



OPEN ACCESS

SUBMITTED 23 February 2025

ACCEPTED 19 March 2025

PUBLISHED 22 April 2025

VOLUME Vol.07 Issue04 2025

CITATION

Jamolov Azizjon Nodir o'g'li. (2025). Legal regulation of activities of the qualification boards of judges in foreign countries. *The American Journal of Political Science Law and Criminology*, 7(04), 44–49.

<https://doi.org/10.37547/tajpslc/Volume07Issue04-08>

COPYRIGHT

© 2025 Original content from this work may be used under the terms of the creative commons attributes 4.0 License.

Legal regulation of activities of the qualification boards of judges in foreign countries

Jamolov Azizjon Nodir o'g'li

Head of Department of the Supreme Court in Uzbekistan

Abstract: This article is devoted to the study of the issues of legal regulation of the activities of qualification boards of judges in foreign countries. In addition to the article also studied the experience of advanced foreign countries and the documents of international organizations. Furthermore, recommendations have been developed based on international standards and experience of foreign countries to improve qualification boards of judges in Uzbekistan.

Keywords: Judicial power, qualification boards of judges, member of qualification board, public representative, court veteran, Commission on Judicial Performance.

Introduction: The independence of the judiciary is the mainstay of a democratic society, and qualification boards of judges have a significant role in ensuring this independence. The study of the legal regulation of the activities of the qualification boards of judges in different countries is important in the process of reforming the judicial system of Uzbekistan.

In Uzbekistan, comprehensive comparative-legal studies on the legal regulation of the activities of qualification boards of judges have not been sufficiently studied. In particular, improving the directions of activities of qualification boards of judges have not been identified based on international legal standards and advanced foreign experience in Uzbekistan.

The study of the legal regulation of the activities of qualification boards of judges in foreign countries and the development of recommendations for Uzbekistan is the main goal of the study. The scientific work carries out the tasks of studying international legal standards, analyzing the experience of foreign countries, developing recommendations for Uzbekistan.

The results of the study can be used in the

implementation of judicial reforms in Uzbekistan, in particular in the improvement of legal acts which regulating the qualification boards of judges.

Literature analysis

Many scholars studied about the activities of the qualification boards of judges or the bodies exercising some of its powers. In particular, S.Shetreet and C.Forsyth's scientific work which is titled "the Culture of Judicial Independence: Conceptual Foundations and Practical Challenges" argues that the qualification boards of judges are one of the main institutions for ensuring the independence of the judiciary [1]. The authors analyzed in depth the issue of the proportion of judges in the composition of the qualification boards of judges, justifying the need for judges to make up at least half of composition of qualification boards of judges.

N.Garoupa and T.Ginsburg studied in his research, "Guarding the Guardians: Judicial Councils and Judicial Independence", comparing models of Judicial Councils and qualification boards of judges in different states [2]. They distinguish two main models that differ from each other according to the composition and competence of the qualification boards of judges: the Southern European model (Italy, France, and Spain) and the Northern European model (Sweden, Denmark). While the first model refers power with broad powers and whose composition is primarily composed with judges while the second model refers with limited powers and relatively little proportion of judges in their composition.

M.Bobek and D.Kosar published "Global Solutions, Local Damages: a Critical Study in Judicial Councils in Central and Eastern Europe", a critical analysis of the activities of Judicial Councils and qualification boards of judges in Central and Eastern European states [3]. The authors argue that in post-soviet states Judicial Councils and qualification boards of judges which organized by European standards do not always give the expected result, the effectiveness of the activities of these institutions largely depends on national legal cultures and traditions.

From Russian scientists Y.Trofimov [4], A.Kashina [5], Y.Burdina [6], N.Smirnova [7], Y.Pereplesninas [8] studied some issues of the activities of the bodies of the judicial community, their constitutional legal framework, the role of these bodies in the independence of the judicial system and the competence of the judges.

From Uzbek scholars D.Aripov scientifically studied issues of the formation of the composition of the qualification boards of judges, the re-election of members and the inclusion of public representatives in

its composition and the determination of criteria for candidates for membership in his dissertation [9].

J.Abdurakhmankhojayev analyzed the legal foundations of the activities of the qualification boards of judges and covered its concept, essence, status and system in scientific and practical terms. At the same time, while he proposed to improve the requirements for candidates for membership in the qualification boards, the organizational and legal framework for their selection, formation, election, suspension of authority and early release [10], M.Mamasiddikov, A.Otajonov [11], E.Sabirovs [12] are revealed analysis and prospects of public control over the activities of the judiciary, the procedural features of the participation of representatives of civil society institutions in the consideration of cases in court.

