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International legal foundations of the principle of judicial independence

Abstract: The principle of judicial independence has been formed in international law not only as a principle expressing the institutional separation of the judiciary from other branches of government, but also as a complex system of legal guarantees that includes ensuring that judges are free from illegal external influences when making decisions on specific cases, protecting their individual and functional independence, and the obligation of the state to create appropriate legal, institutional and material guarantees for this purpose. The 1985 UN Basic Principles on the Independence of the Judiciary, subsequent international and regional standards, and international principles on the conduct of judges have complemented this approach, developing judicial independence in its interaction with the rule of law, fair trial, and effective protection of human rights. The European Court of Human Rights, through its interpretation of Article 6 of the European Convention on Human Rights, has played an important role in developing the practical content of this principle by specifying the institutional and individual criteria of judicial independence, the protection of judges from external pressure, and the guarantees of appointment and tenure.

Keywords: Constitution, Convention, law, state, international.

International experience shows that the effective functioning of a legal state is closely linked to the existence of an independent judiciary. Because one of the main principles of a legal state formed on the basis of democratic principles is ensuring the independence of the judiciary. In the context of globalization, the development and strengthening of international legal principles and standards of fair trial constitute one of the important foundations of a democratic society. In this context, "justice, as a fundamental mechanism for the protection of human rights and freedoms, should not only be implemented in accordance with the relevant norms and principles of international law, but should also include the effective protection and provision of internationally recognized rights and freedoms" [15, p. 3]. The independence of judges is of particular importance in implementing these requirements.

C. Capatina states that "in the modern era, ensuring the independence of the judiciary is characterized as a continuous process carried out through legal reforms, constitutional provisions, and international legal obligations. However, institutional and practical challenges remain in ensuring the full and effective independence of the judiciary. In this regard, the formation of an independent judiciary and ensuring its effective functioning remain a pressing issue for international law and national legal systems" [3, p. 45].

In modern times, ensuring the independence of the judiciary is characterized as a continuous process carried out through legal reforms, constitutional provisions, and international legal obligations. However, institutional and practical challenges remain in ensuring the full and effective

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independence of the judiciary. In this regard, the formation of an independent judiciary and ensuring its effective functioning remain a pressing issue for international law and national legal systems.

Historically, the independence of judges has been regarded as a matter regulated mainly within the internal constitutional structure of states. However, especially after World War II, as a result of the development of mechanisms for the protection of human rights at the international level, the independence of judges has become an important component of international legal standards. As a result of this process, the right to a fair trial by an independent and impartial tribunal has emerged as one of the universal human rights standards. One of the primary sources of the international legal basis for the independence of judges is the Universal Declaration of Human Rights of December 10, 1948. Article 10 of the Declaration establishes the right of everyone to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and in the determination of any criminal charge against him [30].

Thus, the idea of an independent judiciary has been accepted in the international human rights system not only as an institutional principle, but also as a means of ensuring the fundamental rights of the individual.

The legal development of the provision enshrined in the Declaration at the regional level is reflected in Article 6, entitled "Right to a Fair Trial", of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 [4], and at the universal level in Article 14 of the International Covenant on Civil and Political Rights of December 16, 1966 [16].

The principle of independence of judges enshrined in the above-mentioned international documents is not understood only as formal organizational independence. In assessing the independence of the court, criteria such as the appointment and term of office of judges, guarantees of protection from external influences, as well as the public perception of the independence of the court are also important.

The "Basic Principles on the Independence of the Judiciary", adopted within the framework of the UN, is of great importance in the international legal development of the principle of judicial independence. The document was adopted at the VII UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985. The General Assembly, by resolution 40/146 of 29 November 1985, recommended that States take these principles, consisting of 20 articles, into account in their national legislation and practice, and endorsed them by resolution 40/32 of 13 December 1985 of the UN General Assembly. The first principle of that document stipulates that the independence of the judiciary should be ensured by the state and enshrined in the Constitution or laws.

The second principle states that judges must make decisions based on the facts and the law when considering cases, without any restrictions, undue influence, pressure, intimidation or interference [1].

