THE PROCEDURE FOR SELECTING CANDIDATES FOR JUDICIAL POSITIONS AS A CRITERION FOR THE PRINCIPLE OF JUDICIAL INDEPENDENCE

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Judges may not hold any other elected or appointed positions, may not engage in any entrepreneurial, commercial or other paid activities other than scientific, pedagogical and creative activities, may not engage in political activities or become members of political parties, may not receive any remuneration other than their official salary, as well as funds received for their scientific, pedagogical and creative activities.

Keywords: Constitution, law, principle, state, position.

Chapter VII of the Constitution of the Republic of Azerbaijan dated November 12, 1995 is dedicated to the judiciary. (Articles 125-133). According to Article 126 of the Basic Law, entitled "Requirements for Candidates for Judges", citizens of the Republic of Azerbaijan who have the right to participate in elections, have a higher legal education, and have worked as lawyers for more than 5 years may become judges.

Article 127 of the Constitution of the Republic of Azerbaijan states: "Judges shall be independent and shall be subordinate only to the Constitution and laws of the Republic of Azerbaijan, and may not be replaced during their term of office.

Judges shall consider cases impartially and fairly, observing equality between the parties, on the basis of facts and in conformity with the law.

The application of illegal influence, threats and interference, and direct or indirect obstruction in court proceedings by any person and for any reason, shall be prohibited.

Justice shall be administered on the basis of equality of citizens before the law and the courts.

Proceedings in all courts of law shall be conducted in public. A closed hearing shall be permitted only if a court decides that an open hearing could result in the disclosure of state, professional, or commercial secrets, or that it is necessary to protect the confidentiality of personal or family life.

Except in cases prescribed by law, the conducting of criminal proceedings in absentia shall be prohibited.

Court proceedings shall be conducted on the basis of the adversarial principle.

Everyone's right to defense shall be guaranteed at any stage of court proceedings.

Justice shall be based on the presumption of innocence.

Court proceedings in the Republic of Azerbaijan shall be conducted in the official language of the Republic of Azerbaijan or in a language of the majority of the population of the specific region. Participants in court proceedings, who do not know the language of the proceedings, have the right to be acquainted with materials of proceedings, and to take part in proceedings using an interpreter, and to make statements in the court in their native language" [2].

Z.A. Asgarov states that the judiciary is seriously different from the others among the branches of state power in terms of

its powers and legal forms of activity [1, p. 426].

One of the guarantees of the independence of judges, which allows them to administer justice at a high professional level, openly for society, is the appointment of qualified lawyers to this position, who have the necessary experience in professional activity, as well as the appropriate moral qualities. That is, we are talking about the importance of personnel and personnel policy for improving the Azerbaijani judicial system.

Chapter XVI of the Law of the Republic of Azerbaijan on Courts and Judges dated June 10, 1997 deals with the appointment of judges (Articles 93-95) [3]. According to the second part of Article 93 of the same Law entitled "Requirements for Candidates for the Position of Judge", Persons with dual citizenship, those with obligations to other states, religious figures, those whose incapacity or limited capacity has been confirmed by a court, those who are unable to exercise their judicial powers due to physical or mental disorders according to a medical opinion, those who have previously been convicted of a crime, those whose criminal prosecution has been terminated without justifiable grounds, and those who have been dismissed from their judicial position as a result of disciplinary proceedings cannot be judges.

Article 93-1 of the aforementioned Law is called "Court-Legal Council", Article 93-2 is called "Judges' Election Committee", Article 93-3 is called "Selection of candidates for the position of judge", Article 93-4 is called "Special procedure for appointment to the position of judge", Article 94 is called "Appointment of judges, chairmen of courts, deputy chairmen and chairmen of judicial panels", and Article 95 is called "Judges' oath".

According to the legislation, the Judicial and Legal Council is a body that carries out the self-governing functions of the judiciary in the Republic of Azerbaijan, ensuring the organization of the judicial system, the independence of judges and the judicial system, organizing the selection of candidates for judicial positions, evaluating the performance of judges, changing their place of work, promotion, bringing them to disciplinary responsibility, as well as resolving other issues related to courts and judges within its authority.

