

The Peculiarities of the Disciplinary Responsibility of Judges in the Administration of Justice



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ABSTRACT: This article researches the issue of disciplinary responsibility of judges as a type of legal liability and its legal basis. It also provides a comparative analysis of the concept of disciplinary responsibility of judges and the views of scholars who have interpreted the content of this concept. The concept of disciplinary offenses of judges, its composition and differences from administrative offenses are discussed. Advanced foreign experience in disciplinary proceedings against judges has been studied. The article analyzes the problems in practice in the field of disciplinary liability of judges and makes recommendations for its improvement.

KEYWORDS: legal liability of judges, disciplinary liability of judges, disciplinary responsibility, disciplinary offense, composition of disciplinary offense, legal basis of disciplinary liability of judges.

INTRODUCTION

The issue of regulating the disciplinary responsibility of judges is one of the main directions in ensuring the independence of judiciary.

According to the legislation of Uzbekistan, the chairman of the Supreme Court and his deputies, the chairmen of the regional court, the chairman of the Supreme Council of judges, which is the body of the judicial community, that is, the bodies governing the community of courts and judges, play an important role in the disciplinary proceedings against judges.

It should be noted that the management of the courts and the judiciary community should ensure the independence of judges and the impartial conduct of cases, while achieving a fair trial and ensuring the rule of law. The judicial administration should not influence the process of judicial decision-making and the essence of its content, as well as the independence of the judges.

THE MAIN FINDINGS AND RESULTS

Ensuring the independence of judges, however, serves the intensity of democratic processes, and independent judges can only be an effective tool in the implementation of the principle of mutual stagnation and balance in public administration.

The main prints of the independence of the judicial bodies of the United Nations[1], the International Covenant on Civil and political rights [2], and the presence of an independent and impartial court established by law for the fair and transparent consideration of the case of a person brought to court at the European Convention on human rights are required [3].

Determining and ensuring the balance between the independence of the judge and the determination of his responsibility for his/her actions is one of the complex issues[4].

The state and society should ensure that the judge's decision does not fully comply with the norms of the law or create rules that prevent disciplinary liability, even for ordinary household mistakes, but do not forget about the sense of responsibility for his actions[5].

In the following years, a number of reforms were carried out in Uzbekistan to ensure the independence and impartiality of judges and to limit the influence of the law on him. In particular, the Supreme Council of judges, which is independent from all state bodies, as well as the court of Appeal, was formed[6], as well as the procedure for an indefinite term appointment (election) to the post of Judge was introduced[7].

A number of reforms have been carried out in Uzbekistan to ensure the independence of the courts, and these reforms are well appreciated by the international community. For example, in the Doing Business 2020 report, Uzbekistan increased by 2.5 points on the "fair trial" standard and, along with other factors, caused it to strengthen its position on the 7th place.

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Taking into account the fact that the issue of disciplinary responsibility of judges is important in ensuring the rule of law, social justice, peace and harmony of citizens, as well as increasing the level of achievement of fair trial of citizens, it is important to conduct a comprehensive scientific analysis and study of positive foreign experience in this regard.

Some law scholars-V.V. Ershov[8], M.O. Kolokolov[9], M.S. Paleev[10], N.V. Radutna[11], G. Tseplyaeva, I. Yablokova[12] and others believe that it is not worthwhile for a judge to impose disciplinary responsibility. Others (in particular, O. Sergeev), they propose to introduce constitutional responsibility of judges instead of disciplinary responsibility [13].

At the same time, in modern legal reality, it is necessary and justified to introduce disciplinary responsibility for violations of the professional obligations of judges, since it is would be warrant to the fundamental rights of Citizen and Public Interest. Scientists note that its application does not contradict European standards in the judicial sphere[13]. Therefore, majority of the scientific community maintain the procedure for bringing judges to disciplinary responsibility and it is believed that improvement is desirable.

From the point of view of the legal doctrine, the disciplinary responsibility of judges is regarded as a separate, independent type of legal responsibility applied in a particular area of human life and associated with the professional activity of individual persons - judges. The real basis of the disciplinary responsibility of a judge is the fact that a disciplinary offense was committed by him/her. The problem is that at the legislative level there is no definition of the concept of “disciplinary actions of a judge”, as well as the composition of such actions. This is a significant drawback, according to some scientists, which leads to a certain uncertainty in the application of disciplinary responsibility to judges[14, p. 336-337].

O.D. Novak calls on the judge's understanding of disciplinary misconduct to ensure that the judge's service discipline is guilty, lawfully, intentionally or he believes that negligence should be regarded as a violation. At the same time, when a scientist says the discipline of a judge in his constitution and understands that in the laws the judge must comply with the rights and obligations established by the profession, restrictions and prohibitions, generally accepted rules of conduct[14, p. 337].

