



Development Of Organizational And Legal Framework In Combating Corruption In The Judicial System

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ABSTRACT

The article examines the negative effect of corruption to the independence of judges and judicial system; factors, causing judiciary corruption; their types; organizational and legal aspects of combating and prevention of corruption; Anti-corruption measures, specifically deriving in accordance with peculiarities of the judicial system; reporting of judges; the raising needs in ensuring the transparency and openness of judicial activities; related international and foreign legislative laws; followed by analyzing the scientific and theoretical aspects of national legislation regulating the issue. Based on the results of analysis and research, the recommendations and proposals will be formulated with the aim of implementation of positive experience to the national legislation.

KEYWORDS

Corruption in the judicial system, factors of corruption in the judicial system, measures to prevent and combat corruption in the judicial system, openness and transparency of the judicial system, reporting of judges.

INTRODUCTION

The existence of factors of corruption in the judiciary in conjunction with the lack of an adequate organizational and legal framework

aimed at preventing and combating judiciary corruption effects negatively the independence of judiciary and judges, creates

favorable conditions for occurrence of inside and outside interferences, as well as results in creation of incompetent and disqualified judicial corpus.

Judicial corruption is the abuse of powers by a judge of his professional duties and status for personal tangible or intangible gain. Corruption practices often occur in the light of conflict of interests situations. The requisite signs of a conflict of interests are the abuse of office by a judge in a particular situation, the fact that he or she has received or may have received tangible or intangible benefit, and the causal link between these two. This means that, when the situation of a conflict of interests occurs, a judge will have to choose between acting with due diligence or acting illegally in his own interest. The choice depends on the moral qualities of each particular judge, as the one with high moral qualities and legal knowledge is highly probable to make legitimate and impartial decision.

Naturally, the event of conflict of interests is not itself an offence, however, the abuse of office in such situations leads to the loss of impartiality in the proceedings and to the occurrence of consequential liability. Therefore, timely detection and elimination of events of conflicts of interest is the most reliable way of preventing the occurrence of corrupt practices, as in the case of immature or immoral judges in the situation of conflict of interests, there is a high probability of judge's self-interest overweighting his undertakings in the oath of judges.

According to Kazakova, the events of conflict of interest and corruption are not the same practices. In some cases, even if in practice no corruption occurs, the event of a conflict of

interests might be present, and vice versa. For example, a civil servant who has a vested interest in the decision-making process may act fairly and legitimately. And there are no signs of corruption. Alternatively, another civil servant may take a bribe even if there is no conflict of interest and he is forced to make such a decision eventually.¹

The European Court of Human Rights distinguishes between a "subjective approach to establish personal convictions in a separate case against a separate judge and an objective approach in which the judge is sufficient to rule out any reasonable suspicion." According to these concepts, it is unfair to consider a case not only if a judge is impartial, but also if it is accepted as such.²

Therefore, Article 6 of the Code of ethical conduct of judges of the Republic of Uzbekistan stipulates that a judge shall be free from any privileges, unfounded beliefs and conjectures in the performance of his professional duties in order to conduct his case impartially. It was noted that his denial was an important factor in ensuring his independence and impartiality.³

¹ Kazakova E.V. *Protivodeystviye korrupsii v sudebnoy sisteme v usloviyah proshesualnogo reformirovaniya* (Administrator suda 2, - 2020) p.48-52.

² International Commission of Jurists, International standards for the independence and accountability of judges, lawyers and prosecutors, practical guide № 1 <www.icj.org/wp-content/uploads/2017/01/Uzbekistan-PGN°1-Publications-Practitioners-Guide-Series-2017-UZB.pdf>

³ Supreme council of judges of the Republic of Uzbekistan, *Code of ethics conduct of judges* (Justice, 2018) p112.

Combating corruption in the judiciary requires the identification of corruption factors, their control and the implementation of systemic measures to prevent them.

According to B. Isroilov and E. Gadoev, corruption factors are social events and processes that affect the emergence, maintenance, change and spread of corrupt behavior in society.⁴

The factors leading to corruption in the judiciary can be divided into internal and external. In this division of corruption factors, the main role is played by the subjects causing these corrupt practices (as well as their official powers) and other factors affecting the independence of judges.

While talking about internal corruption factors, we refer to situations arising when chairmen, along with the organs of judiciary associations, make decisions concerning formation of the judicial corpus, selection and appointment of judges, professional development of judges and court staff, promotion of judges, other managerial and controlling orders, in which the legal and organizational factors arise such as abuse of powers, bad faith, acquaintanceship, kinship, or bribery, affecting the formation and operation of courts, independence of judges and administration of justice.

External corruption factors include the possibility of interference of government agencies, other organizations, officials and society in the administration of justice, obstruction of justice, and commitment of

illegal acts that infringe on the independence of the judiciary.

There exists the complex set of measures aimed at eliminating existing factors of corruption and corruption offenses, including taking strict measures against them, preventing their reoccurrence and eliminating negative consequences.