The organization, legal basis of its activities and powers of the Judicial-Legal Council are determined by the Law of the Republic of Azerbaijan on Courts and Judges and the Law of the Republic of Azerbaijan "On the Judicial-Legal Council".

The Judicial Selection Committee is a body formed by the Judicial and Legal Council and responsible for selecting candidates for judicial positions.

The activities of the Judges' Election Committee are regulated by the Law of the Republic of Azerbaijan on Courts and Judges, the Law of the Republic of Azerbaijan "On the Judicial-Legal Council", as well as the Regulations on the Judges' Election Committee adopted by the Judicial-Legal Council.

Candidates for the position of judge are selected on the basis of a test exam, written exam and interview. The exams and interview are organized by the Judges Selection Committee.

The results of the exams and interviews are evaluated by the Judges Selection Committee. The Judges Selection Committee may involve an ad hoc commission it has formed for this purpose.

The Judges' Selection Committee ranks the candidates who successfully pass the exams and interviews according to the scores they have obtained.

The results of the evaluation of candidates are submitted to the Judicial-Legal Council. The Judicial-Legal Council makes a recommendation to the President of the Republic of Azerbaijan on the appointment of candidates to judicial positions in accordance with the number of vacant judicial positions.

Judges are first appointed to the position of judge for a period of three years. Immediately after their appointment, they are involved in training for professional training at the educational and scientific institution of the Academy of Justice of the Ministry of Justice of the Republic of Azerbaijan in accordance with the procedure established by the Judicial and Legal Council. At the end of the 3 (three) year period, the performance of judges is evaluated. If the evaluation does not reveal any

professional deficiencies in the judge's performance, his/her powers are extended until the final age limit upon the proposal of the Judicial and Legal Council.

The maximum age limit for judges of the Supreme Court is 68 (sixty-eight), and for judges of other courts of instance is 66 (sixty--six).

If the assessment reveals professional deficiencies in the activities of a judge, his/her powers shall not be extended.

Persons whose powers are not extended as a result of the assessment may not participate in examinations and interviews for the selection of candidates for the position of judge for a period of 5 (five) years.

The rules and methodology for assessing the performance of judges are determined by the Judicial and Legal Council.

The performance of judges is assessed on the basis of quantitative (judicial workload and ability to cope with it) and qualitative (quality of management of judicial acts and court proceedings, communication skills, judicial ethics and discipline) indicators, which allow determining their level of professionalism based on materials collected by the Judicial Evaluation Committee.

The activities of court chairmen, deputy chairmen and chairmen of panels in the exercise of administrative powers are assessed on the basis of materials collected by the Judges' Evaluation Committee, based on criteria that allow determining their management skills (observance of labor and executive discipline in the relevant court and the state of organization of work (conducting court statistics and archival work, compliance with clerical rules, organization of management of the court apparatus, state of studying and generalizing judicial practice, organization of work in the court in the field of receiving citizens, consideration of applications).

The performance of judges is assessed taking into account the results of monitoring the performance of courts, information from the Office of the Judicial and Legal Council, the judge whose performance is being assessed, as well as the chairmen of the Supreme Court of the Republic of Azerbaijan, courts of appeal and courts of first instance, and the number of cases referred to mediation in accordance with the Law of the Republic of Azerbaijan "On Mediation". When evaluating the performance of judges, information available to members of the Judicial and Legal Council may be used.

The Judges Evaluation Committee prepares a final opinion on the results of the evaluation of the judge's performance and submits it to the Judicial and Legal Council.

The Judicial and Legal Council discusses the final opinion received from the Judges Evaluation Committee at its meeting and adopts a decision on the approval of the results of the judge's performance evaluation.

If the final opinion of the Judges Evaluation Committee does not comply with the form and content established in the rules and methodology for evaluating the performance of judges, or if it is contradictory, the Judicial and Legal Council shall return the final opinion together with the materials attached to it by a reasoned decision. At this time, the Judges Evaluation Committee, taking into account the decision of the Judicial and Legal Council, eliminates the shortcomings in the final opinion and re-submits it to the Judicial and Legal Council.

