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## Research Article

# THE ANALYSIS OF THE LEGISLATION GOVERNING THE JUDICIAL AND LEGAL REFORMS OF THE REPUBLIC OF UZBEKISTAN FROM 2017 TO THE PRESENT

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## ABSTRACT

The article analyses the important historical and legal documents that served to ensure the independence of the Republic of Uzbekistan, the formation and development stages of the legal system of the country, the prospects for the development of the legislation of our independent state. The changes in the social, economic, political, legal and cultural life of the country are reflected in the legal system.

## KEYWORDS

Legislation, legal reforms, judicial reforms, law, judge, procedure.

## INTRODUCTION

On February 7, 2017, the President of the Republic of Uzbekistan Shavkat Mirziyoyev issued Decree No. PD-4947 “On the Action Strategy for the Further Development of the Republic of Uzbekistan”, in which outlined the directions for the future development of the state, which includes, among other issuers, the reform of the judicial and legal

system, aimed at strengthening true independence of the judiciary.

Among the tasks assigned to the National Commission for the implementation of this Strategy, in terms of the subject of this review, were:

- ensuring the true independence of the judiciary, increasing the authority of the court,

democratization, and improvement of the judicial system;

- ensuring guarantees of reliable protection of the rights and freedoms of citizens;
- improving administrative, criminal, civil, and economic legislation;
- improving the system of combating crime and preventing offenses;
- further strengthening the rule of law in the judicial and legal system;
- improving the system of providing legal assistance and services.

The adoption of the Strategy foreshadowed, for the most part, the introduction of an effective mechanism for the organizational activity of the courts, as well as the subsequent improvement of legal acts in this area of regulation.

On April 6, 2017, the Law of the Republic of Uzbekistan “On the Supreme Judicial Council of the Republic of Uzbekistan” was adopted in support of this conclusion.

The new structure of the judiciary was entrusted with the task of assisting in ensuring compliance with the constitutional principle of the independence of the judiciary in the Republic of Uzbekistan.

The Council became a collegiate body, which, along with judges, included representatives of civil society institutions and experts in the field of law with a total limited number of 21 people. Among them, 14 members began to carry out their activity on a permanent basis, and the rest 7 members on a voluntary basis.

A number of its main tasks were formulated to organize the activity of the Council in this perspective, the resolution of some of which does not exclude the influence of the subjective factor on decision-making, namely:

- formation of the judiciary through competitive selection and appointment of judges, as well as promotion to senior judicial positions;

- consideration of the issue of bringing judges to disciplinary responsibility and giving an opinion on criminal liability.

In this regard, it is important to note the powers of a member of the Council, which are reduced to familiarization with the materials submitted to the Council, as well as participation in their study and consideration.

At the same time, in determining a candidate's suitability for the position of a judge, the Council is authorized to request the necessary information from law enforcement agencies, which must submit an opinion.

On July 28, 2021, the Law of the Republic of Uzbekistan “On Courts” (New Edition) was adopted, dedicated to the organizational and legal foundations of the judicial system, which summarized a number of previously adopted by-laws, in any way regulating various issues in the field of administration of justice.

The significance of this act was expressed in the consolidation of norms guaranteeing that:

- it is not allowed to adopt legislative acts that limit the independence of a judge;

- cancellation or amendment of a court decision in itself does not entail the responsibility of the judge who participated in the adoption of the court decision unless he committed a deliberate violation of the law or bad faith, which entailed significant consequences.

Further, On January 29, 2022, the Decree of the President of the Republic of Uzbekistan No. PD-107

“On measures to further ensure the effective protection of the rights of citizens and business entities in relations with state bodies, as well as increasing public confidence in the courts” was adopted.

This act, in order to strengthen the role of administrative courts in society, provides for the parties to have the right to conclude a settlement agreement in cases arising from public law relations, establishes a one-month deadline for the execution of a court decision with subsequent notification, imposes fines on officials with an excess coefficient in case of repeated failure to comply with a court decision.

However, the judicial practice has shown that the implementation of these legal acts did not significantly affect the increase in public confidence in the national judicial system.

Therefore, on January 16, 2023, the Decree of the President of the Republic of Uzbekistan No. PD-11 “On additional measures to further expand access to justice and improve the efficiency of courts” was adopted.

This Decree, in order to ensure the true independence of the judiciary and the quality of the administration of justice, approved:

- a short-term strategy for raising the judicial system to a new level for the period 2023-2026;
- an action plan for the implementation of this strategy for the same period.