The first principle allows us to draw two important conclusions. First, the independence of judges is not a principle that must be ensured only within the judiciary itself. Its provision requires both positive measures by state authorities to strengthen the independence of the judiciary and to refrain from interfering with this independence. Secondly, the establishment of the independence of the judiciary at the constitutional and legislative levels is an important requirement of international standards.

The second principle expresses the essence of the personal and functional independence of judges in a particularly clear way. Within the framework of this principle, independence should not

be understood only as an institutional separation from other branches of state power. The judge should also be protected from pressure from parties and other persons, from public and political influences, as well as from any other undue interference.

Paragraph 1 of the Resolution No. 1 of the Plenum of the Supreme Court of the Republic of Azerbaijan "On the Independence of the Courts of the Republic of Azerbaijan" dated October 16, 1992, consisting of 11 paragraphs, stipulates that the courts were instructed to strictly comply with the UN "Basic Principles of the Independence of the Judiciary" dated 1985, and paragraph 2 stipulates that, the independence of the courts was explained as examining cases objectively, being guided only by the law and relying on established facts [24].

According to the "Procedures for the Effective Implementation of the Fundamental Principles of the Independence of the Judiciary", approved by the UN Economic and Social Council resolution of 24 May 1989, it is inadmissible to require a judge to perform duties that are inconsistent with the fundamental principles of the independence of the judiciary [28].

It is commendable that these international standards have also been reflected in the practice of the Plenum of the Constitutional Court of the Republic of Azerbaijan. Thus, the Resolutions of the Plenum of the Constitutional Court dated July 18, 2008 and January 17, 2022 referred to the UN "Basic Principles of the Independence of the Judiciary" of 1985, and the Resolution dated April 17, 2012 referred to both the aforementioned Principles and the "Procedures for the Effective Implementation of the Basic Principles of the Independence of the Judiciary" [5; 6].

The mentioned legal positions of the Constitutional Court are also consistent with the standards on the independence of judges adopted within the framework of the Council of Europe. In this regard, the "European Charter on the Status of Judges" of 8–10 July 1998 and Recommendation No. 12 of the Committee of Ministers of the Council of Europe "On the independence, efficiency and role of judges" of 17 November 2010 are among the main documents establishing important European standards for ensuring the independence of judges. According to the European Charter, the fundamental principles determining the status of judges must be enshrined in the highest legal norms of domestic law. At the same time, the participation of a body independent of the executive and legislative branches in making decisions regarding the selection, appointment, career development, promotion and termination of office of judges should be ensured [8].

One of the important features of the Charter is its comprehensive consideration of the independence of judges not only in the decision-making process, but also in the context of their status, functional and financial guarantees. This approach shows that the independence of a judge means not only the freedom to make decisions on a specific case, but also a system of institutional guarantees that include the formation of his professional status, career guarantees and protection of his financial security from external influences.

The distinctive feature of the Recommendation of 17 November 2010 is that it considers the independence of judges in relation to the efficiency of the judiciary and its role in society. The document emphasizes that the independence of judges does not give rise to their arbitrariness or freedom from accountability; on the contrary, independence must be reconciled with the requirements of the rule of law, professionalism, and the quality of justice [21]. In this regard, the independence of judges is not only an important guarantee of the efficient and fair administration of justice, but also one of the main conditions for the formation of public trust in the courts.

One of the important stages in the development of international legal and institutional guarantees of judicial independence was the formation of standards of professional and ethical

conduct of judges. In this regard, the "Bangalore Principles of Judicial Conduct", revised and adopted at the Round Table of Chief Judges held in The Hague on 25–26 November 2002, are of particular importance [27]. These Principles are an important international document that systematizes the ethical values that should guide judges in their professional activities. A.A. Tarasov and I.A. Gizatullin state that, "the main feature of this act is that it contains recommendatory provisions addressed directly to judges" [26, p. 32].

The Principles establish a basic ethical framework for the conduct of judges based on six fundamental values: independence, impartiality, integrity, decent conduct, equality, and competence and diligence. An important aspect of the document is that it does not merely set out these values as general ethical requirements, but also envisages their implementation through specific rules of conduct in the daily professional activities of judges. In this context, the Bangalore Principles serve to formulate the professional ethics of judges on the basis of common criteria and to establish a common framework for assessing their conduct.

