

## **STAGES OF DEMOCRATIZATION AND LIBERALIZATION OF JUDICIAL AND LEGAL SYSTEM OF UZBEKISTAN**

From the moment of gaining independence, Uzbekistan has chosen the path of establishing democratic state with rule of law. Maintenance of supremacy of law, respect for human rights, and raise of legal culture and legal conscience of the citizens is not only the goal, but also the method as the most important condition of establishing – truly democratic lawful state and civil society.

The first stage, 1991 to 2000 – **the stage of the most urgent reforms and changes of the transition period and formation of the bases of national statehood** that contains the reforms of the judicial and legal system of Uzbekistan as its integral part took an enormous, imperishable, historical indeed place in the country's life.

At the first stage, the task of formation of integer system of the judicial branch aimed at restructuring the judicial from the punishing agency protecting the interest of the state only into the body securing the primacy of law and human rights protection has been posed and successfully resolved.

The main law has been developed and enacted within quite short period of time – the Constitution of the Republic of Uzbekistan where basic principles of the state and society the most important of which is the principle of division of the state powers into legislative, executive, and judicial branches have been clearly formulated. Among the main principles declared by the Constitution, priority of human rights over the state interests are prevailing as well as primacy of shared standards of the international law.

The Law of the Republic of Uzbekistan “On Courts” enacted in September, 1993, consolidated the main guarantees for the independence of judges for the first time

thus providing efficient judicial protection of the rights and freedoms of the citizens.

The Constitutional Court, courts of general jurisdiction, and economic courts have been formed.

Mechanism of considering compliance of the acts of the legislative and executive branches to the Constitution in accordance with the main law and legal basis for the functioning of the Constitutional Court has been introduced by the law of the Republic of Uzbekistan «On the Constitutional Court of the Republic of Uzbekistan» enacted in August, 1995.

Criminal, criminal procedural and other backbone laws have been approved that form the legal basis of judicial-legal system.

So, the Economic Procedural, Criminal, Criminal Procedural, Civil, Civil Procedural, Criminal-Execution Codes of the Republic of Uzbekistan, Code of the Republic of Uzbekistan on Administrative Responsibility, the laws of the Republic of Uzbekistan «On appeal to courts against actions and decisions infringing upon rights and freedoms of the citizens», «On the Bar», «On Guarantees of the Bar Activities and Social Protection of the Barristers» and other acts on formation and further development of judicial-legal systems have been adopted.

The second stage, 2001 to 2007, is **the period of active democratic renovation and modernization of the country.**

At this stage, a new conception on **deep reforms and liberalization of judicial-legal systems** as the most important component of formation of the lawful state has been realized in the country. Specialization of courts has been introduced – the courts on civil and criminal matters have been established, the courts have been released from the improper functions for them such as execution of the courts' decisions.

Enacting of the new edition of the Law of the Republic of Uzbekistan “On Courts” in December 2000 turned to be an important stage in reforming of the judicial system. The whole experience of the reforms of judicial-legal system

gained during the years of independence has been employed there, conditions have been established for the further democratization and improvement of the courts' functioning.

It is worth mentioning that by the new law "On Courts":

an efficient mechanisms of realization of the constitutional principle of separation of powers and independence of courts as a full-fledged self-dependent branch of power have been established. The authority to nominate the judges for position, suspending, and early termination of the authorities of the judges have been excluded from the functions of the Ministry of Justice. These functions have been transferred to the Higher Qualification Commission on Selection and Recommendation of Judges for Positions established under President of the Republic of Uzbekistan;

specialization of the courts of general jurisdiction has been legislatively secured, the establishment mechanism of separate courts on civil and criminal matters has been defined, specialization of judges has been realized. Specialization of the courts provided increase of quality of hearing, enhanced guarantees of protection of the rights and freedoms of citizens;

the tasks of supply and logistic support and funding of the courts functioning have been charged on specially authorized separate body – the courts department under the Ministry of Justice of the Republic of Uzbekistan that must function with full respect for independence of judges and their accountability to the laws only;

unlike the previous law «On Courts», the new one establishes an efficient and democratic legal mechanism of selection and appointment of court candidates.

In accordance with the new Law «On courts» as a basic legal act in the judicial-legal sphere, amendments have been made in criminal procedural and civil procedural legislations.

The appeal proceedings for hearing cases have been introduced which turned to be an important guarantee for on time correction of the judicial mistakes, prevention of procrastination in the proceedings. According to the law, the court of

appeal has authority to hear the case by merits without turning it back for new court hearing.

The cassation instance has been reformed. The citizens when they disagree with the court ruling that had taken legal effect are entitled to protect their rights in person and immediately at the court hearing of cassation instance. Both, defense and prosecution are given equal rights there.

The citizens are granted the rights to choose the methods of defense of their rights by means of appeal or cassation protest against the court decisions.

Since January, 2001, the Supreme Court of the Republic of Karakalpakistan on civil matters, regional, Tashkent city and inter-district courts on civil matters, as well as the Supreme Court of the Republic of Karakalpakistan on criminal matters, regional, Tashkent city and district (town) courts on criminal matters have been established and began to function.