A number of studies have also been conducted by international organizations on the activities of the qualification boards judges. In particular, in the opinion set "On Judicial Councils" No. 10 prepared by the Advisory Council of Judges (CCJE) of the Council of Europe, the role of Judicial Councils and qualification boards of judges in ensuring the independence of the judiciary is analyzed in depth, which states that members should reflect as much diversity in society as possible [13].

Another of the most important documents on judicial independence within the Council of Europe is the "European Charter on the Status of Judges", adopted on 8 July 1998. Paragraph 1.3 of this charter establishes that judges must make up at least half of the composition of the qualification boards (or similar bodies) of judges [14]. This requirement aimed at the implementation of the principle of

self-government of judges.

The Council of Europe's report "On the Independence of the Judicial System" which is prepared by the European Commission for Democracy through Law also explored various aspects of the activities of the judicial competence boards [15].

METHODOLOGY

This scientific article uses methods of comparative-legal, logical, systematic, historical-legal, functional approach, statistical analysis. Documents of national and foreign countries and international organizations were studied, scientific literature and information on internet resources were analyzed, and relevant proposals and recommendations were made.

RESULTS

According to the results of the analysis, the composition of the qualification boards of judges is formed various way in different states. However, international

standards recommend that judges make up at least 50% of the members. Among the countries that fully follow this recommendation are France, Russia, and Ukraine. In France, for example, the Supreme magisterial Council is the body that adjudicates questions of judicial selection, appointment, and disciplinary liability, and contains two contents - one of them competent with respect to judges and another one competent with respect to prosecutors. The competent composition includes five judges and one prosecutor, in addition to the President of the Republic and the minister of justice, one member appointed by the State Council and three persons who do not belong to either Parliament or the judicial system are appointed by the President of the Republic, the Speaker of National Assembly and Chairperson of Senate.

The composition of the Supreme magisterial Council, authorized in relation to judges, makes proposals for the appointment of judges of the court of Cassation, first Presidents of the courts of Appeal and Presidents of the courts of High instance. The remaining judges appointed with a positive opinion of the Council. It makes decisions as a disciplinary board of judges. The composition of the Supreme magisterial Council, which is competent in relation to judges, makes decisions as the Disciplinary Council of judges.

It is possible to appeal to the Council of state (Conseil D'état) Within 2 months of the decisions of the Supreme magisterial Council as a disciplinary panel. The mechanism of this appeal is administrative-legal control. There is no direct appellate mechanism for judges' recommendations for appointment, because the final decision made by the President or the minister of Justice [16].

According to Article 11 of the law "On the bodies of the judicial community" of the Russian Federation, the Supreme qualification boards of judges is formed in a composition of 29 members. In this case, from the Supreme Court of the Russian Federation 4 judges, from district arbitration courts 2 judges, from arbitration appellate courts 2 judges, from the Supreme Courts of the Republics, territories, regional courts, courts of cities of federal significance, autonomous regional court and autonomous district courts 4 judges, from the arbitration courts of the subjects of the Russian Federation 3 judges, from the district military courts 3 judges, totally 18 members of the Supreme qualification board of judges elect by the Congress of judges. Also, representatives of the public (10 person) appointed by the Federation Council of the Federal Assembly and the representative of the president (1 member) appointed by the President [17]. It can be seen that judges make up 62% of the

composition of the Supreme qualification board of judges in Russia (18 out of 29 members are judges).

The main tasks of the qualification boards of judges are select candidates for the position of a judge, recommend them to the relevant authorities, give qualification degrees to judges, and solve the issues of disciplinary prosecution of judges.

Judges can appeal the decisions of the qualification boards of judges to the Disciplinary Board of the Supreme Court of the Russian Federation within 10 days, and on the decisions of the Supreme Court Disciplinary Board can be appealed to the Presidium of the Supreme Court in appellate order.