According to A.A. Selivanov, disciplinary misconduct for professional judges should be understood as a deliberate violation by a judge of the set of requirements imposed on a professional judge who carries out a fair trial in the document of the legislative body or in the internal organizational documents (instructions) of the judicial system in the form of an act or omission[15, p.34-50].

Taking into account the above mentioned, we propose to formulate the definition of the disciplinary offense of a judge as a criminal act (inaction) of a judge in the form of a violation of legal obligations established by a special law, which is the basis for bringing him to disciplinary responsibility. Also, the issue of disciplinary responsibility has been studied extensively, fundamental rules have been created in scientific circles.

In particular, it was noted that the issue of disciplinary responsibility of judges in the field of jurisprudence is considered to be an interdisciplinary legal institution regulated by various branches of law[16].

On this issue, D.N. Bahrakh expressed the opinion that the issue of disciplinary liability of judges is regulated by the labor, administrative, criminal-executive and judicial structures in the field of law[17, p. 2]. According to some researchers, if one derives from a generally accepted concept, when a disciplinary offense is said, it is understood that an employee (servant) is a criminal offender who violates labor or service discipline. Therefore, it is possible to bring judges to disciplinary responsibility not only for violation of labor discipline or service duty, but also for violation of the rules of etiquette, which are not covered by the law “on the status of judges of the Russian Federation” at the time of exclusion of service, it is not advisable to bring them to disciplinary responsibility[18].

Also, the Association of European judges recommended that the violation of the rules of conduct by the judge himself should not be established as a basis for bringing him to disciplinary responsibility[19].

According to the request of the European Charter on the status of judges, the disciplinary responsibility of judges should include the most favorable rules for achieving the goals of judicial activity. In this charter, a judge may be a subject to disciplinary liability only in cases where, according to the principle of legality, he/she has not fulfilled the duty of service arising from his position. Of course, the judge is a public official, and his indecent behavior undermines the confidence of citizens in the system of Justice.

Compliance of each judge with constitutional norms and laws, the rules of the “Code of conduct of judges” evokes confidence in citizens that the judge will carry out its activities on the basis of prints of justice and equity. Through the belief in the system of Justice of citizens, the execution of court decisions, the rule of law, social justice, peace and harmony of citizens are ensured.

However, the rules of the “Code of conduct of judges”, which contain a fairly wide range of public relations, should not be the basis for bringing the judge to disciplinary responsibility for the violation of these rules by the judge himself.

Because for all serious violations, which are the basis for bringing legal responsibility, regulated by these rules, disciplinary, civil, administrative or criminal liability is established by the current legislation.

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For example, a judge may be subject to criminal liability for making a decision that does not meet the requirements of justice, equity and impartiality; civil liability for damages to the property or copyright of another person in his professional activity; disciplinary liability for not properly organizing the case if he does not fulfill his obligations conscientiously, at a high professional level.

However, it is unfair in our eyes to bring a judge to disciplinary responsibility for household errors for the inherent misconduct of people when choosing a friend. Usually in a fair trial, the system of disciplinary liability is a guarantee of professional ethics of judges, which is taken separately. However, the failure of a judge to comply with any professional ethics does not lead to the application of a disciplinary responsibility case against him. Only serious and gross violations of professional ethics can jeopardize the authority of the court, as well as damage the rights of those under judicial persecution, which justifies the case of disciplinary liability.

The code of judicial ethics and the printouts on its basis are obliged to determine the actions of the judges and provide for the purpose of preventing their criminal acts. It is necessary to distinguish such codes from the rules of disciplinary responsibility, since the rules stipulate a measure of punishment for actions and violations already committed. However, they can also serve as a reliable source for interpretation as content of ethical or unprofessional conduct that leads to disciplinary responsibility.

In this case, it is necessary to distinguish the work of disciplinary responsibility from the work of criminal responsibility. At the same time, a concrete action can be serious enough that it can be qualified at once, both as a disciplinary responsibility case and as a criminal responsibility case. However, in general, in order not to create a state of helplessness in the judicial system, it is necessary to carefully apply both types of liability.

The rules of disciplinary punishment must clearly indicate what actions will lead to the application of certain types of punishments, therefore, it must provide for a wide coverage of the punishment, that is, from such insignificant measures as a warning to the serious consequences for the judge, including temporary dismissal from his career, transfer to another job or release from duty in general. Such types of punishment must necessarily be equal to the degree of severity of the offense.