By transfer of the function of execution of court decisions to the Courts Department under the Ministry of Justice of the Republic of Uzbekistan, separate efficient system of unconditioned execution of the court decisions has been established.

Enormous social and political significance has had the measures on liberalization of the system of criminal penalty as a result of which majority of *corpus delicty* has been changed from category of grave and especially grave into category of offences not posing great social danger and less grave crimes. The number of norms, precluding the courts to assign punishment in the form of imprisonment if the perpetrator recovers the damage in full, has been significantly enlarged. Since the time of accepting of above mentioned amendments, application of imprisonment by courts as a type of punishment decreased by more than 40 percent in 2007 as compared to 2000.

Besides, introduction and wide application of the reconciliation institute into criminal legislation was also a novel.

Establishment of an efficient system of selection and appointment to the positions of judges based on contemporary democratic principles where the radical

change of the functioning of Higher Qualification Commission on selection and recommendation of judges for the position under President of the Republic of Uzbekistan in March 2006, turned to a result of continuous democratization and liberalization of the selection and recommendation of judges for the positions.

In August, 2005, the Decrees of President of the Republic of Uzbekistan «On Abolishment of Capital Punishment in the Republic of Uzbekistan» and «On Transfer of the Right to Issue a Warrant for Arrest to the Courts» were adopted that envisage abolishment of capital punishment as well as transfer of the right to issue a warrant for arrest to the courts since January 1, 2008.

The laws “On Amendments of Some Legal Acts of the Republic of Uzbekistan with respect of Abolishment of Capital Punishment” and “On Amendments of Some Legal Acts of the Republic of Uzbekistan with respect of Transfer of the Right to Issue a Warrant for Arrest to the Courts” enacted in July 2007 was the next step in this direction that evoked an enormous echo in the world.

Capital punishment as a kind of penalty has been replaced by life term imprisonment that may be applied only for two kinds of especially grave offences, namely, murder with aggravating circumstances and terrorism, and long term imprisonment. It is worth mentioning that life term imprisonment may not be applied to the women and individuals under the age of 18 as well as to the individuals over 60 years of age.

With the introduction of above measures in Uzbekistan, one of the most humane and liberal systems of criminal punishment that fully meets all the requirements of the norms of the international law has been established.

Transfer of the right to issue a warrant for arrest to the courts, determination of clear procedural and legal mechanism of its realization are to become an important guarantee of efficient protection of rights and legitimate interests of the citizens subjected to criminal prosecution at pre-trial stage of the criminal proceeding. The mentioned measure will foster strengthening responsibility of investigators and prosecutors while choosing arrest as a type of security, raise of authority and independence of the judicial power, maintenance of reliable

protection of constitutional human right for liberty. Thus, number of individuals whom arrest was applied to as the security measure, has fallen by 1.5 thousand in the period of 9 months of 2008 as compared to the same period of 2007, since the time the law went in force, the courts overruled more than 220 motions of prosecutor to arrest.

In accordance with the Decree of President of the Republic of Uzbekistan «On Measures for Further Reforming of the Institute of Bar in the Republic of Uzbekistan» enacted on May, 2008, a new stage of reforming of the institute of Bar aimed at further liberalization of judicial-legal system in the country, realization of the constitutional norms that secures the right of citizens for professional legal counsel at any stage of court proceedings, providing organizational self-dependence of the Bar, its manning with highly qualified personnel, enhancement of the Bar independence guarantees, increase of authority and prestige of the Bar profession has began.

The Bar Chamber of the Republic of Uzbekistan has been established on the basis of the Bar Association of Uzbekistan - efficient centralized system of the Bar self-government as one of the main institutions of civil society in the sphere of protection of human rights and freedoms.

In September 2008, amendment has been introduced into the Criminal Procedural Code of the Republic of Uzbekistan setting mandatory participation only of a legal counsel in court proceedings that possess special knowledge in the sphere of law – attorney at law. Along with that, one of close relatives or legal representative of the suspect, accused or defendant may be allowed to participate as a defender.

Establishment of the Research Centre on Democratization and Liberalization of Judicial Legislation and Ensuring Independence of Judicial System at the Supreme Court of the Republic of Uzbekistan in June, 2008, turned to be one more significant step in further democratization of judicial-legal system, raising authority and independence of courts, maintenance of legality at carrying out of

justice, prevention of interference into functioning of the courts and bringing illegal rulings.

Newly established independent information-analytical and advisory institution will have to deal with the tasks such as to:

analyze and harmonize the legal basis of judicial activity, effectiveness of realizations of the provisions of the Constitution of the Republic of Uzbekistan, define the objectives of the court system, and also study and harmonize law implementation, court practice directed on provision of the superiority of the Law;

create measures on further liberalization of the system of criminal, administrative justice, democratization of judicial, criminal-procedural, civil-procedural, and economic procedural legislation;

develop proposals on further improvement of justice system, increase respect to and strengthen independence of judicial authorities, prevention of the facts of intervention into activity of court, banning of wrongful judgments;

develop and implement programs to analyse and implement the universal principles and norms of international law related to judiciary into the national legislation, deepen cooperation with the international and foreign organizations in justice area, organization of conferences, seminars and other actions devoted to the problems of democratization and liberalization of the judicial legislation and ensuring independence of judiciary.