In Ukraine, according to Article 94 of the law of the Republic of Ukraine "On the structure of the court and the status of judges" sixteen members can elect to the Supreme qualification Commission of judges. They should be citizens of Ukraine; the candidate must have higher legal education and experience of professional activity in the field of law for at least fifteen years. In the Supreme qualification Commission of judges, the following elect (appointed):

- 1) at the Congress of judges of Ukraine eight commissioners from among judges who have at least ten years of seniority in the position of judge or who have resigned;
- 2) At the Congress of representatives of legal higher educational institutions and scientific institutions - two members of the commission;
- 3) At the Congress of lawyers of Ukraine - two members of the commission;
- 4) Two members of the commission - from non-judges by the Verkhovna Rada of Ukraine's Human Rights representative;
- 5) Two members appoint by the chairperson of the state judicial administration of Ukraine from among non-judicial persons.

There are two chambers within Supreme qualification Commission of judges. Each chamber includes eight commissioners. The term of member of the Supreme qualification Commission of judges is four years from the date of election (appointment). The same person cannot exercise his authority for two consecutive terms.

A member of the Supreme qualification Commission of judges, who is a judge or civil servant, retains the position, status and place of work during the exercise of powers. Members of the Supreme qualification Commission of judges cannot carry out Justice. According to Article 95 of the law, the Supreme qualification Commission of judges is competent if at least eight members elected to its composition.

The Commission performs tasks such as selecting candidates for the position of Judge, assessing their qualifications, conducting qualification exams, recommending candidates for judge. In addition, the Commission will review the complaints received over the judges and may bring them to disciplinary responsibility. Judges can appeal to the Court above the decision of the Supreme qualification Commission of judges [18].

However, in some countries, the proportion of judges in the qualification boards of judges less than 50 percent. For example, in some states of the United States, judges make up 30-40 percent of the composition of the qualification boards. In particular, the state of California qualification boards of judges – The Commission on Judicial Performance, established in 1960, is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, pursuant to article VI, section 18 of the California Constitution.

The commission's jurisdiction includes all judges of California's superior courts and the justices of the Court of Appeal and Supreme Court. The commission also has jurisdiction over former judges for conduct prior to retirement or resignation. Additionally, the commission shares authority with the superior courts for the oversight of court commissioners and referees. The Director-Chief Counsel of the commission designate as the Supreme Court's investigator for complaints involving the judges of the State Bar Court. The commission does not have authority over federal judges, judges pro tem or private judges. In addition to its disciplinary function, the commission is responsible for handling judges' applications for disability retirement.

The commission's authority is limited to investigating allegations of judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics. The commission cannot change a decision made by any judicial officer; this is a function of the state's appellate courts. After investigation and in some cases a public hearing, the commission may impose sanctions ranging from confidential discipline to removal from office.

The CJP has its own balanced composition that intend fully cover the judicial system, the law Corps and the interests of the public. The CJP consists of

11 members. Particularly, the Supreme Court of California appoints three judges. They must operate in California's courts of varying degrees – the Supreme Court, the Court of Appeals, or the district courts. The California Bar Association appoints two lawyers who

are required to have a license in the state of California and have at least 10 years of practical experience.

Various branches of government appoint the six public representatives that make up a large part of the Commission. In particular, two by the Governor, another two by the Senate committee, and the other two by the speaker of the Assembly appoints. Representatives of the public should be citizens of California who do not have a legal education.

CJP members serve four-year terms, and one person may serve as a jury member for a maximum of two terms. An important aspect is that all members operate for free (voluntary basis) with only the official expenses covered.

The main duties of the board include handling complaints arising from the activities of the judges, verifying the conduct of the judges and, if necessary, taking disciplinary action. The disciplinary actions the CJP sees can vary depending on the level – from warning and reprimand to public condemnation, to a certain period of demotion, and even to the recommendation to be removed from office altogether. Such powers allow the CJP to play an important role in maintaining the validity and prestige of the judicial system.

CJP conducts its activities based on a clearly defined procedure. This process begins with the adoption of complaints and includes the stages of preliminary examination, if necessary, formal examination, conducting appropriate hearings and decision-making. The basic principles of the CJP's activities are review of complaints, giving the judge the opportunity to defend himself, impartiality, and the acceptance of decisions by a majority vote [19].

The California CJP had handled more than 1,424 complaints in 2023, of which 111 had a preliminary investigation, with disciplinary action in 34 cases. In 2024, it had heard more than 1,715 complaints, of which 115 had a preliminary investigation, with disciplinary action in 29 cases [20].

The CJP disciplinary decisions may be appealed for review to the California Supreme Court within 30 days. In cases of the judge is alerted or fined, he or she has the right to request a review. However, cases automatically heard by the California Supreme Court when CJP made decisions about removing or forcing resignation. In this case, the California Supreme Court may amend, overturn, or leave decisions in force.

