

Ensuring Judges' Independence In Bringing Them To Justice: Problems And Solutions

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Abstract: *The article discusses the necessary measures to be taken to prevent judges from infringing on their independence in the process of bringing them to justice, to create conditions for them to perform their duties independently of other branches of government, individual groups and individuals, and to amend the legislation.*

Keywords: independent judiciary, responsibility of the judge, immunity of the judge, complicated procedure of prosecution.

INTRODUCTION

In order to guarantee that the legal perform its functions effectively and without abuse, it is essential to ensure their autonomy and to enable them to execute the principle of inevitability of liability without compromising their independence.

In the structure and working of public administration in modern democracies, the presence of three independent branches of government based on common restraint and adjusts of interests: the legislature, the official, and the judiciary are imperative.

The issue of the regulation independence of the legal was, to begin with, regulated at the constitutional level in 1787 with the adoption of the U.S. Structure.

Without a strong and autonomous judiciary, there is no possibility of making a framework based on the principle of separation of powers that functions normally and viably.¹

THE MAIN FINDINGS AND RESULTS

Bringing a judge to justice certainly dangers undermining citizens' access to justice. This is often because uncovering a judge, who is a standard person, to make big or small mistakes, creates an opportunity to influence the decisions made by him beneath the risk of being held responsible for his actions. In any case, the lack for a mechanism to limit a judge, that is, the truth that he does not feel capable of his wrongdoing leads him to create oppressive, unjust choices.

Therefore, the issue of guaranteeing the independence of judges in settling the issue of accountability could be a topical issue.

Although a number of positive comes about have been achieved in guaranteeing the independence of the judiciary in Uzbekistan, there is still a risk that a few external influences will affect the independence of the legal and individual judges.²

In addition to getting a charge out of the rights and freedoms cherished in human rights instruments, judges too appreciate extra guarantees, expecting special duties and obligations as open officials. In arrange to make a strong network of the legal that

¹ Monteske Sh. (1955) Selected Works. – Moscow. – pp. 291-296 (Монтескье Ш. Избранные произведения. М., 1955. - С. 291-296)

² Report of the Special Rapporteur on the independence of judges and lawyers. Diego Garcia-Sayan. // undocs.org/ru/A/HRC/44/47/Add.1 (Доклад Специального докладчика по вопросу о независимости судей и адвокатов. Диего Гарсия-Саян. // undocs.org/ru/A/HRC/44/47/Add.1)

gives a proper balance between the official and the legislature, it is fundamental to take into account the benefit of individual (human) judges within the legal.³

A judge does not have to be disconnected from society. This is since the legal can only function appropriately in the event that judges live in close association with genuine life.⁴

A judge must live a right and decent life, his conduct must not weaken the specialist of the legal, and he must be blameless. Be that as it may, it is human nature to make mistakes.

It is important for any country that seeks to ensure the true independence of the judiciary that other branches of government or the investigative bodies prevent a judge from being pressured and placed under his or her control for a minor or major mistake made unknowingly by a judge.

The independence of judges is an important principle and the right of citizens of every state, as well as judges [5].

Judicial bodies shall resolve cases assigned to their proceedings impartially on the basis of evidence and law, without any restrictions, undue influence, pressure, interference or threats [6].

Based on these views, the previous Law of the Russian Federation “On the Status of Judges” excluded the possibility of disciplinary and administrative proceedings against judges [7, pp. 474-480].

Some researchers believe that because a judge is a symbol of high justice, he or she should not commit disciplinary or administrative offenses, even if he or she does, given his or her place in society and public administration; they also note that in order to preserve the prestige of the judiciary, the legislature has ruled out the possibility of disciplinary and administrative proceedings against a judge [8, p. 161].

While one stage of the scales in resolving the issue of a judge's responsibility is to ensure the independence of the judge, the other stage is the guarantee of the right of other persons to a fair trial.

MATERIALS

In accordance with the basic principles of the independence of the judiciary, approved by the UN General Assembly in 1985, the independence of the judiciary is guaranteed by the state and enshrined in the constitution and laws [9].

Because the judge is an agent of one of the branches of government, in most cases the state bears responsibility for the mistakes he or she has made in his or her administration of justice.

However, personal risk of judges, i.e. disciplinary, criminal, civil, and procedural liability is not excluded.

The reality that a party disappointed with a judge's choice does not look for to compensate for his or her disappointment by arraignment the judge requires that extra procedural activity be taken in all legal systems to dodge restricting the judge's independence.

