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Research Article

ENSURING JUSTICE AND THE RULE OF LAW IN UZBEKISTAN: IN THE CONTEXT OF JUDICIAL AND LEGAL REFORMS

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ABSTRACT

In the Republic of Uzbekistan, significant results have been achieved in recent years within the framework of judicial and legal reforms, which have affected all spheres. As indicated by the President of the Republic of Uzbekistan Sh.Mirziyoyev “over the last years we have accomplished a profound work to establish justice in the judicial system and the activities of law enforcement bodies”. The main purpose of these reforms is to ensure the priority of individual rights, the rule of law in the activities of courts and law enforcement agencies.

KEYWORDS

Judicial and legal reforms in Uzbekistan, achieved results

INTRODUCTION

Improving the judicial system

One of the striking results is the improvement of the country's judicial system, the procedure for considering cases in courts.

In 2017, a radically new body of the judicial community was formed – the Supreme Judicial Council of the Republic of Uzbekistan, designed to assist in ensuring compliance with the constitutional principle of the

independence of the judiciary in our country. A completely new system of selecting candidates and appointing judges has been introduced, providing for the participation of representatives of both the judiciary itself and public organizations in this process. Thanks to the activities of the council, almost complete replacement of judicial positions has been ensured. So at the end of the first quarter of 2023, 98.1 % of judicial positions in the republic were replaced .

It should be particularly noted that in the history of independent Uzbekistan, a new procedure for the appointment or election of a judge was introduced for the first time, providing for an initial five-year term, another ten-year term and a subsequent indefinite period of tenure, as well as a maximum limit on the age of tenure of a judge.

Prior to the reforms in the Republic of Uzbekistan, judges were appointed or elected only for a five-year term, which naturally had a negative impact on the activities of judges and did not correspond to world practice.

Among the important novelties, it is necessary to note the unification of the Supreme Court and the Supreme Economic Court into a single body – the Supreme Court of the Republic of Uzbekistan. The creation of this body is aimed at ensuring uniform consideration of cases, coordination of the work of the courts as a whole. Of great importance for ensuring the principle of independence of the judiciary, was the transfer from the executive authorities of the powers of material, technical and financial support of the courts to the jurisdiction of the Supreme Court of the Republic of Uzbekistan. Thus, the functions and powers of the judicial authorities in the field of material, technical and financial support for the activities of courts of general jurisdiction have been transferred to the Supreme Court of the Republic of Uzbekistan, with the creation of the Department for Ensuring the Activities of Courts under the Supreme Court of the Republic of Uzbekistan.

Since January 1, 2021, the “one court – one instance” system has been introduced, as a result of which the courts of general jurisdiction of the Republic of Karakalpakstan, regions and the city of Tashkent have been formed, the institute of judicial review in the order of supervision has been abolished.

At present, the national information system of electronic court proceedings E-SUD has been introduced, which makes it possible to speed up and improve the efficiency of legal proceedings. The implemented videoconferencing system for participation in court sessions has yielded economic results. Only in 2017-2020, more than 200 courtrooms were fully provided with this system, as a result of which 17.7 billion soums were saved.

In 2023, a system was introduced for accepting applications regardless of jurisdiction and transferring cases to a competent court, ensuring the resolution of all legal consequences within a certain case in order to widely implement the “single window” principle in the court system.

Transparency and openness of courts

In order to ensure transparency in the activities of judicial bodies, expand open dialogue with the public and strengthen the role of the public in the administration of justice:

the procedure for the systematic publication of judicial decisions on the website of the Supreme Court of the Republic of Uzbekistan has been introduced;

it has been introduced into the practice of courts to give participants in the judicial process explanations of the essence of the adopted judicial act after its announcement;

quarterly reviews of the practice of considering court cases in cassation proceedings are published.

Reforms in the field of administrative proceedings

Until 2017, there was no separate judicial body in the Republic of Uzbekistan considering disputes of a public legal nature. This caused significant problems in judicial

practice. In order to resolve these problems, administrative courts were established in the Republic of Uzbekistan in 2017, which are subordinate to the consideration of administrative disputes arising from public law relations. The establishment of administrative courts has a positive impact on the effective resolution of disputes between State bodies and citizens. Thus, from 2019 to the first quarter of 2023, 65487 public disputes were considered by administrative courts, in 38413 of them (i.e. 58.6% of cases) the applicants' claims were satisfied. Only in the first quarter of this year, in 1184 cases, decisions of administrative bodies, including 359 decisions of local authorities were declared invalid.

Reform of the criminal law sphere

Significant results have also been achieved in the criminal law sphere. Thus, the punishment in the form of arrest was abolished, the terms of detention of persons were reduced from 72 to 48 hours, the deadlines for the application of preventive measures in the form of detention and house arrest, as well as preliminary investigation – from 12 to 7 months.