In addition to the formation of international standards, it is also important to generalize their content and determine uniform criteria for application in the European legal space. In this regard, the Report of the Venice Commission on the Independence of the Judiciary, Part I: Independence of Judges (CDL-AD(2010)004), adopted on 12–13 March 2010, holds a special place [23].The report systematizes existing European and international approaches to the independence of judges and summarizes the main reference criteria for states in this area.

One of the distinctive features of the report is that it assesses this principle not only at the normative level, but also in terms of its practical implementation, taking into account the application of judicial independence in various legal systems. The Commission considers it necessary to take into account, in addition to the status of judges, the organization of court administration, the role of judicial councils and institutional mechanisms for the professional activity of judges in assessing judicial independence. Thus, the Report presents a systematic approach that integrates individual legal provisions on judicial independence within a broader institutional context.

The development of international standards on the independence of judges is not limited to the above-mentioned documents. Various international and regional documents are also of great importance in this regard. The International Bar Association's 1982 document "Minimum Standards of Judicial Independence" set out basic approaches to the appointment and tenure of judges, relations with the legislature and executive, and the prevention of external interference in judicial activities, as one of the initial international professional standards on the independence of judges [19].

The "Draft Universal Declaration on the Independence of Justice" prepared by L.M. Singhvi within the UN framework was an important initiative towards the systematization of universal standards on the independence of the judiciary. It should be noted that the document is a draft and has not been adopted by the UN as a final international legal act. According to official UN information, a revised version of the document was submitted by L.M. Singhvi on August 24, 1987 [7].

The "Beijing Declaration of Principles on the Independence of the Judiciary in the LAWASIA Region" of 19 August 1995 set out the basic principles of judicial independence at the regional level. The Declaration stressed the importance of this principle in ensuring a fair trial [2].

The "Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence", prepared by representatives of four professional organizations from the Commonwealth countries at a joint colloquium held at Latimer House, United Kingdom, on 15–19 June 1998, examined judicial

independence in the context of the separation of powers and the rule of law, and set out key provisions for the protection of the constitutional division of powers between the legislative, executive and judicial branches [17].

The International Association of Judges' 1999 "Universal Charter of Judges" document systematized the basic principles of a universal nature regarding the professional status of judges and the exercise of judicial functions [29].

At the European level, the Opinion No. 1 of the Consultative Council of European Judges of 2001 (CCJE Opinion No. 1) is of particular importance in terms of defining the relationship between the independence of judges and their security of tenure [22]. The CCJ's 2010 document "Magna Carta of Judges (Fundamental Principles)" summarized the main approaches formulated in previous opinions and unified the fundamental principles regarding the status and independence of judges in the European space into a single framework [18].

The European Court of Human Rights, in its judgment of 28 June 1984 in the case of Campbell and Fell v. the United Kingdom, established a number of criteria for assessing whether a court is considered to be "independent" or not. According to the court's legal position, "during this assessment, the procedure for appointing judges and their term of office, the existence of guarantees for the protection of judges from external pressure, as well as the appearance of judicial independence should be taken into account" [9].

The content of the principle of independence of judges in the case law of the European Court of Human Rights has been further developed in subsequent decisions. In its judgment of 25 February 1997 in the case of Findlay v. the United Kingdom, the Court further specified the criteria for assessing independence, including the procedure for appointing judges and their terms of office, safeguards against external pressure and the appearance of independence of the court [11].

The decision of 10 October 2000 in the case of Daktaras v. Lithuania is significant in terms of the development of the concept of internal judicial independence, which envisages the protection of judges' independence not only from influences outside the judicial system, but also from instructions and pressures that may exist within the court [10].

The decision of 9 January 2013 in the case of Oleksandr Volkov v. Ukraine examined the impact of the mechanisms for disciplinary liability and removal of judges from office on their independence, and stressed the need to limit interference with the status of judges to legal and institutional guarantees [13].

In the Grand Chamber judgment of 1 December 2020 in the case of Gudmundur Andri Astradsson v. Iceland, the relationship between the procedure for appointing judges and the independence of the court and the requirement of a "court established by law" was extensively developed [12].