Measures to eliminate corruption in the judiciary include: establishing a special anti-corruption body in the judiciary, exercising systematic internal control, ensuring compliance with the Code of ethical conduct, enforcing anti-corruption rules and regulations, as well as ensuring protection of judges who report crimes, establishing the practice of mandatory reporting of corruption cases by judges and court staff, evaluating judges' performance (including their ratings and opinions), along with opinions of the general public (discussion of whether a judge has unreasonably applied or not applied the law), systematizing the practice of submission by a judge of a decision of a court of higher instance, ensuring openness and transparency of the judiciary, involving the general public in the administration of justice, conducting social and special surveys.

Based on the abovementioned, measures to eliminate corruption in the judiciary can be divided into two types: legal and organizational.

Prevention of corruption means a set of measures aimed at identifying, limiting or eliminating the factors of corruption, the social risk of the identity of the corrupted judge, as well as the detection and prevention of occurrence of certain types and forms of

⁴ Isroilov B.I., Gadoev E.F. *Korrupsiya tushunchasi va unga qarshi kurashishga oid atamalar izohli lug'ati* (Tafakkur, 2019) p 186.

corruption.⁵ Measures to prevent corruption in the judiciary include adoption of the Code of ethical conduct for judges, the appointment of highly moral and honest judges to judicial office (by the way of analyzing their work and daily life, and organizing psychological interviews and polygraph or forensic examinations), conducting preventive interviews with judges and court staff, as well as their family members, monitoring strict adherence to labor and executive discipline, increasing the anti-corruption culture of citizens, and providing social and economic protection for judges, properly organizing of judicial work (providing with sufficient staff seats, election of competent court staff, transport and logistical support, imposing restrictions on collection of money from judges for other purposes). Anti-corruption practices are carried out through development and implementation of effective measures to ensure the implementation of the tasks set out in existing regulations. At the same time, special attention shall be paid to the activities of specially authorized state bodies in this area and their results. Therefore, the establishment of the Judicial inspectorate for combating corruption and ensuring the integrity of judges in the Supreme judicial council - a specially authorized state body for combating corruption in the judiciary, has been a major step against corruption in the judiciary, which allows the development and implementation of strategic plans for the medium and long term.

In addition, in order to boost the efficiency in anti-corruption practices in the judiciary, it is

⁵ Isroilov B.I., Gadoev E.F. *Korrupsiya tushunchasi va unga qarshi kurashishga oid atamalar izohli lug`ati* (Tafakkur, 2019) p 186.

necessary to review current legislation in order to eliminate the norms of a corrupt nature. In particular, according to Article 7 of the Law "On the Supreme judicial council of the Republic of Uzbekistan", the Council submits proposals to the President of the Republic of Uzbekistan on the matter of awarding judges with state awards. However, the lack of criteria and procedures for recommending judges for state awards can lead to the occurrence of corrupt behavior in this area. Therefore, the Law on Courts shall provide certain criteria for awarding judges with state awards and the clear procedure for their implementation. According to the state of current legislation, administrative prosecution of judges is exercised by the Supreme qualification board of judges based on the conclusion of the Supreme judicial council, while criminal prosecution or arrest of judges is exercised with the permission of Plenum of the Supreme Court based on the conclusions of the Supreme judicial council.⁶ According to Article 26 of the Law "On courts", if the President of the Supreme court presides over the sessions of the Plenum of the Supreme court, the criminal prosecution of a judge may depend on his decision. However, in order to ensure the independence of judges, any coercive measures taken against them must be carried out by a body of the impartial and independent judiciary. In particular, according to Article 3 of the Law of the Republic of Kazakhstan "On the Supreme council of judges", the President of the Republic of Kazakhstan imposes administrative or criminal penalties for the detention of a judge, the

⁶ Charter of Supreme qualification board of judges, article 10.

application of precautionary measures, house arrest, coercion of a judge.⁷

According to abovementioned, this power of the application of precautionary measures such as administrative and criminal liability or arrest of a judge shall be removed from the Plenum of the Supreme court and shall be vested to the Supreme judicial council.

Additionally, the imposition of severe penalties in law for acts such as influencing judges in any way is one of the best ways of preventing the interference and obstruction to the administration of justice.

Article 25 of the UN Convention against Corruption includes provision stating that state parties shall take measures to establish criminal liability for acts that impede the administration of justice.⁸

From this point of view, it is the need of the time to adopt relevant legal documents imposing legal liability for interfering in the activities of courts and bodies of the judiciary, acting in the way of contempt to the court, violating the inviolability of a judge and a people's assessor, creating outside obstacles to the full and impartial consideration of a case.

Importantly, financial accountability plays an important role in combating and preventing the corruption.