The main tasks of the Strategy, the solution of which, in the near future, will make it possible to achieve true independence of the judiciary, are as follows:

- the activity of the judicial system should be carried out on the basis of effective protection of the interests of the people, the honor and dignity of a person;

- strengthening people's confidence in the judiciary should depend on the adoption of fair decisions;

- it is necessary to ensure the real competitiveness of the judicial process and the objectivity of judicial practice;

- to digitize the judicial system, including the use of artificial intelligence in the interdepartmental document flow, and further expand the possibilities of remote participation in the judicial process;

- to develop effective mechanisms of preventing interference in the administration of justice;

- to increase the responsibility of state bodies in the execution of court decisions;

- to form consistently a sense of satisfaction with the judicial system of each person who applied for the protection of their rights.

In order to implement these objectives of the Strategy, the relevant Program of Action identified separately by sections the priority areas, goals and objectives, the implementation mechanism, forms, deadlines, and responsible executors represented by judicial and law enforcement agencies, as well as other interested institutions.

Thus, it is planned to adopt a law providing for the transfer of authority from the prosecutor's office to conduct searches, wiretapping, and seize property directly to the courts.

At the same time, it is proposed to legislate the procedure for changing the measure of restraint chosen for the accused (defendant) from detention to

bail, if, at the initiative of the parties, an amount exceeding the amount of damage caused by the crime is paid.

Therefore, responsible agencies seem to introduce the institution of "habeas corpus" at the stages of criminal proceedings.

Along with this, it is recommended to expand the range of issues on which alternative dispute resolution methods, such as mediation, should be used. And to develop procedures and mechanisms for pre-trial settlement of disputes in most civil cases.

Taking into account the fact that the subjects of proof under the current procedural legislation are the persons responsible for the proceedings. It is also supposed to study foreign experience in empowering all parties of the process with the right to provide evidence of the guilt or innocence of a person during the trial.

At present, according to national legislation, the inquirer, the investigator, the prosecutor, and the judge are obliged to establish the truth in the case. At the same time, they must strictly follow the process of collecting and verifying evidence and, in making a decision, evaluate the evidence according to their inner conviction, guided by the law. The evidence presented by the lawyer to the investigating authorities and the court is subject to mandatory assessment by the responsible persons. In this regard, the evidence collected by a lawyer may not always be taken into account in making a decision.

In addition, the program points to the expediency of elaboration of an effective mechanism to guarantee the observance of the right of the accused to receive qualified legal assistance during the criminal process. Giving the defense counsel the right to involve a

specialist in a criminal case on a contractual basis. The introduction of a system of careful study by the prosecutor and the judge of each case of the refusal of the accused from his defense counsel with the clarification of the reasons for such refusal.

Such proposals, which are put forward to improve law enforcement practice, are caused by the ongoing cases of unpunished violation of the rights of the accused by representatives of law enforcement agencies and the court, although the right of the accused person to receive qualified legal assistance is legally enshrined.

In order to improve the quality of the administration of justice, analysis of foreign legislation, and judicial practice, it is proposed to take into account the experience of specialization of judges by category of disputes.

In this regard, a legislative act will be developed to regulate the formation of a corps of specialized judges to consider disputes arising from property and personal non-property legal relations, including in the field of family, labor law, and the protection of intellectual property rights.

A comprehensive implementation of measures to improve administrative proceedings is planned through a critical analysis of law enforcement practice and the study of foreign experience in organizing the activity of such courts.

In this regard, it is planned to revise the rules of jurisdiction by conducting an inventory of disputes that have arisen between administrative bodies, citizens, and entrepreneurs. Introduction of extraterritorial jurisdiction of administrative disputes. Definition of principles reflecting the essence and content of public law relations. The inclusion of the concept of a claim in administrative proceedings and the classification,



taking into account their presentation to administrative bodies. Recovery of damage caused as a result of illegal actions of an administrative body or official, or as a result of the execution of a decision recognized by the court as illegal.

At this time, there are still difficulties in determining the jurisdiction of the administrative court, due to unclear principles of administrative justice. The delegation of certain rights by administrative bodies to business entities with state participation, on the basis of a business contract and therefore the entry of the specified type of paid services into the register of state, administrative courts in practice is considered public law relations. Whereas the relationship between the parties to provide paid services is based on purely contractual legal relations. In this regard, it is proposed to include the concept of a claim and recovery of material damage in the administrative proceedings.

A procedure is being introduced to improve the provisions of the decisions of the Plenum of the Supreme Court according to a pre-approved annual schedule for summarizing judicial practice, especially in areas requiring clarification.

