

Issues Related to Reforms in the Judicial and Legal System During the Period of Independence

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Abstract. *This article analyzes issues related to reforms in the judicial and legal system during the period of independence. It emphasizes several stages of reforms implemented in the judicial and legal sphere of Uzbekistan during the years of independence and highlights the importance of justice-related matters. The principles of transparency and accessibility of justice for all, as well as issues pertaining to public involvement, are also discussed.*

Key words: *judicial system, history, judicial and legal reforms, protection of human rights and legitimate interests, former Soviet Union, foreign experience, improvement.*

The reforms carried out in the judicial and legal sphere in Uzbekistan during the years of independence can be divided into several stages.

First stage (1991-2000) - At this stage, a national strategy for fundamental reform of the judicial and legal system was formed and its constitutional and legal foundations were created. Based on world experience, the Constitutional Court was established for the first time in our country. Commercial courts were established as an integral part of the judiciary. First of all, effective measures have been taken to establish the judiciary as an independent, autonomous, and strong branch of state power, exercising its powers in the interests of protecting the rights and freedoms of man and citizen, the constitutional order, the rights and legally protected interests of enterprises, institutions, and organizations. In the second half of the 90s, based on the accumulated experience and analysis of current legislation, measures were implemented aimed at deepening reforms in the judicial and legal sphere, democratizing the justice system, and raising the status of the bar to ensure equality of prosecution and defense in the judicial process. At the same time, the Association of Judges of the Republic of Uzbekistan was created. At this stage, the draft¹, "On Courts"² laws, Criminal Code³ of the Criminal Procedure Code and⁴, Code of Administrative Responsibility⁵, "On the Constitutional Court"⁶, "On Appealing to the Court Actions and Decisions Violating the Rights and Freedoms of Citizens"⁷ laws, Civil Code,⁸ Civil Procedure Code⁹, Criminal Executive Code¹⁰, "On the Bar"¹¹, "On

¹ "Прокуратура тўғрисида" ги Ўзбекистон Республикаси Қонуни. 1-модда. <https://lex.uz/docs/5534923>

² "Судлар тўғрисида" ги Ўзбекистон Республикаси Қонуни. <https://lex.uz/docs/5534923>

³ Ўзбекистон Республикаси Жиноят кодекси <https://www.lex.uz/docs/26477>

⁴ Ўзбекистон Республикаси Жиноят-процессуал кодекси <https://lex.uz/docs/369568>

⁵ Ўзбекистон Республикаси Маъмурий жавобгарлик тўғрисидаги кодекс <https://lex.uz/docs/1294626>

⁶ Конституциявий суд тўғрисидаги Ўзбекистон Республикаси Қонуни. <https://lex.uz/docs/5534923>

⁷ Фуқароларнинг ҳуқуқлари ва эркинликларини бузадиган хатти-ҳаракатлар ва қарорлар устидан судга шикоят қилиш тўғрисида" ги қонун <https://lex.uz/docs/244179>

⁸ Ўзбекистон Республикаси Фуқаролик кодекси <https://lex.uz/docs/310791>

⁹ Ўзбекистон Республикаси Фуқаролик процессуал кодекси

¹⁰ Ўзбекистон Республикаси Жиноят-ижроия кодекси <https://lex.uz/docs/800688>

¹¹ Адвокатура тўғрисида Ўзбекистон Республикаси Қонуни. <https://lex.uz/docs/5534923>

Guarantees of Advocacy and Social Protection of Advocates"¹², Presidential Decree of the Republic of Uzbekistan "On Improving the Composition of Economic Courts of the Republic of Uzbekistan"¹³, "On Improving the Judicial System of the Republic of Uzbekistan"¹⁴ Decree and others.

The adoption of the Law "On Courts" in a new edition on December 14, 2000, became a logical continuation of this direction of judicial and legal reforms and a harmonious conclusion of the initial stage of reforms. This law reflected at the legislative level fundamentally different and fundamental guarantees of the independence and autonomy of the judiciary, its effectiveness. In accordance with this law, an effective and democratic legal mechanism for the selection and placement of judicial personnel has been created, and the specialization of courts in civil and criminal cases has been legally strengthened and implemented.

