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Research Article

THE MAIN APPROACHES TO DEVELOPMENT OF JUDICIAL SELF-GOVERNANCE IN EUROPE

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ABSTRACT

In this article, the experience of some European countries in the sphere of development of judicial self-governance as well as strengthening the powers of the judicial self-governance bodies at governing the judicial system are briefly discussed.

KEYWORDS

Judicial self-governance bodies, judicial self-governance, Europe, judiciary, judicial independence, models of self-governance bodies, judicial councils.

INTRODUCTION

A thorough study of the experience of foreign countries is necessary to develop the most optimal approach to the development of judicial self-government and increasing its role in ensuring the independence of the judiciary in Uzbekistan. First of all, we are talking about European countries that have accumulated significant experience in ensuring the independence of the judiciary through the development of judicial self-government bodies.

Today, bodies of independent judicial management have been formed in almost all countries of the European Union and are usually called bodies of judicial self-government. Judicial self-government and its bodies in European countries (primarily the so-called “Western Europe”) have gone through a relatively long historical path of their formation and development. Back in the mid-20th century, in European countries there was a tendency to abandon the system of “government-controlled administration (management) of the judicial system” in favor of the

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transfer of administrative (managerial) powers to the judges themselves and the development of judicial self-government bodies.

Thus, as A.A. Soloviev notes, “the emergence of judicial self-government bodies in Western Europe dates back to the post-war period (we are talking about the Second World War), when the first judicial councils were created in Spain, Italy, Portugal and France, whose task was to ensure a higher degree of independence of the courts from the executive power, transfer of the function of appointing judges to judicial self-government bodies.” Or those already in force were given powers of judicial administration.

At the same time, according to UN Special Rapporteur Diego Gacia-Sayan, “there is no one-size-fits-all model of a council of judges and each of them originates in a legal system that has clearly distinguishable historical, cultural and social roots.”. France is considered one of the first states in which a body of judicial self-government was created - the Supreme Council of Magistracy. Created back in the 19th century (1883), this body acquired constitutional status after the Second World War and began to be vested with powers to exercise judicial self-government in parallel with the development of international standards.

This distinguishes European countries from the CIS countries, in which the issue of judicial self-government and, accordingly, the creation of bodies exercising such self-government appeared on the agenda only at the end of the 20th century. In the countries of Central and Eastern Europe, the creation of judicial self-government bodies is mainly associated with the period of their preparation for accession or already accession to the European Union.

In general, we can conclude that the process of formation and development of European bodies of

judicial self-government is directly related to the evolution of views on judicial self-government as the most important element of the system of ensuring the independence of the judiciary in Europe. At the same time, there is no single European model to which judicial bodies abroad would correspond.

What is meant by judicial self-government bodies in the countries of the European Union? Thus, David Kosar defines judicial self-government as any institutional entity (including one or more judges) with authority in the field of judicial administration and/or judicial career. It recognizes as such bodies not only judicial councils, but also commissions for the appointment and promotion of judges, court presidents and disciplinary councils.

The composition of judicial self-government bodies in the countries of the European Union is heterogeneous. There is a clearly visible trend according to which judicial self-government bodies in Europe, as well as in the CIS countries, should consist primarily of judges.

However, there are examples where they may include other persons, such as prosecutors, as is the case in the judicial councils of Italy, Belgium and France. For example, in France, the Supreme Council of Magistracy, which includes prosecutors, is also endowed by the Constitution with powers to manage the affairs of the prosecutor's office system.

One of the main and, one might say, universal forms of judicial self-government in the countries of the European Union are judicial councils, the equivalent of which in Uzbekistan is the Supreme Judicial Council. Judicial councils in European countries have various powers and, according to Wim Woermans and Pim Albers, “are an intermediary between the government and the judiciary in ensuring its independence”.

At the same time, as noted by V.N. Bibilo, “judicial councils, which were created in the states of post-war Europe in order to strengthen independence from the executive branch, were the predecessors of the bodies of the judicial community. Gradually they began to take part in recruiting the judiciary, bringing judges to disciplinary liability, etc.” That is, they gradually acquired the status and powers that are characteristic of the bodies of the judicial community in their modern understanding.

The Judicial Councils of the European Union unite into an international non-governmental association – European Network of Councils for the Judiciary, formed in 2004 with headquarters in Brussels. This association represents the judicial self-government bodies of 20 countries from the 27 member countries of the European Union.