It should be noted here the ambiguity of the requirement of mandatory leadership in resolving cases by the provisions of the decision of the Plenum of the Supreme Court. According to Article 22 of the Law of the Republic of Uzbekistan of July 28, 2021 "On Courts" (New Edition), one of the main powers of the Plenum of the Supreme Court of the Republic of Uzbekistan is to consider materials of generalization of judicial practice and give clarifications on the application of legislation. Whereas, the application of legislation is possible with the correct official interpretation of its norms. In turn, the official interpretation of the norms of the laws of the Republic of Uzbekistan is given by the Constitutional Court in

accordance with Article 55 of the Law of the Republic of Uzbekistan of April 20, 2021 "On regulatory legal acts". Similarly, the present authority of the Constitutional Court is enshrined in Article 109 of the Constitution and Article 4 of the Law of the Republic of Uzbekistan of April 27, 2021 "On the Constitutional Court of the Republic of Uzbekistan". In this regard, in many respects, when summarizing judicial practice, the Supreme Court clarifies the norms of legislation, which is an integral sign of interpretation, not application. Consequently, Article 112 of the Constitution, which states that judges are independent and subject only to the law, is violated.

In order to ensure strict compliance with the norms of tax and customs legislation, generalization of judicial practice in these areas, and the participation of representatives of these bodies, it is proposed to develop proposals for solving existing problems.

According to paragraph 3 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the judiciary" of December 20, 1996 No. 1, the law does not permit any restriction of judicial proceedings, direct or indirect influence, threat or interference with judicial activity, by any party, official or citizen on any ground. The law obliges state institutions, citizens, and organizations to treat the court with respect. Article 236 of the Criminal Code of the Republic of Uzbekistan on this matter establishes liability, including for interference in the resolution of judicial cases.

But, in order to create an effective mechanism for preventing cases of contempt of court, further strengthening the measures of responsibility in resolving court cases and non-execution of judicial acts, it is proposed to introduce administrative and criminal liability based on the types of such acts, taking into account the degree of public danger. At the same

time, operational-search measures, such as limiting the rights of a judge to the inviolability of the home, the secrecy of correspondence, telephone and other conversations, postal, courier, and telegraphic messages transmitted via communication channels, as well as aimed at obtaining information about connections between subscribers or subscriber devices, to be carried out solely on the basis of the sanction of the Prosecutor General of the Republic of Uzbekistan.

The last initiative is already contained in Article 64 of the Law of the Republic of Uzbekistan of July 28, 2021 “On Courts” (New Edition), which provides that a criminal case against a judge can only be initiated by the Prosecutor General of the Republic of Uzbekistan. A judge cannot be prosecuted or taken into custody without obtaining the conclusion of the Supreme Judicial Council and the consent of the Plenum of the Supreme Court of the Republic of Uzbekistan. In order to bring a judge to administrative responsibility, the conclusion of the qualification commission should be obtained. Entry into the home or office of a judge, the transport used by him, the performance of an inspection, search, or seizure there, wiretapping of his telephone conversations, a personal search of a judge, as well as inspection, seizure, or confiscation of his correspondence, things and documents belonging to him may not be carried out otherwise than by a court decision or with the sanction of the Prosecutor General of the Republic of Uzbekistan.

It is assumed that, in the near future, the stated provisions of the laws will be adjusted and clarified, in relation to the conduct of operational-search activity in relation to the judiciary and brought in accordance with the program of action for the analyzed strategy.

At the same time, ensuring the true independence of the judiciary, along with the establishment of

prohibitive norms that exclude interference in the administration of justice is also seen in the resolution of organizational issues of judicial self-government.

Therefore, the judiciary is tasked with enhancing the role of the bodies of the judiciary and the widespread introduction of the principle of self-government of judges.

In the current legislation, the functions of the bodies of the judiciary are not sufficiently disclosed, except for the powers of the Supreme Judicial Council and qualification commissions.

Thus, the law on courts regulates that the conferences of the relevant courts are limited to the election of members of the qualification commissions for a period of 5 years, and judges have the right to unite in associations. The law on the Supreme Judicial Council only states that the Council, in organizing the professional training of judges, interacts with the Association of Judges of Uzbekistan.

Since an important role in the administration of justice is assigned to self-government bodies by the judicial community, it is believed that the status of each body of judicial self-government will be determined, and their inherent powers will be allocated.