A specially authorized body - the Department for the Execution of Court Decisions, Material, Technical and Financial Support of the Activities of Courts - was created under the Ministry of Justice of the Republic of Uzbekistan, which significantly freed the courts from non-core functions, allowing them to focus on their main task - the administration of justice.

The second stage (2001-2010) - the stage of active democratic renewal and modernization of the country. At the beginning of this stage, legal mechanisms were created for the specialization of courts, the liberalization of criminal punishment, improving the quality of justice, reducing the time of court proceedings, introducing the appellate procedure for considering criminal and civil cases and changing the cassation procedure, and improving the execution of court decisions. It is worth noting several key reforms that have led to fundamental changes in the entire judicial system. As an example, the Law "On Courts" in a new edition was adopted on December 14, 2000, and from January 1, 2001, in accordance with the Decree of the President of the Republic of Uzbekistan "On the Specialization of Courts of General Jurisdiction," courts for separate consideration of civil and criminal cases began to function. Since 2001, the institution of reconciliation in law enforcement and judicial practice has been introduced and is functioning effectively. According to it, a person who commits criminal acts that do not pose a great public danger will not be held criminally liable. Initially, it was applied to crimes related to personal inviolability, public safety, and encroachment on public order. Subsequently, its effect will extend to some crimes against the foundations of the economy.

To this end, based on the principles and requirements used in developed democratic countries, the system of offenses and punishment has been reviewed, new provisions have been introduced into the current Criminal, Criminal Procedure, and Administrative Responsibility Codes, and the Law on the Liberalization of Criminal Punishments of August 29, 2001, is of particular importance.

On the basis of this law, for the first time in our national legislation, the institution of reconciliation was introduced, and Article 66-1 of the Criminal Code provides for the release of a person from criminal liability in connection with reconciliation.

Confiscation of property was excluded from the penal system as a type of criminal punishment. Citizens were removed from the list of objects of prosecutorial supervision, and at the same time, the responsibility of the prosecutor's office for the observance of human rights, freedoms, and legitimate interests was increased. The right to suspend the execution of court decisions was also excluded from the powers of the prosecutor's office, and city and district prosecutors were deprived of the right to extend the terms of investigation and detention of the accused.

The abolition of the death penalty in Uzbekistan from January 1, 2008, and the introduction of life imprisonment and long-term imprisonment in its place caused a great stir in the international community.

¹² Адвокатлик фаолиятининг кафолатлари ва адвокатларнинг ижтимоий ҳимояси тўғрисидаги Ўзбекистон Республикаси Қонуни. <https://lex.uz/docs/5534923>

¹³ Ўзбекистон Президентининг 1996 йил 25 июлдаги "Ўзбекистон Республикаси хўжалик судларининг таркибини такомиллаштириш тўғрисида"ги ПФ-1501-сон Фармони. <https://lex.uz/docs/286935>

¹⁴ Ўзбекистон Республикаси Президентининг 2000 йил 14 августдаги "Ўзбекистон Республикасининг суд тизимини такомиллаштириш тўғрисида"ги ПФ-2682-сон Фармони. <https://lex.uz/docs/214945>

A fundamental step was the introduction of the institution of "Habeas Corpus," that is, the transfer from the prosecutor to the courts of the right to issue sanctions for detention as a preventive measure, starting in 2008. A set of measures aimed at ensuring the equality of the prosecutor and lawyer, adversarial proceedings at all stages of criminal and civil proceedings, improving the quality and efficiency of the administration of justice has been consistently implemented. A number of amendments and additions have been made to the current legislation aimed at further strengthening the independence of the legal profession as an important component of the process of liberalization of the judicial and legal system and ensuring the protection of human rights.