The Grand Chamber judgment of 22 July 2021 in the case of Reczkowicz v. Poland highlighted the importance of the institutional independence of the body involved in the appointment of judges, showing that protecting the appointment mechanism from the influence of the legislative and executive branches is an important guarantee of judicial independence [14].

The above-mentioned decisions of the European Court of Human Rights have established various criteria and guarantees for ensuring the independence of judges. One of the approaches that theoretically systematizes this judicial practice can be seen in the classification of T.N. Neshataeva. Based on international legal documents and the practice of the European Court of Human Rights, the author divides the guarantees of judicial independence into two main groups: "guarantees that ensure

external manifestations of independence – the procedure for appointing judges, their irremovability and the binding force of court decisions; as well as guarantees that determine the internal mechanisms of independence – equality within the judicial system, protection of judges from unacceptable external influences, proper organization of financing of the judicial system and remuneration of judges" [20, pp. 88-89].

An analysis of international and regional documents, as well as the case law of the European Court of Human Rights, shows that the independence of judges is recognized as one of the fundamental elements of modern justice. An independent judiciary is one of the international standards of justice.

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Hakimlərin müstəqilliyi prinsipinin beynəlxalq hüquqi əsasları

Xülasə: Hakimlərin müstəqilliyi prinsipi beynəlxalq hüquqda yalnız məhkəmə hakimiyyətinin digər hakimiyyət qollarından institusional ayrılığını ifadə edən prinsip kimi deyil, hakimlərin konkret işlər üzrə qərar qəbul edərkən qanunsuz xarici təsirlərdən azad olmasının təmin edilməsini, onların fərdi-funksional müstəqilliyinin qorunmasını və bu məqsədlə dövlətin müvafiq hüquqi, institusional və maddi təminatlar yaratmaq öhdəliyini ehtiva edən kompleks hüquqi təminatlar sistemi kimi formalaşmışdır. BMT-nin 1985-ci il tarixli "Məhkəmə orqanlarının müstəqilliyinin əsas prinsipləri", sonrakı beynəlxalq və regional standartlar, habelə hakimlərin davranışına dair beynəlxalq prinsiplər bu yanaşmanı tamamlayaraq məhkəmə müstəqilliyini hüququn aliliyi, ədalətli məhkəmə araşdırması və insan hüquqlarının effektiv müdafiəsi ilə qarşılıqlı əlaqədə inkişaf etdirmişdir. İnsan Hüquqları

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üzrə Avropa Məhkəməsi isə Avropa İnsan Hüquqları Konvensiyasının 6-cı maddəsinin təfsiri vasitəsilə məhkəmə müstəqilliyinin institusional və fərdi meyarlarını, hakimlərin kənar təzyiqlərdən qorunmasını, təyinat və vəzifədə qalma təminatlarını konkretləşdirərək bu prinsipin praktiki məzmununun inkişafında mühüm rol oynamışdır.

Açar sözlər: Konstitusiya, Konvensiya, hüquq, dövlət, beynəlxalq.

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Международно-правовые основы принципа независимости судей

Аннотация: Принцип независимости судей в международном праве сформировался не только как принцип, выражающий институциональное отделение судебной власти от других ветвей власти, но и как комплексная система правовых гарантий, включающая обеспечение свободы судей от незаконного внешнего воздействия при принятии решений по конкретным делам, сохранение их индивидуально-функциональной независимости, а также обязанность государства создавать для этих целей соответствующие правовые, институциональные и материальные гарантии. Принятые ООН в 1985 году «Основные принципы независимости судебных органов», последующие международные и региональные стандарты, а также международные принципы, касающиеся поведения судей, дополняют данный подход, развивая принцип независимости судебной власти во взаимосвязи с верховенством права, правом на справедливое судебное разбирательство и эффективной защитой прав человека. Европейский суд по правам человека, в свою очередь, посредством толкования статьи 6 Европейской конвенции по правам человека конкретизировал институциональные и индивидуальные критерии независимости судебной власти, гарантии защиты судей от внешнего давления, а также гарантии их назначения и пребывания в должности, тем самым сыграв важную роль в развитии практического содержания данного принципа.

Ключевые слова: Конституция, Конвенция, право, государство, международный.

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