At the same time, in European countries a one-sided approach has been formed to the study of issues of judicial self-government and the bodies implementing it - the main attention of European scientists is focused on studying the issues of organization and activities of judicial councils. As David Kosar notes, “Judicial self-government is a much broader phenomenon than just judicial councils, and can take various forms. In this regard, the time has come to consider the judicial community beyond the framework of judicial councils as a more complex network of participants and bodies with varying levels of participation of judges in them.” Often the composition of these judicial councils and the procedure for their formation may call into question their status as bodies of judicial self-government in accordance with international standards.

In European countries, various models for the creation of judicial self-government bodies have been formed, which is due to the peculiarities of their judicial systems

and legal traditions. Thus, there are two main organizational models of judicial self-government bodies in Europe: the Northern European and Southern European models, proposed by Wim Voermans in 2003.

The northern European model includes the judicial self-government bodies of Sweden, Ireland, Denmark and the Netherlands, and the southern European model includes Italy, Portugal, France, Belgium and Spain.

What are the features of each of these two models, since this classification is based not only on geographical criteria. Thus, judicial self-government bodies belonging to the Southern European model are characterized by a constitutional consolidation of their status with a focus on ensuring the independence of the courts. For example, consulting on the appointment and promotion of judges, as well as training and conducting disciplinary proceedings against judges.

For example, Article 122 of the Spanish Constitution provides for the creation of the General Council of the Justice, which has powers over the administration of the judicial system, including the appointment and promotion of judges, as well as the investigation and disciplinary action against them. The French Constitution (Article 64) also provides for the creation of the Supreme Council of Magistracy, which assists the President of the Republic in guaranteeing the independence of the judiciary.

The powers of judicial self-government bodies of the Northern European model are concentrated on such areas as judicial administration (control over court apparatus, distribution of the workload of judges, strategic planning, etc.), judicial management (automation of work processes, hiring workers, advanced training, etc.), as well as formation and distribution of the budget of the judicial system. In

other words, the bodies of judicial self-government of the Northern European model, in contrast to the Southern European model, are focused not on a judicial career, but on effective judicial management.

However, this classification is not universal, since it does not cover the judicial self-government bodies of other countries that joined the European Union after 2003 (Bulgaria, Croatia, Hungary, Latvia, Lithuania, Estonia, etc.). In addition, the proposed qualification is limited only to specially created judicial councils, which does not allow it to be fully applied to the entire system of judicial self-government in Europe. At the same time, in European countries, the system of judicial self-government is not limited to a single body - the judicial council. It also includes other types of bodies that carry out intra-judicial management (court presidents, commissions for the selection and appointment of judges, etc.).

In Germany, there is generally no single body of judicial self-government (judicial council), and the functions of managing the affairs of the judicial system are performed by the Ministry of Justice (a similar procedure was in effect in the 90s in the Republic of Uzbekistan and other CIS countries). Thus, the selection and appointment of judges is mainly carried out by the justice authorities of the federal states of Germany. Only in some federal states are these issues resolved by judicial election committees.

At the same time, in Germany there are bodies that perform the functions of judicial self-government bodies. Fabian Wittreck points out among these bodies “court presidiums (in terms of determining the order of distribution of cases between judges), councils of judicial appointments, general councils of judges, responsible for resolving issues of professional activity of judges (advanced training etc.), service court for judges, responsible for disciplinary proceedings

against judges, etc.” However, despite the fact that these bodies represent the judicial community and perform the functions of judicial self-government, in Germany they are not systematized into a single system. The legislation of this country also does not contain a special legal act relating to judicial self-government bodies.

Having analyzed the practice of judicial councils using the example of a number of countries, UN Special Rapporteur Diego Garcia-Sayan groups the main tasks of judicial councils as follows: a) selection, appointment and promotion of judges; b) administrative management of the judicial system and budgetary control; c) disciplinary procedures and accountability.

Despite the differences in tasks, functions, powers and formation mechanisms, we can conclude that the main purpose of judicial self-government bodies in European countries is to ensure the independence, transparency, efficiency and responsibility of the judiciary, implemented through the management (administration) of the judicial system by the judicial self-government bodies. The main content of the activities of these bodies is judicial self-government. It implies the formation of an optimal balanced format of interaction between the three branches of government in managing the affairs of the judicial system while ensuring its independence.

At the same time, the process of development of judicial self-government bodies in European countries has not been completed. It continues to this day with the aim of increasing the independence of the judiciary. A striking example of this is France, which continues to search for an optimal model of judicial self-government, and justice is currently one of the main subjects for discussion.

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