In order to ensure justice and legality, judicial control over pre-trial proceedings has been strengthened. Today, the use of a preventive measure in the form of detention or house arrest, the suspension of a passport, the removal of the accused from office, the placement of a person in a medical institution, the exhumation of a corpse, the arrest of postal and telegraph items is carried out with the sanction of a court. The vicious practice of returning a criminal case by the court for additional investigation has been completely abolished, and mechanisms for filling in the incompleteness of the investigation during the trial have been legislatively fixed.

The role of the court as a judicial body ensuring justice is being strengthened. Evidence of this is information about acquittals. So, from 2017 to the first quarter of 2023, 4874 persons were acquitted.

In recent years, at the initiative of the President of the Republic of Uzbekistan, in order to provide an opportunity to return to society and family to persons who have violated the law, but realized the illegality of their acts and showed a firm determination to embark on the path of correction, for the first time in the history of Uzbekistan, the practice of pardoning convicts instead of the previously existing amnesty institution has been actively applied. So, since 2016, about 6500 convicts have been pardoned.

As part of the implementation of the Concept of Improving the Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan, the procedure for electronic criminal proceedings ("Electronic Criminal Case") is being gradually introduced in Uzbekistan, providing for the introduction of a secure system that allows conducting criminal proceedings in electronic form.

Countering torture

To prevent torture and ensure respect for human rights in judicial and investigative activities, 10 acts of the President of the Republic of Uzbekistan were adopted. In addition, criminal liability for torture has been strengthened. Previously, it was possible to attract only employees of investigative and law enforcement agencies for torture and only for actions against participants in criminal proceedings and convicts. Today, any other person can be involved in such a crime if he acted in the interests of employees of investigative and law enforcement agencies. At the same time, actions against a person who was arrested administratively are now also recognized as torture.

The state tries to use mechanisms to prevent torture. So, since last year, public groups to identify and prevent cases of torture under the Ombudsman have been operating. These groups are tasked with studying the conditions in places of detention of persons, identifying cases of torture and submitting requirements to the relevant State body for their prompt elimination, participating in the consideration of complaints about cases of torture, etc.

In addition, video recording has become mandatory during detention, search and other actions. However, there is no need to stop there. The practice of maintaining a unified electronic register of detainees or those in custody should be established faster.

Reforming the institute of advocacy

The judicial and legal reform also affected the institute of advocacy. Qualification requirements for candidates for the profession of an advocate have been simplified, the terms of mandatory internship have been halved, certain categories of specialists with three years of legal experience have been exempted from internship. As a result, over the past three years, the number of advocacy groups has increased by a third, and the number of advocates – by 17 %.

A colossal practice of the legal defence system has been formed with the corresponding national infrastructure of the advocacy. In 2022 alone, the country's advocates provided assistance in more than 292 thousand cases. Over the past year, about 93 thousand people have received legal advice from advocates, 84 thousand of them are free of charge. During this period, advocates have achieved rehabilitation in more than 2.5 thousand criminal cases. This figure demonstrates the importance of professional legal assistance that people are interested in.

Guarantees of ensuring justice and the rule of law in the framework of constitutional reforms

The constitutional reform touched upon important issues of ensuring individual rights in the judicial and legal sphere. Based on the principle of "person-society-state", a number of important guarantees aimed at ensuring justice and the rule of law in the judicial and legal sphere were secured:

Firstly, the direct effect of constitutional norms is fixed (article 15). The norms of the Constitution of the Republic of Uzbekistan in the new edition act directly and independently of the adoption or availability of relevant laws and other regulatory legal acts. Consequently, citizens have the right to directly enjoy constitutional rights in the judicial and legal sphere, and judicial and investigative bodies are obliged to comply with them.

Secondly, proportionality and sufficiency were fixed as conditions for the application of measures of influence (article 20). When applying measures of legal influence, state bodies, in particular judicial and law enforcement agencies, are obliged to adhere to proportionality and sufficiency. In addition, according to the new version of the Constitution, all contradictions and ambiguities in the legislation, which arise in the relationship between a person and state bodies, shall be interpreted in favor of the person (article 20). Thus, it is necessary to adhere to proportionality and fairness in judicial and investigative activities.

Thirdly, restrictions on human rights must be reasonable and sufficient. According to article 21 of the new version of the Constitution, human rights and freedoms may be limited only in accordance with the law, and only to the extent necessary to protect the constitutional order, public health, public morality, the rights and freedoms of other persons, to ensure public

safety and public order. Consequently, judicial or law enforcement agencies do not have the right to restrict human rights if the restriction is not provided for by law or does not correspond to the mentioned purposes.

Fourthly, the provisions of the “Miranda Rules” are fixed at the level of the Constitution. Articles 27 and 28 of the new version of the Constitution establish that during detention, the person must be informed about his or her rights and the reasons for detention in a language he or she understands, as well as and the right to silence is also enshrined. This rule obliges law enforcement officers to observe and respect the rights of detainees.