When making a decision on the evaluation of the performance of judges, only the judicial members of the Judicial-Legal Council participate in the voting. The meeting of the Judicial-Legal Council on the evaluation is authorized if more than half of the judicial members of the Council who have the right to participate in the voting are present. The decision shall be made by a simple majority of the voting members of the Judicial-Legal Council. In the event of a tie, the vote of the person presiding over the meeting of the Judicial-Legal Council shall be decisive.

As a result of the evaluation of the judge's performance, one of the following conclusions is determined: the judge's performance is highly evaluated; the judge's performance is evaluated satisfactorily; there are professional shortcomings in the judge's performance.

If the judge's performance is highly evaluated, the Judicial and Legal Council considers the possibility of promoting the judge in office.

If the judge's performance is assessed as satisfactory, the Judicial and Legal Council shall adopt a decision on the judge's suitability for the position he holds.

If, during the evaluation of a judge's performance, professional shortcomings are identified in the judge's performance, including when systematic shortcomings in the application of substantive and procedural legal norms are revealed as a result of monitoring the performance of courts, the performance of the judge (except for persons appointed as judges for the first time) shall be evaluated again at a time determined by the Judicial and Legal Council, but not earlier than one year and not later than two years. If professional shortcomings are again revealed in the judge's activities during the re-evaluation, his/her powers shall be terminated before its due time in accordance with the procedure established by the Law of the Republic of Azerbaijan "On Courts and Judges".

The Judicial and Legal Council shall form the Judges Evaluation Committee, consisting of 9 (nine) members, with the following composition, for the purpose of evaluating the performance of judges: Three judges of the Supreme Court of the Republic of Azerbaijan; three judges of the courts of appeal; three judges of the courts of first instance.

A member of the Judicial-Legal Council or the Judges' Selection Committee may not simultaneously be a member of the Judges' Evaluation Committee.

The term of office of the members of the Judges' Evaluation Committee is five years.

In accordance with Article 109, Clause 9 of the Constitution of the Republic of Azerbaijan, judges of the courts of the Republic of Azerbaijan are appointed by the President of the Republic of Azerbaijan.

In accordance with Article 109, Paragraph 9 and Article 95, Paragraph 10 of the Constitution of the Republic of Azerbaijan, judges of the Supreme Court, the Supreme Court of the Nakhchivan Autonomous Republic and courts of appeal are appointed by the Milli Majlis of the Republic of Azerbaijan upon the recommendation of the President of the Republic of Azerbaijan.

As a rule, persons who have worked as judges of first instance courts for at least 5 years may be appointed to the positions of judges of higher instance courts.

The Chairman of the Supreme Assembly of the Nakhchivan Autonomous Republic participates in the selection of candidates for the position of judges in the courts of the Nakhchivan Autonomous Republic.

Before starting their duties, the appointed judges take the following oath in front of the State Flag of the Republic of Azerbaijan at the meeting of the Plenum of the Supreme Court:

"I swear to administer justice impartially and fairly, in full accordance with the Constitution and laws of the Republic of Azerbaijan, to preserve the independence and dignity of the judge, and to act in a spirit of respect for the name of the supreme judge".

The oath is the embodiment of the responsibility of judges to the state, citizens, and justice.

The powers of judges begin from the moment they take the oath.

Judges sign the text of the oath, which is kept in the judges' personal file.

On December 28, 2004, the Law of the Republic of Azerbaijan on the Judicial and Legal Council, consisting of 29 (twenty-nine) articles, was adopted [4]. According to Article 6.1 of this Law, the Judicial and Legal Council shall consist of 15 (fifteen) members and shall be composed of the following persons:

- three judges of the court of cassation elected by the conference of judges;
- three judges of the courts of appeal elected by the conference of judges;
- three judges of the courts of first instance elected by the conference of judges;
- Judge appointed by the Constitutional Court of the Republic of Azerbaijan;
- A person appointed by the Milli Majlis of the Republic of Azerbaijan;
- A person appointed by the Ministry of Justice of the Republic of Azerbaijan;
- A lawyer appointed by the Bar Association of the Republic of Azerbaijan;
- A legal scholar appointed by the Azerbaijan National Academy of Sciences;

▪ A representative of the legal community elected by the conference of judges.