Article 8 of the UN Convention against Corruption establishes the rule on submission of financial declaration by public officials regarding all their profits arising out of their

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https://online.zakon.kz/document/?doc_id=34433079#pos=77;-28

⁸ <https://lex.uz/docs/1461327>

additional activities, occupations, investments, assets outside of their main professional activities, that might cause the situation of occurrence of conflict of interests.

Although, Uzbek law does not expressly require the financial accountability of judges and court staff, Article 13 of the Code of ethical conduct stipulates that judges themselves, their spouses and minor children, who are entitled to their property and other sources of income, shall submit all income related information to the Supreme Court.⁹

However, the mechanism of implementation of this requirement points to ineffectiveness of this procedure on account of the fact that there is the lack in system to verify the accuracy of the information provided by judges, as the Judicial Inspectorate does not have sufficient powers in this regard.

Referring to foreign experience of state practices, such as the Netherlands, China and Singapore, judges are required to file a declaration on the property and their property obligations, as well as a financial statement of their spouses and minor children, and submit it to the competent authorities on an annual basis. This declaration, then, is examined at the time when a judge is being recommended for the next term or a for a leadership position.

Moreover, Article 20 of the UN Convention against Corruption stipulates that State Parties have obligation to adopt measures to prevent the intentional misappropriation of public officials such as criminalization and imposition of penalties for assets of public officials, which are not obtained from their

⁹ Supreme judicial council, *Code of ethical conduct* (Adolat, 2018) p 112.

legal income, and the sources of which cannot be ascertained.¹⁰

These measures are one of the best ways to curb corruption among officials, to prevent it, and to identify and punish those who commit corruption when it is not possible to prosecute them.

Ensuring openness and transparency of the judiciary plays an important role in establishing anti-corruption practices in the judiciary and the elimination of its causes. These include: administration of justice, formation of the judiciary, organization and management of the judiciary, financing of the judiciary, evaluation of judges, their recommendation for other judicial or managerial positions, and the prosecution of the judiciary through the wide use of information and communication technologies, involvement of representatives of civil society in ensuring the impartiality and transparency of these processes, and finally, use of public oversight over the actions of judiciary in order to achieve transparency and openness.

According to Diego Garcia-Sayan, the UN Special Rapporteur on the Independence of Judges and Advocates, in order to simplify the procedure for selecting judges, the selection of suitable candidates shall be based on the results of regular competitions. Competitive examinations, which are conducted in part in writing and anonymously, are important elements in the selection process. Only successful candidates may be eligible for compulsory training and court internships.¹¹

¹⁰ <https://lex.uz/docs/1461327>

¹¹ <https://undocs.org/ru/A/HRC/44/47/ADD.1>

One of the most effective ways to combat corruption is to raise the legal awareness and legal culture of the population, to form an uncompromising attitude to corruption in society. It is important to pay special attention to the education and upbringing of the younger generation, to inculcate in them the qualities of honesty and purity, to give a clear explanation of the negative consequences of corruption, in short, to ensure that they have important legal knowledge in this area.

In order to increase the effectiveness of anti-corruption practices in the judiciary, it is proposed to implement the following measures:

- (a) Development and implementation of a set of short-term, medium-term and long-term action plans for the adoption of an anti-corruption strategy in the judiciary and its effective and systematic implementation;
- (b) Establishment of the Supreme judicial council as the competent anti-corruption body in the judiciary, responsible for ensuring the independence of judges and raising the effectiveness of the Judicial inspectorate for the prevention of corruption.

In this regard, the State shall take concrete measures to prevent corruption in accordance with Article 1 of the Law of the Republic of Uzbekistan No. RK-158 of July 7, 2008 "On accession of the Republic of Uzbekistan to the United Nations Convention against Corruption" by including the Supreme judicial council in the list of existing bodies;

- (c) As a result of ratification of the UN Convention against Corruption by the Republic of Uzbekistan, ensuring that Uzbekistan performs its functions,

including the provision of property and income of judges and their family members, as well as property rights, through the way of introduction of an annual declaration of property obligations to the tax authorities; adding provisions to laws imposing obligation for judges to report corruption cases; arranging the effective mechanisms to prosecute corrupt officials; as well as punishing them.

- (d) Guaranteeing openness and transparency of the process of selection and appointment of candidates for judicial office, appointment (election) of incumbent judges for the next term or other judicial office. In this case, the appointment of judges only for a certain period of time, the appointment of a judge whose activity was positively assessed during this period for an indefinite period only on the basis of interviews by the Supreme judicial council without additional examinations;
- (e) Introduction of regular trainings and preventive interviews between judges, court staff and their close relatives in order to ensure that judges adhere to the requirements of the Code of ethical conduct;
- (f) Establishment of a procedure for training of judges at the Supreme school of judges at least once a year in developing anti-corruption practices, including the proper application of the law;
- (g) Propagating the essence of existing legislation in order to combat corruption and create a climate of uncompromising attitude among judges, court staff, lawyers, as well as among the population, especially in secondary education, introduction of anti-corruption training

courses, wide involvement of civil society institutions in this process.

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