Fifth, the role and importance of the advocacy is being strengthened. The rules on the advocacy have been systematized and presented in a separate chapter (Chapter XXIV), which emphasizes the special role of advocates. In the new version of the Constitution, the provision of professional legal assistance is assigned to advocates, and the legislative possibility of providing this assistance at the expense of the state is provided. In addition, the state guarantees the provision of conditions for advocates to have unimpeded and confidential meetings and consultations with their client. These guarantees directly affect the effectiveness of the protection of individual rights in the judicial and investigative sphere.

В-шестых, усиливаются возможности для защиты прав личности. Согласно статье 55 новой редакции Конституции каждому гарантируется защита своих прав и свобод всеми способами, не запрещенными законом, право на рассмотрение его дела компетентным, независимым и беспристрастным судом. Кроме того, что гарантируется право на возмещение государством вреда, причиненного незаконными решениями, действиями или

бездействием государственных органов либо их должностных лиц.

Sixth, opportunities for the protection of individual rights are being strengthened. According to article 55 of the new version of the Constitution, everyone shall have the right to defend his or her rights and freedoms by all means not prohibited by law, everyone shall be guaranteed the right to have his or her case examined by a competent, independent, and impartial court. In addition, the right to compensation by the State for damage caused by unlawful decisions, acts, or omissions of State bodies or their officials is guaranteed.

Seventh, the norms of the Habeas Corpus institute are implemented at the level of the Constitution. Exclusively within the competence of the court is the solution of such issues as arrest, commitment, and confinement (article 27), restriction of the right to secrecy of correspondence, telephone conversations, messages, search (article 31).

In general, the amendments made to the Constitution of the country clearly demonstrate the importance of protecting individual rights and freedoms by creating norms direct action. In addition, these innovations are a guideline for improving legislation.

Continuation of the course on ensuring justice and legality in the judicial and legal sphere

The results achieved during the implementation of the judicial and legal sphere and the constitutional reform carried out have shown the importance of ensuring justice and the rule of law. In our opinion, in order to continue the chosen course and ensure efficiency, it seems appropriate to implement the following measures.

The first is the improvement of legislation taking into account the updated Constitution. The constitutional reform has laid a solid foundation for the reform of all spheres of life. The new constitutional guarantees require their further implementation in the sectoral norms of legislation. In particular, work is to be done on the adoption of a number of new laws (for example, the Criminal, Criminal Procedure and Penal Enforcement Codes in a new edition - taking into account the consolidation of the principle of proportionality and sufficiency) and amendments and additions to existing laws (for example, a change in the CPC on the transfer of sanctions for search and wiretapping to the court). Taking into account the new tasks facing the institutions of the judicial and legal system, it seems appropriate to adopt new versions of laws on the bar, the prosecutor's office, systematization of normative legal acts regulating the judicial system.

The second is to increase the level of trust and accessibility of courts. To do this, it is necessary to solve a number of tasks. One of them is the workload of courts. Today, on average, there is 1 judge per 23 thousand people in Uzbekistan. In foreign countries, this indicator is much lower. So in France, for 11 thousand people, in the USA – 9 thousand people, in Germany – 4 thousand people there is 1 judge. This state of affairs affects the quality of the consideration of court cases. In turn, the load of courts is also not uniform. To solve this problem, it is necessary to develop a set of measures that includes:

establishing clear criteria for determining the number of judicial staff in courts;

development of mechanisms for the uniform distribution of cases, as well as determining the maximum burden on one judge;

allocation of additional staff of judges in those places where there is a reloading of courts.

Another direction is the openness and transparency of courts. Unfortunately, the press services of the courts, especially the courts of districts and cities, do not sufficiently provide important information on certain judicial processes. It is necessary to increase the efficiency of the press services to overcome the "information vacuum".

Third, it is necessary to introduce a clear and specific mechanism for compensation of harm to a person caused within the framework of judicial and investigative activities. Taking into account the constitutional obligations of the State to create conditions for the compensation of damage to victims (article 29), it is necessary to form an effective mechanism for compensation for damage to the victim. For these purposes, it is considered appropriate to create a Fund for compensation of harm to the victim. It is necessary to adopt a separate regulatory legal act regulating the activities of this fund, as well as questions about the sources of financing, the procedure for paying compensation, and the subsequent recovery of compensation payments in a retrogressive manner from the guilty person.

Fourth, increasing the level of use of modern information and communication technologies. Today it is difficult to imagine the activities of courts and law enforcement agencies without modern technologies. It is necessary to continue work on the introduction of these technologies, taking into account the needs of the state and the population, namely:

ensuring a gradual transition to an "electronic court case" system that combines all stages of legal proceedings and investigations;

full transition to audio-video recording of court sessions and electronic shorthand;

to establish a system for broadcasting court sessions on certain categories of cases in the media and on the Internet.

Summing up, we can say that it is justice and the rule of law that serve as a priority criterion for the judicial and legal sphere. Judicial and law enforcement agencies must guarantee unconditional compliance with these criteria in their activities, ensure reliable protection of individual rights and freedoms, the interests of society and the state.

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