The independence of the judiciary and the inability to replace the judge, taking into account the importance of contributing to their printouts, it is possible to exclude the judge from his career only in some cases for the reason of a serious disciplinary offense[20], including if his conduct is to the extent that it undermines the independence and objectivity of the judicial[21]. There are also such opinions regarding the application of the sentence of transfer of a judge to another less responsible position[22].

Most states in their legislation provide a number of penalties, such as warning about the conduct of disciplinary proceedings, fines, reduction of positions, reduction of monthly salaries, forced transfer to another job, temporary dismissal from the career, dismissal in the career.

For example, in accordance with article 420 of the organic law on judicial power in Spain, the following penalties can be applied to a judge and Masters:

- a) warning;
- b) fine up to 6000 euro;
- c) dismissal from his career for up to three years;
- d) dismissal.

The legislation of Austria, Bulgaria, Croatia also provides for similar penalties against judges. It can be seen that the legislation of a number of democratic countries provides for the appointment of one of the broad types of punishments established by the legislation, depending on its seriousness in relation to this or that offense.

For example, the use of a warning or a dishonest fine for offenses with a very low social risk, while serious offenses with large fines and extremely serious offenses, provided the opportunity to apply penalties such as temporary dismissal from a career, forced transfer to another job or complete dismissal[23].

As a rule, the degree of damage caused by the act in the appointment of punishment in relation to the judge, the consequences of the offense, the circumstances that caused the act to happen, as well as the previous activities of the judge and behavior is taken into account. For example, in Austria, Bulgaria, Croatia, in extremely serious cases, he may be expelled from his career as soon as he is at the stage of disciplinary proceedings against a responsible Judge. This is primarily a precautionary measure rather than a disciplinary measure. Such punishments can be determined by the nature of the alleged offenses and the degree of seriousness. For example, the Judicial Council of the member states of the European Union and in the documents of the European network of judicial authorities councils, which combine the institutions assigned to these tasks, the judge is temporarily excluded from his work, although he nevertheless insists that he should receive his salary in full[24, p. 33-34].

In a number of European countries, temporary dismissal from his career is provided for, although such work is allowed only in some exceptional cases, if the work is associated with serious disciplinary offenses, if this is necessary to support the public's confidence in the judicial system, or if a criminal case has been instituted against the judge (in Austria), in other states. Analysis of the current legislation of Uzbekistan in this regard indicates the presence of some problems.

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In particular, our national legislation does not provide for the participation of a judge in disciplinary proceedings by the Supreme Council of Judges or the Qualification Board of judges, the use of his right to protection, express his views and the right to have a representative.

When studying the legislation of the countries of the Middle East in this regard, it was found out that the Russian legislation recognized the right of the judge to participate in the consideration of disciplinary proceedings against him, and in Ukraine, Belarus, Georgia and Kazakhstan the judge was imposed on the obligation to participate in this process. Also, according to the current law, the complaint filed against the decision of the board of Higher Education on the disciplinary prosecution of the judge will be considered by this board. In Georgia, a complaint is filed against the “Disciplinary Chamber”, which is considered a high instance of this type of decision of the Disciplinary Commission, and in Kazakhstan, Ukraine, Moldova, the Supreme Council of judges.

According to the legislation of the Republic of Uzbekistan, the disciplinary responsibility of judges is regulated by the Labor Code, the law “On courts” and the regulations “On qualification boards of judges”. Regulation “On qualification boards of judges”.

Article 55 provides for only 2 pieces of disciplinary punishment, that is, “hayfsan” and fine penalties, the basis and criteria for bringing the judge to disciplinary responsibility are not clearly specified.

According to the current legislation, the judge:

For violation of the law during the implementation of the fair trial for his shortcomings, which he allowed as a result of negligence or indiscipline in the organization of the court case, as well as for the honor of the judge and for committing a crime that will stain the dignity and discredit the reputation of the court, judges may be subject to disciplinary liability for violating the rules of conduct.

Decree of the President of the Republic of Uzbekistan on measures to ensure more effective organization of the process of acquisition of rights over land.

In accordance with Article 26, the chairman of the Supreme Court has the right to initiate proceedings against the judges of the courts of the Republic of Uzbekistan on disciplinary liability.

In accordance with Article 6 of the law “on the Supreme Council of judges of the Republic of Uzbekistan”, the Supreme Council of judges conducts service inspections against judges and members of the council, carrying out their activities on a permanent basis, considers the issue of bringing judges to disciplinary responsibility and sends the materials to the relevant qualification boards of judges.