In particular, in the context of the Anglo-American legal system, the judge is the creator of law and the authority of the judiciary is at an unattainable height [10, p. 1051].

³ Mishina. E.A. (2010) From the American experience of ensuring the personal independence of judges. *Right*. №4. – pp. 119-133 (Мишина. Е.А. Из американского опыта обеспечения личной независимости судей// *Право*. – 2010. – №4. –С.119-133)

⁴ Aphorisms (Electronic resource) // Sidirov S.V. Educator-researcher website - URL: <http://si.com/board/ciceron/11-1-0-54>, (last seen date: 10/13/2021). (Афоризмы (Электронный ресурс) // Сидиров С.В. Сайт педагога-исследователя – URL: <http://si.com/board/ciceron/11-1-0-54>, (охирги кўрилган сана: 13.10.2021 й.).)

The continental legal system, on the other hand, has a slightly stricter procedure for judges, and there are procedures for prosecuting judges in various branches of law.

The Muslim legal system also permits judges to be held legally responsible through certain procedural procedures related to guaranteeing their insusceptibility. In Saudi Arabia, for illustration, the Supreme Council of Judges is informed after a judge is captured. The Supreme Council of Judges will consider whether to detain or release him. The Supreme Council of Judges may force a disciplinary sanction on a judge for misconduct or end of office. The choice of the Incomparable Council of Judges to force a disciplinary sanction for early termination of office must be affirmed by the King of Saudi Arabia [11].

The independence of judges in the Republic of Uzbekistan is ensured by.⁵

to elect, appoint, suspend and terminate their judicial powers in accordance with the procedure established by law;

the immunity of the judge;

strict procedures for the administration of justice;

the secrecy of the deliberations of judges in the issuance of decisions and the prohibition of requiring its disclosure;

liability established by law for contempt of court, interference in the administration of justice and violation of the immunity of a judge;

to provide the judge with material and social security worthy of his high status at the expense of the state.

A judge's inviolability might apply not only to his or her identity, but also to his or her residence, office, vehicle and means of communication he or she uses, correspondence, assets, and documents belonging to him or her.

It shall not be allowed to arraign an extrajudicial judge or apply coercive measures against him in agreement with the procedure built up by law, which determines the procedural mechanisms and methods of ensuring the independence of a judge.

The element of non-prosecution is that a judge may be held liable during the term of office or after the expiration of his or her term of office for expressing his or her views in the administration of justice and in making a decision, unless proven guilty of criminal misconduct or intentional injustice. is manifested in the absence of gravity [9, pp. 474-480].

Legislation in many countries also provides judges with immunity from civil liability. In particular, Article 1070, paragraph 2, of the Civil Code of the Russian Federation provides for compensation for damages incurred in the administration of justice in the event that a judge's guilt is established by a court judgment that has entered into force.⁶

Similar norms can be found in the legislation of the Republic of Belarus [14], the Republic of Armenia [15], and the Republic of Azerbaijan [16].

This approach is more in line with the legislation in force in Uzbekistan. A judge shall not be prosecuted for evading the complicated strategy provided for within the Code of Criminal Procedure.

DISCUSSION

The annulment or modification of the judgment itself might not constitute a liability of the judge included within the judgment in the event that he or she has not committed a deliberateness infringement of the law or an act of unscrupulousness that has had serious consequences [17].

⁵ Law of the Republic of Uzbekistan "On Courts", Article 63, <https://www.lex.uz/docs/5534923>, (last seen date: 13.10.2021). (Ўзбекистон Республикасининг "Судлар тўғрисида"ги Қонуни, 63-модда, <https://www.lex.uz/docs/5534923>, (last viewed: 13.10.2021 й.))

⁶ Civil Code of the Russian Federation. Chast 2. Assembly of RF legislation. 1996. № 5. – p. 410. (Гражданский кодекс Российской Федерации. Часть 2 // Собрание законодательства РФ. –1996. -№ 5. –С. 410.)

However, this norm is specified only in Article 74 of the Law on Courts, which deals with the disciplinary liability of judges, and does not regulate these relations in other types of legal liability.

In particular, the legislation of Uzbekistan does not provide for the immunity of a judge in civil law relations.