The third stage (2011-2020) began on November 10, 2010, a new stage of judicial and legal reform. President of the Republic of Uzbekistan I.A. Karimov at a joint meeting of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan put forward the Concept of Further Deepening Democratic Reforms and Formation of Civil Society in the Country in six main areas, defining the tasks of forming civil society, protecting human rights and freedoms, and further democratizing the judicial and legal system.

Subsequently, in accordance with the Law "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with Further Reform of the Judicial and Legal System" ¹⁵ judicial control over the investigation at the pre-trial stage has been strengthened. If previously an institution was introduced into national legislation, and the right to issue arrest warrants - "habeas corpus" - was transferred from prosecutors to courts, now, within the framework of the implementation of the tasks arising from the Concept, the application of measures of procedural coercion, such as removal of a person from office and placement in a medical institution, has also been transferred to the courts. An important step in ensuring the implementation of generally recognized principles and norms of international law in the field of protecting the rights and freedoms of citizens was the introduction of legislative changes, providing for the exclusion from the powers of the court of the right to initiate a criminal case not inherent in it, as well as the imposition on the prosecutor of the obligation to read out the indictment in the court of first instance.

The adoption of these legislative measures made it possible to strengthen judicial control in the implementation of inquiry and preliminary investigation, expanded the scope of application of the institution of "habeas corpus" in criminal proceedings, contributes to ensuring the independence, impartiality, and impartiality of the court, and strengthens the adversarial principle in criminal proceedings. The adoption of the Law "On Operational-Investigative Activities" on December 25, 2012, played a special role in the development and further improvement of the national system for protecting the rights and freedoms of citizens at the pre-trial stages of criminal proceedings in our country¹⁶. This law defines the precise grounds for conducting operational-search measures, thereby creating real legal guarantees for observing legality, ensuring the rights and freedoms of citizens, excluding the possibility of administrative arbitrariness in conducting operational-search measures, and ensuring further liberalization of the activities of law enforcement agencies in this area.

The Resolutions of the President of the Republic of Uzbekistan "On Further Enhancing the Role of Justice Bodies in Ensuring Legality in the Activities of State Bodies" of June 17, 2011, and "On Measures for Further Improving the Activities of the Ministry of Justice of the Republic of Uzbekistan" of August 23, 2011, became a logical continuation of the reforms being carried out in the judicial and legal sphere within the framework of the Concept. These resolutions are aimed, first of all, at further improving the system of control in the field of law enforcement, increasing the role and place of the Ministry of Justice in the system of law enforcement agencies, in the implementation of lawmaking and strict observance of legality in law enforcement practice and rule-making activities, strengthening the powers of justice bodies in the implementation of a unified state policy aimed at reliably protecting the constitutional rights and freedoms of citizens, ensuring the rule of law in the sphere of public and state construction.

¹⁵ Ўзбекистон Республикаси қонун ҳужжатлари тўплами, Тошкент, 2012 й., 38-сон, 64-76-б.

¹⁶ <https://lex.uz/ru/docs/2107763>

The Decrees of the President of the Republic of Uzbekistan "On Measures for the Fundamental Improvement of Social Protection of Employees of the Judicial System" of August 2, 2012, and "On Organizational Measures for Further Improvement of the Activities of Courts" of November 30, 2012, played an important role in strengthening the authority of the judiciary, creating an effective system for the selection and placement of judicial personnel that meets modern democratic requirements.

In addition, within the framework of the implementation of the above-mentioned documents, the Cabinet of Ministers adopted a Program for the introduction of modern information and communication technologies into the activities of courts. It is aimed at increasing the level of computerization and the efficiency of using computer equipment, creating information systems and resources in courts, expanding the sphere of providing interactive services to business entities and the population, and most importantly, introducing electronic legal proceedings, which are successfully used in many countries. In particular, this institution provides for the possibility of submitting and receiving various documents from the court in electronic form. It is possible to monitor the progress of the case via the Internet, participate in court hearings via videoconference, and familiarize yourself with court decisions online. The introduction of information and communication technologies into court proceedings will increase the efficiency of proceedings, reduce paperwork and the time for considering appeals.