In accordance with Article 17 of the same law, the Supreme Council of judges may decide on the application of disciplinary action measures against the judge. As can be seen from this norm of the law, the Supreme Council of judges has the right to initiate disciplinary proceedings against the judge, as well as to bring him to disciplinary responsibility. When discussing the issue of disciplinary proceedings against judges, it is necessary to distinguish a group of persons who have the right to file a petition for the initiation of such a case and persons who have the right to initiate it.

The first group can include a wide range of individuals, namely citizens, officials, offices and organizations. For example in Belgium, Bulgaria and Croatia the chairmen of the courts, in Bulgaria, Croatia, Italy, Lithuania, Spain, Georgia and Ukraine special judicial commissions or special judicial commissions, in Croatia and Lithuania the minister of justice, in Lithuania, France, England, Ukraine and Romania individual persons have the right to apply for disciplinary proceedings against the judge [24, p. 33-34]. Usually, receiving complaints against the judge, the organs that consider them and the organs that decide the issue of disciplinary proceedings against the judge operate independently from each other.

According to the Kiev Recommendations, the body that made the decision to initiate a disciplinary case against the judge and the bodies that decided the issue of disciplinary responsibility of the judge should operate separately from each other[25].

The recommendation of the European Commission for democracy by law of the Council of Europe (the Venice Commission in subsequent places) is also in this context, noting that it is not necessary to establish a separate institution for this purpose, but to limit the participation of a person as a “accuser” or “investigator” in the initial stages of disciplinary proceedings. The fact that a person conducting an examination for the initiation of a disciplinary case is prohibited from participating in a vote in the Council during the resolution of the issue of disciplinary responsibility creates grounds for doubt about the objectivity of the decision adopted by this body [26].

The Venice Commission also noted that it is not always necessary to grant the chairmen of the court the right to initiate disciplinary proceedings against the judge, it is necessary to see the chairman of the court not as a controller, but as the first among the ten.

In the Kiev recommendations, it is separately noted that it is necessary to give the right to appeal with a complaint to the authorities that consider complaints against the judges and conduct disciplinary proceedings against the judge, but it is impossible for him to initiate a disciplinary case against the judge or to bring him to disciplinary responsibility[26]. Initiation of a disciplinary responsibility case against a judge will undoubtedly have a significant impact on the activities and reputation of the judge of the law “on judges and prosecutors” in Austria

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In accordance with Section 145, the disciplinary liability penalty can be removed from the judge after three years from the date of the decision of the court, when the behavior of the judge changes positively.

In addition, judges who are subject to disciplinary responsibility are prohibited from entering the administrative heads or seats of the courts, the national judicial bodies or commissions, including the boards of disciplinary proceedings. Also, to have legitimacy, openness, transparency, Representative in the conduct of the case of bringing judges to disciplinary responsibility and the provision of legal protection rights is also important.

In Uzbekistan, the relations on disciplinary proceedings against judges are regulated in accordance with the regulations approved by the Supreme Council of judges. Considering that the Supreme Council of judges of Uzbekistan is not formed by the community of judges, we believe that it will be correct to approve this charter by the parliament. It is also important to ensure the equality of the parties in the process of disciplinary proceedings. In particular, the participation of a judge in disciplinary proceedings and its consideration in relation to himself and the creation of an opportunity to bring his own evidence is an important tool that guarantees his rights.

In the legislation of most states that determines the procedure for disciplinary proceedings in relation to a judge, it is envisaged to hear the relevant Judge, to interrogate witnesses, to evaluate evidence[27], and also to guarantee the right of the judge to have a representative[28]. It is also recommended to provide for the right of European judges to apply in court order over the decision issued by the disciplinary body in the document on disciplinary proceedings at the conclusion of the advisory council[29].

Conclusion

Taking into account the above, in order to prevent the involvement of judges in the process of disciplinary proceedings in the Republic of Uzbekistan in their independence[30], it is proposed to introduce the following amendments and additions to the national legislation:

- approval of the rules of disciplinary proceedings against a judge by law
- participation of the judge in the process of disciplinary proceedings, use of the right to protection, express their views and to ensure the right to have a representative;
- clearly demonstrate the principles and criteria for bringing a judge to disciplinary responsibility in the law;
- warning of disciplinary penalty system, qualification level;
- reduction to the term of up to 6 months, filling the competence of the judge with penalties for termination earlier than the deadline;
- limit the right of a member of the council to vote when the council has initiated or conducted a service check on disciplinary liability at the time of consideration of the issue of bringing a judge to disciplinary responsibility;
- abolition of the right of the chairman of the Supreme Court to initiate disciplinary proceedings against the judge, giving him the right to submit a submission to the Council on the initiation of disciplinary proceedings against the judges;
- to determine whether representatives of law enforcement and executive bodies should not be included in the composition of the council.

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