For example, unlawful use of a sentence, detention as a precautionary measure or receipt of a certificate of good conduct, damage to a citizen as a result of unlawful imposition of an administrative penalty of imprisonment, regardless of the guilt of court officials, by the state in the manner prescribed by law. it is stipulated that full compensation may be imposed by the court on the officials guilty of causing the damage.⁷

The Council of European Judicial Advisory Council concluded that judges could not be held civilly liable unless they committed an intentional violation of the law [19].

The intentional violation of the law by the judges must be proved by a court judgment that has entered into force.

In order to ensure the fairness and impartiality of judges, as well as the certainty of risk in case of harm to property as a result of abuse, it is proposed to supplement the primary portion of Article 991 of the Civil Code of the Republic of Uzbekistan with a third sentence: "The damage caused should be permitted to be recouped from the judge in case the judge's blame is demonstrated by a court choice that has entered into force".

According to the Code of Criminal Procedure, the pre-trial investigation authority, the inquiry body and the investigator are given broad powers in the evidentiary process.

Prior to the investigation, the investigating authority, the inquiry body and the investigator are more likely to be interested in the final decision on the case. In particular, the quality of their work is inextricably linked to the fact that the indictment published in the indictment is confirmed by the court.

In connection with the fact that a judge lives in a way that is inextricably linked with real life, he or she may witness this or that situation, or the grounds for suspicion of committing an offense may be determined.

Therefore, it is important to establish mechanisms to prevent the pre-investigation investigation, the inquiry body and the investigator from influencing the judge.

To address this issue, the legislation of many countries provides for special rules governing the detention and arrest of judges.

For example, under Ukrainian law, a judge arrested for an administrative offense or an act punishable by criminal liability is immediately released upon identification.

Except in cases where the Supreme Council of Justice has ordered the arrest of a judge for such actions and in cases where a judge has been arrested for committing a felony or aggravated felony or immediately after committing it [20].

There are similar norms in the legislation of the Russian Federation. In particular, a judge who is suspected of having committed a crime or who has been arrested or forcibly brought in on other grounds shall be released upon identification if his identity has not been established at the time of his arrest or forcible transfer [21].

In Kazakhstan, a judge may not be detained, arrested, placed under house arrest, compulsorily, or prosecuted for an administrative offense without the consent of the President of the Republic of Kazakhstan based on the decision of the Supreme Judicial Council, and the chairman and judges of the Supreme Court without the consent of the Senate of the Parliament of the Republic of Kazakhstan. Except in cases where a judge has been apprehended at the scene of a crime or has committed a serious or very serious crime [22].

Similar rules exist in Kyrgyz [23] and Belarusian [24] law.

⁷ Civil Code of the Republic of Uzbekistan. Article 991. <https://www.Lex.uz/docs/180552>, (last seen date: 13.10.2021).

The procedure for conducting criminal proceedings in the territory of the Republic of Uzbekistan shall be established by the Code of Criminal Procedure.⁸

According to Article 223 of the same code, a judge may be arrested only if he is caught on the offense or directly after committing it.

However, the procedural actions to be taken by the relevant official were not disclosed if he did not have documents proving his judicial status at the time of his arrest or if the judge himself had concealed information about it and became aware of it after his arrest or forcible return.

Hence, it is proposed to supplement Article 223 of the Code of Criminal Procedure with the following second and third sentences: "If a person is found to be a person enjoying immunity at the time of detention provided for in the first paragraph of this article, he shall be released immediately".

The Law on Courts also stipulates that in case a judge is detained on suspicion of committing an offense, the Supreme Judicial Council of the Republic of Uzbekistan must be notified no later than three hours from the moment of the judge's detention with copies of documents.

However, the fact that the only document that an inquiry officer, investigator, or prosecutor must follow in criminal proceedings is not specified in the Criminal Procedure Code of the Republic of Uzbekistan.

Consequently, it is proposed to supplement Article 217 of the Code of Criminal Procedure with the second part as follows:

In case of application of a coercive measure of detention to a judge, no later than three hours from the moment of his detention, the Supreme Council of Judges of the Republic of Uzbekistan shall be notified with copies of the documents on which the detention is based.

CONCLUSION

While judges remain the most important person in the process of administering justice and ensuring that human rights abuses by any person go unpunished, they are one of the key actors in building a democratic society and ensuring that the rule of law really prevails.

Therefore, the legislature should take into account the best international practices and obligations arising from international law sources in drafting legislation governing the legal liability of judges, and create conditions for the state to perform its professional duties without interference from other branches of government or other groups or individuals.

In this case, the obligation of the state is not only not to interfere in the activities of the judiciary, but also to protect the independence of judges.

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