges of the Constitutional Court of the Republic of Uzbekistan and Deputy Chairmen and Judges of the Supreme Court needs to be strengthened at the legislative level. It is expedient to organize discussions in each committee of the Senate on the candidate nominated by this law, to prepare conclusions of each responsible committee on the candidate and its terms, procedures and many other questions connected with discussion of results of the prepared session in plenary session of the Senate. would be. Although the practice of the Senate in this regard is already in place, in our opinion, its organizational and legal framework needs to be further improved. Therefore, the relevant procedures on these issues should be clearly defined in the judicial legislation.

Another point is that "the nomination of candidates to the plenary session of the Senate should be carried out by a person appointed by the President of the Republic of Uzbekistan, and not by the relevant chairmen of courts or their deputies" [6].

This view is noteworthy. It is possible that if the Senate rejects the relevant candidate, it may, by its decision, come up with a proposal to the President to hold mutual consultations to reach a consensus on the candidate. Because such experience exists in the practice of the upper house of the parliament of the Russian Federation [7].

The participation of the President of Uzbekistan in the formation of the judiciary is manifested in three main ways, theoretically and practically interrelated. These methods include the processes of selection, appointment, and negotiation that are directly related. The peculiarity of these processes is that the appointment of chairmen and deputy chairmen of regional and equivalent courts is made by the President on the recommendation of the Council, and the election is made by the Senate on the recommendation of the President. In addition, judges of regional and equivalent courts, inter-district, district (city) courts and chairmen and judges of courts equated to them shall be appointed by the Council in agreement with the President.

Lawyer F. Muhitdinov [8] stressed the need to introduce a system of nominating two or three candidates for one position to the President in the appointment of judges. In our opinion, this issue should be clearly defined in the judicial legislation. This, in turn, will serve to expand the President's choice in the process of appointing court chairmen and deputy chairmen, while allowing the selection of the most suitable candidates for the post of court chairmen and deputy chairmen. In addition, according to Article 96 of the Constitution of the Republic of Uzbekistan, in the appropriate cases, the formation of the judiciary can be carried out by a

person with the status of acting President of the Republic of Uzbekistan. However, in the future, it would be expedient if this issue is clearly enshrined in law.

After the Senate and the President, the Council plays an important role in the system of entities involved in the formation of the judiciary. In our opinion, in the future it is expedient to further expand the range of entities involved in the formation of the Council, studying the best international practices. First of all, it is necessary to take into account the participation of the parliament and the judiciary. Most importantly, Article 80, paragraph 4 of the Constitution, which provides for "absolute powers of the Senate of the Oliy Majlis of the Republic of Uzbekistan", should include not only the appointment of the Chairman of the Council, but also his dismissal. In addition, it is extremely important to pay special attention to the fact that the part of the Council, which is formed at the expense of judges, consists of judges of different levels of the judiciary. The non-judicial part should be composed of the Chamber of Advocates of the Republic of Uzbekistan, the Association of Judges of Uzbekistan and other bodies of the judicial community, as well as law professors with extensive life and scientific experience in the field of law. These entities are the most important institutions of civil society and have the right to exercise public control as a true representative of the public. In addition, the requirements and selection conditions for the future Chairman of the Council and its candidates, consisting of judges and members of the public, as well as its procedures, should be strengthened in detail by law. In particular, the practice of forming the composition of such Councils is also present in the experience of a number of foreign countries. For example, it is reflected in the legislation of France, Italy, Spain, Poland, Belgium, Ukraine, Moldova and Kazakhstan [9]. In countries such as France [10] and Italy [11], for example, it can be observed that these issues are even enshrined in the Constitution.

The current procedure for the direct selection of candidates for judges provides for the verification of the accuracy of documents and information submitted by candidates to the qualification commissions of judges, the Council. We believe that the selection of first-time candidates or judges for the next term or indefinite term should be carried out by a body capable of collecting information about them objectively and accurately and providing an objective assessment. In the United States, this task is performed by the Federal Bureau of Investigation. O.N. Markov, I.S. Some legal scholars, such as Vlasov [12], have paid special attention to these issues in their research. To date, such an investigation mechanism and procedures have not been enshrined in judicial law in Uzbekistan. In our view, candidates for the judiciary should be examined only by the Council and under its leadership, if necessary, with the assistance of the relevant law enforcement agencies, and only after an impartial assessment of their results, as evidenced by evidence. Most importantly, this process must be organized in a fair, just and transparent manner in accordance with the law. When the final list of candidates for judges was published in the media, the public's opinion was taken into account, and if journalists were interviewed, their work would be more open and transparent.