According to Article 9.1 of the Law dated December 28, 2004, members of the Judicial and Legal Council are independent and subject only to the Constitution and laws of the Republic of Azerbaijan. A member of the Judicial and Legal Council cannot be held liable for his/her activities on the council, voting, or opinions expressed, and he/she cannot be required to provide explanations or statements regarding these matters.

The "Rules for the Selection of Candidates for Vacant Judicial Positions" were approved by the decision of the Judicial-Legal Council dated March 11, 2005 [6]. In accordance with paragraph 3.1 of those Rules, the Judges' Election Committee regularly publishes in the media and on the Internet the start date and deadline for accepting applications from persons wishing to fill vacant judicial positions, the list of documents to be submitted by these persons, the annotation of exam questions (information on the areas covered by the exam questions), the list of laws and other regulatory legal acts used in their preparation, as well as other information related to the selection of candidates for vacant judicial positions.

In accordance with the requirements of paragraph 3.2 of the above-mentioned Rules, lawyers wishing to fill vacant judicial positions shall submit the following documents to the Judicial Selection Committee: Application to the Judges' Selection Committee; notarized copy of the identity card; personal record sheet of personnel; curriculum vitae; notarized copy of the higher education document (diploma); certified (notarized or in the personnel department) copy of the work book; health certificates at the address of residence, as well as certificates of registration in mental and nervous diseases and narcological dispensaries; 4 photos 4x6 size.

The Judicial and Legal Council also approved the "Regulation on the Judges' Election Committee" on March 11, 2005 [5]. According to that Regulation, the powers of the Judges' Election Committee are as follows:

✓ accepts documents of candidates for vacant judicial positions;;

✓ organizes the preparation and examination of exam question sets;

✓ can form an ad hoc commission from among its members involved in evaluating the results of the exams;

✓ organizes written and oral exams for candidates for the position of judge for admission to training courses aimed at acquiring the judicial profession;

✓ applies to the State Examination Center of the Republic of Azerbaijan for the purpose of holding the first phase of the written exam;

✓ prepares the curriculum of initial long-term training courses;

✓ The Court, together with the Legal Council, organizes initial long-term training courses for candidates for vacant judicial positions;

✓ involves candidates for the position of judge in initial long-term training courses at an educational institution;

✓ Makes a proposal to the Judicial and Legal Council to recall from training courses and cancel the candidacies of candidates for the position of judge whose behavior during the training period is unsatisfactory, who do not participate in training sessions without an excuse, and who do not understand the training program, based on the presentation of the educational institution;

✓ determines the professional suitability of candidates for the position of judge through an interview.

✓ Based on the results of the training courses and the final interview, it prepares an opinion (comment) on the specialization of the candidates selected for the position of judge and makes a proposal to the Judicial and Legal Council on their appointment to the position of judge;

✓ summarizes the results of the process of selecting candidates for the position of judge;

✓ constantly improves the question of test exams;

✓ prepares proposals for improving initial long-term training;

- ✓ prepares new methodologies for exams;
- ✓ prepares proposals for improving the prosedure for selecting candidates for the position of judge;
- ✓ studies international experience in the field of selecting candidates for the position of judge and training of selected candidates.

Reference

1. Asgarov, Z.A. Constitutional law. Textbook. - Baku: Baku State University Publishing House, - 2011. - 760 p.

2. Constitution of the Republic of Azerbaijan // Adopted on November 12, 1995 (amendments and additions dated August 24, 2002, March 18, 2009 and September 26, 2016; in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/897

3. Law of the Republic of Azerbaijan on Courts and Judges // Adopted on June 10, 1997 (amendments and additions until November 7, 2024; in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/3933

4. Law of the Republic of Azerbaijan on the Judicial-Legal Council // adopted on December 28, 2004 (amendments and additions until November 7, 2024; in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/7303

5. Regulations on the Judges' Election Committee // Adopted on March 11, 2005 (amendments and additions as of July 13, 2023; in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/17145

6. Rules for the selection of candidates for vacant judicial positions // Adopted on March 11, 2005 (amendments and additions as of September 8, 2023; in Azerbaijani): [Electronic resource] / https://e-qanun.az/framework/17144