The introduction of amendments and additions to certain legislative acts of the Republic of Uzbekistan, providing for the introduction of additional mechanisms for judicial protection of the rights and legitimate interests of entrepreneurs, business entities, including in their interaction with government bodies, contributed to the further strengthening of judicial protection of business entities. In particular, the Decree of the President of the Republic of Uzbekistan "On Measures to Improve and Enhance the Effectiveness of the Activities of District and City Courts of General Jurisdiction" of October 4, 2013, served to implement measures to further improve the activities of courts, increase their effectiveness, optimize the workload of courts and establish appropriate procedures to ensure the high-quality administration of justice by them, reliable protection of the rights and legitimate interests of citizens.

The results achieved at this stage of reforming the judicial and legal system served as the basis for further improving the system of training not only judges, but also all highly qualified legal personnel who meet the high requirements of the democratic and legal reforms being carried out in the country, modern international standards for the formation of civil society.

In particular, the Decree of the President of the Republic of Uzbekistan "On Measures for Further Reforming the Judicial and Legal System, Strengthening Guarantees of Reliable Protection of the Rights and Freedoms of Citizens" of October 21, 2016, raised state policy in this area to a qualitatively new level and opened a new era in ensuring the full and reliable protection of human rights and freedoms in Uzbekistan.

A number of amendments have been made to criminal, criminal procedure, civil procedural, and other legislative acts aimed at increasing the effectiveness of justice, taking into account ensuring the priority of human rights and freedoms, fair and timely conduct of court proceedings, strengthening guarantees of fairness and humanity of punishment. Within the framework of further expanding the application of the "Habeas Corpus" institution, the powers of prosecutors to authorize the conduct of investigative actions, such as the seizure and exhumation of postal and telegraph correspondence, have been transferred to the courts. These amendments fully comply with the Constitution of the Republic of Uzbekistan and generally recognized principles and norms of international law regarding the inviolability of personal rights and freedoms of a person, and that no one has the right to deprive or restrict them without a court decision.

As an innovation aimed at improving the efficiency and quality of court proceedings, eliminating unjustified delays in making final decisions, and enhancing the role of courts in criminal proceedings, it is worth noting the abolition of the institution of returning a criminal case by the court for additional investigation.

Also, in order to improve the existing system for reviewing the legality and validity of court decisions, eliminate unnecessary intermediate instances that negatively affect the timing and quality of judicial proceedings, duplicating instances of reviewing civil and criminal cases in the supervisory procedure by regional courts have been abolished, and in turn, the powers of the chairmen of the relevant courts and prosecutors to file protests in the supervisory procedure have been canceled. A new judicial system and administrative courts have been formed, authorized to consider disputes arising from public law relations. In order to further strengthen the legal protection of private property, create favorable conditions for small business and private entrepreneurship, and provide comprehensive support, inter-district, district, and city economic courts have been established in the regions, authorized to consider cases in the first instance.

The adoption of the Decree of the President of the Republic of Uzbekistan "On Measures for the Fundamental Improvement of the Structure and Enhancement of the Efficiency of the Judicial System of the Republic of Uzbekistan" of February 21, 2017, has become an important document for the fundamental improvement of the judiciary as a unified system in Uzbekistan, raising justice to a qualitatively new level, and ensuring the full and reliable protection of human rights and freedoms.

In accordance with the Decree, in order to radically improve the system of selection and appointment of candidates to judicial positions, expand the participation of judges in this process, and enhance the status and powers of the body responsible for the formation of a highly qualified judicial corps, the Supreme Judicial Council of the Republic of Uzbekistan was created, which is a body of the judicial community and contributes to ensuring compliance with the constitutional principle of independence of the judiciary.

Summarizing the above, as well as analyzing the experience of foreign countries and the opinions of scientists, it can be concluded that technology will play a huge role in our lives in the 21st century. The use of its capabilities by judges for the administration of justice in economic cases can be perceived as a huge step towards making a correct and justified decision from the point of view of jurisprudence.

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