In this regard, it is planned to launch an online platform for direct appeal to the Chairman of the Supreme Judicial Council by the judge directly on the fact of violation of his immunity. Borrowing advanced foreign experience in an independent determination by the courts of the funds necessary to finance the activity of justice. Increasing the grounds for financial incentives for judicial employees. Prevention of cases when judges are assigned tasks that are not typical for them. Unloading the activity of the courts through the capabilities of the justice authorities, delegating the

latter the right to consider the appeals of individuals and legal entities on the provision of legal clarifications. Organization of visiting receptions of citizens and business entities.

Therefore, in order to determine the legal basis for the activity of the bodies of the judicial community, the development, and adoption of a law of the same name is predicted, which will provide for tasks, functions, and competencies, including the procedure for nominating candidates to these bodies, the mechanism of their activity and interaction with each other, as well as with other departments.

At the same time, it is planned to improve the activity of the Higher School of Judges on the basis of foreign experience, and the role of judges in the formation of its composition. Revision of the training of candidates for judges, advanced training of acting judges and court staff. Providing at a highly qualified level, taking into account the needs of the present, establishing the relationship between theory and practice, and integrating professional subjects into law enforcement. Introduction of democratic principles of openness and transparency in the formation of the judiciary, as well as in the appointment of judges to senior positions in the judiciary.

Currently, Article 66 of the Law on Courts establishes that the media are not entitled to prejudge the results of the trial in a particular case in their messages or influence the court in any way. Article 6 of the Law of the Republic of Uzbekistan of April 24, 1997 "On the protection of the professional activity of a journalist" obliges a journalist to verify the accuracy of the prepared materials and provide objective information, adhere to the principle of the presumption of innocence. Article 6 of the Law of the Republic of Uzbekistan of December 26, 1997 "On the Mass Media" prohibits prejudging the results of a particular

case before the court makes a decision or otherwise influencing the court before its decision enters into legal force.

But, despite the existence of a procedure for covering this area, in practice there are widespread facts of violations of the law and many perpetrators are not held accountable for reasons of tolerance in society.

In this regard, in order to form a correct and objective opinion about trials and decisions among the population, it is proposed to review the activity of the divisions of the judiciary that interact with the media in order to respond promptly to biased and one-sided information published in various sources related to the activity of the courts. Organization of special training courses for journalists and bloggers on the basics of legislation. Speeches in the media and social networks. Communicating impartial opinions, judgments, and views about the judiciary to the general public.

For the purpose of timely and complete execution of judicial acts, regulatory legal acts will be developed to regulate the foreclosure of the right to a long-term lease of real estate, rights to land, and property rights to intellectual property. New mechanisms for the simplified procedure for the execution of judicial acts have been expanded and introduced.

It is planned to introduce artificial intelligence technology into the activity of courts to provide legal assistance to citizens, which will contribute to the automatic preparation of judicial acts and the analysis of judicial decisions. Creation of a single interdepartmental integration platform. Translation of data exchange between judicial and law enforcement agencies using digital technologies, ensuring the security of access to transmitted information. Digitization of the court archive in electronic format. Establishment of deadlines for the storage of criminal



cases in paper format and permanent storage of the electronic format of cases and documents.

In the direction of combating corruption in courts, with the involvement of experts and specialists, mechanisms will be developed to prevent conflicts of interest, and mandatory declaration of property of judges and their minor children. In this regard, it is interesting that the property of other close relatives of judges is not subject to declaration. In addition, the projects "Sphere without corruption" and "Courts are categorically against corruption" are expected to be launched.

These reforms, clearly, cannot be carried out without dialogue with the international community, therefore, the action program defines forms of cooperation in the form of expanding bilateral and multilateral relations with representatives of the judiciary of partner countries, organizing consultations on judicial and legal issues, and implementing joint programs.

Based on the results of the action program, it is envisaged to take measures for the effective organization of work on the continuous material, technical and financial support of the courts, from the start of the construction of unified court buildings to the solution of social issues related to improving the conditions, norms, and procedures for providing pensions to judges and their families.

Presidential Decree No. PD-12 "On additional measures for the efficient organization of the administration of justice", adopted on January 16, 2023, deals with the subsequent procedural activity of the courts.

In particular, electronic document management is being introduced between the prosecutor's office and the court by integrating their information systems.

It is proposed to transfer the authority to consider certain categories of civil, and economic cases and cases of an administrative offense, according to the experience and practice of foreign countries, to administrative bodies. Development of legal grounds for the completion of certain categories of criminal, civil, economic, and administrative cases in lower courts. The issue of the wide application of the institute of reconciliation of the parties and mediation in civil and economic cases is considered.

As a result of the introduction of new mechanisms for organizing the activity of the judiciary, a rational distribution of staff units of courts with an optimized workload is expected.

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