In general, CJP is an important element of the self-control mechanism of the judicial system, which serves to build confidence in justice by ensuring that the CJP complies with high moral and professional standards.

DISCUSSION

By international standards, it is recommended that judges make up

50 percent at least the composition of the qualification boards. This recommendation developed in order to ensure the principle of self-government of the judiciary. However, according to the results of the study, it is obvious that several states have not fully implemented this recommendation.

In terms of ensuring the independence of the judiciary, the high proportion of judges in the board is positive case. However, according to some scholars, the excessive proportion of judges in the board can lead to the closure of the judicial system and the protection of the "corporate interests" of judges [21].

For this reason, it is advisable that the board consists of law professors, lawyers and representatives of civil society, as well as judges. This makes it possible to achieve balance in the activities of the board and take into account various points of view.

The scope of competence of boards is vary in different countries. In some states, the courts are concerned only with matters of judicial selection and appointment, while in other states they have broad powers (judicial selection, appointment, qualification assessment, qualification level awarding, disciplinary prosecution, etc).

It is important to ensure balance in determining the scope of the powers of the board. On the one hand, the granting of broad powers to the board makes it possible to ensure the independence of the judiciary. On the other hand, too broad a board's powers can lead to a violation of the principle of separation of powers and the expulsion of the board from control [22].

Therefore, legislatures should take into account the features of the national legal system, the traditions of the judiciary and the peculiarities in the public administration system when determining the scope of the powers of the boards.

Mechanisms for revising board decisions play an important role in ensuring the independence of the judiciary. According to the results of the study, these mechanisms organized differently in different states.

The most effective mechanism is the presence of an opportunity to appeal the decisions of the board to the court. This mechanism allows independent control over the activities of the board [23].

However, caution is necessary in introducing the mechanism of judicial review, because this situation should not become a means of interfering with the activities of the board and limiting its independence [24].

Based on the study of international standards and advanced foreign experience, the following proposals developed to improve the activities of qualification boards of judges in Uzbekistan:

To introduce the procedure for the election by the Congress of judges of the Supreme qualification boards of judges for a term of five years in a composition consisting of the chairman, deputy chairman and twenty-three members of the jury, including judges of the courts of each branch, as well as representatives of the public and veterans of the judicial system;

Set up requirements like age, legal, judicial and general experience for candidates for membership of qualification boards of judges;

To introduce separate quotas for the membership of female judges in order to ensure the gender balance of the qualification boards of judges;

Development of the legal framework for the inclusion of foreign experts in the membership of the qualification boards of judges;

To create the legal framework for the exemption from the performance of justice and the maintenance of the position and salary, when a member of the board performs duties on the qualification board;

It is advisable to establish rules that the qualification boards of judges can be elected by secret ballot, the member of the lower board cannot be a member of the Supreme qualification boards of judges, and the judge cannot be elected for the position of Chairman and deputy chairman of the board for more than two consecutive terms.

The implementation of these proposals will serve to ensure the independence of the judicial system in Uzbekistan, improve the qualifications of judges and strengthen confidence in the judicial system.

The results of the study can be used in the implementation of reforms of the judicial system in Uzbekistan, in particular in the process of improving the activities of the qualification boards of judges. The developed recommendations serve as the basis for the development of the law of Uzbekistan "Judicial Community Bodies", which is expected to be adopted, and for the improvement of the regulation "On the qualification boards of judges".

In the future, it is advisable to conduct a deeper study of the main areas of legal status and activity of the qualification boards of judges, the scope of powers, the procedure for making decisions (conclusions), the issues of ensuring transparency and the introduction of modern information technologies and the prospects for improving legislation and practice in the field.

REFERENCES

Shetreet, S., Forsyth, C. The Culture of Judicial Independence: Conceptual Foundations and Practical Challenges. Martinus Nijhoff Publishers. 2012;

Garoupa, N., Ginsburg, T. Guarding the Guardians: Judicial Councils and Judicial Independence. The American Journal of Comparative Law, 57 (1), 103-134. 2009;

Bobek, M., Kosar, D. Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe. German Law Journal, 15 (7), 1257-1292. 2014;

Трофимов Е. А. Квалификационные коллегии судей как инструмент укрепления «вертикали» судебной власти: кратологический очерк // Теория и практика общественного развития. – 2014. – №. 9. – С. 102-104;