It is necessary to increase the level of use of information and communication technologies at all stages of the formation of the judiciary. At present, the system does not meet modern requirements, which does not allow to provide the general public with timely and quality information on the formation of the judiciary, to obtain and analyze the necessary and reliable information on the formation of the judiciary. Therefore, in the future it is expedient to develop and effectively implement a single digital portal called "Sudyalarkorpusi.uz", which will have a more efficient recruitment of judges and a digital electronic database of their activities. It is also necessary to provide for the electronic systematization of more than 10 documents required for inclusion in the reserve of candidates for judicial positions and the digitization of all databases on the movement of judges in the judiciary, as well as the

establishment of online evaluation of judges and chairmen. This, in turn, will increase the efficiency of the actors involved in the formation of the judiciary, on the other hand, will eliminate unnecessary paperwork and bureaucratic barriers in the system, as well as waste time.

The preparation of candidates for the judiciary, retraining and advanced training of judges play an important role in the formation of the judiciary. Well-known jurists MN Kleandrov [13], Sh.N. Ruzinazarov [14] paid special attention to this in their research. The Higher School of Judges under the Supreme Council of Judges of the Republic of Uzbekistan plays an important role in the formation of the judiciary. The establishment of this school was another important step in radically modernizing the system of training judges in our country. The Higher School of Judges is a state educational and research institution in our country, which is responsible for the preparation of candidates for judges, retraining and advanced training of judges and judicial staff.

B. Boymatov states that "it is expedient to regulate the system of preparation of candidates for judicial positions at the legislative level" [15], in our opinion, his opinion is valid. In our view, the implementation of norm-setting on the legal basis of the status and activities of the School of Judges, as well as the implementation of special research in this area shows that one of the important directions in the future. This will ensure the independence of the institution responsible for the training of judges from the legislature and the executive, as well as from the supreme body of the judiciary, as set out in the Declaration of Principles for the Training of Judges, approved on 8 November 2017 [16]. In foreign countries, the status of such academies is regulated by law in Spain, Portugal, Georgia and Armenia.

Most importantly, it is necessary to further strengthen the teaching and methodological support for the training and retraining of judges, taking into account the recommendations of international organizations and experts on the training and retraining of judges [17].

Qualification commissions of judges play an important role in the formation of the judiciary. Because it is the qualification commissions that, within their powers, assist the Council in carrying out its work on the formation of the judiciary. However, at the same time, the activity of the qualification commissions is not satisfactory. Article 41 of the State Program provides for the development of additional legal measures aimed at the democratic organization of the activities of the qualification commissions of judges, ensuring their impartiality and impartiality [18]. In our opinion, the authority to form a high-level panel of judges should be transferred to a body of the judicial community. Most importantly, the composition of the bodies of the judicial community should be formed at the expense of current judges and members of the public (former judges, veterans of the judiciary, lawyers). It is also necessary to clearly strengthen in the law the issues related to the term of office of the chairmen, deputies and members of the qualification commissions of judges and their membership, as well as the procedure for their formation. At the same time, the practice of presiding over the qualification commissions of judges by the relevant court chairmen should be completely abolished. At the same time, it is necessary to abandon the practice of nominating the chairmen of the relevant courts. This will eliminate the possibility of appropriate pressure on judges by the chairmen of the relevant courts in some places.

The Association of Judges of Uzbekistan should play an important role in the formation of the judiciary. One of the most important tasks in the development of a democratic state governed by the rule of law and civil society, especially in the protection and promotion of the rights and legitimate interests of first-time candidates and judges in this process, should be one of the important tasks. Based on the analysis, it should be noted that the Association

should actively participate in the formation of the judiciary, first of all, in the process of selection, examination, training, retraining and re-employment of judges at the end of their term.

It is impossible to create an effective non-governmental system in our country without increasing the effectiveness of the activities of judicial associations and public bodies, the rights and interests of judges, as well as the interests of candidates for judges. In addition, there is a need to strengthen the status of these NGOs at the legislative level [19]. Because judicial associations and community bodies are the most important democratic institutions of the judiciary. Therefore, taking into account the experience of foreign countries, the development of the Law of the Republic of Uzbekistan "On the bodies of the judicial community" is an important promising direction. In particular, in countries such as Russia [20] and Kyrgyzstan [21], a separate law regulating the activities of the judiciary has been adopted. In this law, the concept, system, types, functions, powers and responsibilities of the judiciary, most importantly, the participation of the judiciary in the formation of the judiciary, the procedure for membership in and withdrawal from the judiciary and interaction with other competent authorities.

The subjects involved in the formation of the judiciary have specific powers. However, the results of the systematic analysis show that the legislation does not rationally define the concept, rights and obligations of the entities involved in the formation of the judiciary. In addition, the powers of some entities involved in the formation of the judiciary are directly enshrined in the constitutional norm, while others are enshrined in law and the rule of law and regulations approved on its basis. In our opinion, given the specificity of the status of the subjects involved in the formation of the judiciary, their powers should be strengthened at the level of priority law. Based on the analysis, the subjects participating in the formation of the judiciary are the state, the judiciary and the public, which have the appropriate authority to select, prepare, elect, appoint and dismiss candidates for judges in the manner prescribed by law.

In short, increasing the efficiency of the entities involved in the formation of the judiciary in the selection, training and placement of qualified personnel for the judiciary will contribute to the formation of a highly qualified judiciary in our country.

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