Кашина, А.Д. Проблемы совершенствования деятельности органов судейского сообщества в субъекте Российской Федерации. Гуманитарный научный журнал. 2021, №3. С. 4-24;

Бурдина, Е.В. Правовая природа, организация и деятельность органов судейского сообщества в судебной системе России: диссертация ... доктора юридических наук: 12.00.11 / Бурдина Елена Владимировна; [Место защиты: Рос. гос. ун-т правосудия]. - Москва, 2016. – С. 123;

Смирнова, Н.Н. Органы судейского сообщества в системе обеспечения правосудия в Российской Федерации: конституционно-правовой аспект: диссертация ... кандидата юридических наук: 12.00.02 / Смирнова Наталья Николаевна; [Место защиты: Рос. акад. нар. хоз-ва и гос. службы при Президенте РФ]. - Санкт-Петербург, 2017. - 219 с.;

Перепискина Е. М. Модернизация судебной власти в контексте взаимодействия конституционного и международного права / под ред.

Л. А. Нудненко. М. : ИНФРА-М, 2013. С. 49-61;

Aripov D.U. Sud hokimiyati mustaqilligini tashkiliy-huquqiy takomillashtirishning zamonaviy tendensiyalari: yuridik fanlar doktori (DSc) dissertatsiyasi. – Toshkent: O'zbekiston Respublikasi Bosh prokuraturasi akademiyasi, 2022. – 259 bet;

Abdurahmonxo'jayev J.X. O'zbekistonda sudyalor korpusini shakllantirishni takomillashtirish va ular mustaqilligini ta'minlash: yuridik fanlar bo'yicha falsafa doktori (PhD) dissertatsiyasi. – Toshkent: O'zbekiston Respublikasi Adliya vazirligi Toshkent davlat yuridik universiteti, 2018. – 187 bet;

Мамасиддиқов М.М., Отажонов А.А. ва бошқ. Мамлакатимизда давлат идоралари фаолияти

устидан самарали жамоатчилик назоратини ўрнатиш механизмлари ишлаб чиқиш ва такомиллаштириш / Монография. Муаллифлар жамоаси. Масъул муҳаррир ю.ф.д., проф. М.М.Мамасиддиқов. -Тошкент. "Lesson press". 2020. –278 б;

Сабиров Э.К. Судлар фаолияти очиқлигини таъминлашнинг ташкилий-ҳуқуқий асослари: юридик фанлар бўйича фалсафа доктори (PhD) диссертацияси. – Тошкент: Ўзбекистон Республикаси Бош прокуратураси академияси, 2021. – 148 бет;

Consultative Council of European Judges (CCJE). (2007). Opinion No. 10 on the Council for the Judiciary at the service of society. <https://rm.coe.int/168074779b> ;

<https://rm.coe.int/16807473ef> ;

Venice Commission. (2010). Report on the Independence of the Judicial System Part I: The Independence of Judges (CDL-AD (2010)004). [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)004-e);

Constitution of October 4, 1958 (as amended up to the Constitutional Law No. 2008-724 of July 23, 2008, on the Modernization of the Institutions of the Fifth Republic), France [Elektron resurs] // <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>;

Закон «Об органах судейского сообщества в Российской Федерации» от 14 марта 2002 года № 30-ФЗ. [Elektron resurs] // <http://letters.kremlin.ru/info-service/acts/11>;

Закон Украины «О судостроительстве и статусе судей» от 02.06.2016 № 1402-VIII. [Elektron resurs] // https://kodeksy.com.ua/ka/o_sudoustrojstve_i_statuse_sudej;

<https://cjp.ca.gov/>;

https://cjp.ca.gov/annual_reports/;

<https://www.encj.eu/images/stories/pdf/judiciaries/voermansalberscouncilsforthejudiciaryintheeu.pdf>;

Garoupa, N., Ginsburg, T. Guarding the Guardians: Judicial Councils and Judicial Independence. The American Journal of Comparative Law, 57 (1), 103-134. 2009;

Venice Commission. Report on the Independence of the Judicial System Part I: The Independence of Judges (CDL-AD (2010)004). 2010. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2010\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2010)004-e);

Kyiv Recommendations on Judicial independence in Eastern Europe, South Caucasus and Central Asia - Judicial Administration, Selection and Accountability - Kyiv, 23-25 June 2010 <https://www.osce.org/files/f/documents/a/3/73487.pdf> .