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### SECTION 32. Jurisprudence.

## SPECIFICS OF FORMATION OF JUDGES' CORPS IN SOME FOREIGN COUNTRIES

**Abstract:** In the scientific article the author considers some specifics of formation and development of judge's corps in such foreign countries as the USA, France, Japan, Russia and suggests well-reasoned proposals accordingly.

**Key words:** judicial corps, status of judges, formation of the reserve judges, selection of candidates for judges, appointment or election of judges.

**Language:** English

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One of the key priorities of deepening the democratic renovation of the country is successive democratization, liberalization of the judicial-legal system directed at ensuring the rule of law, legality, reliable judicial protection of the rights and interests of a person, society and state. It is therefore since the first years of accomplishing the independence a special attention has been paid to this direction of reformation in Uzbekistan.

The principles of the activity of the judicial organs were defined in the Declaration on fundamental principles of justice for victims of crime and abuse of power, adopted by the resolution 40/34 of the UN General Assembly of November 29, 1985 (section 2 of the Declaration) and the European Charter on status of judges adopted in Strasburg on July 8-10, 1998 [1] which establishes that the judges' status is challenged to provide competence, independence and impartiality of judges' and envisages the main provisions regarding the requirements to nominees with law education and work experience, can not be determined by gender, ethnic or social belonging [2].

In legal literature very diverse thoughts are said about the formation of a judicial corps. It is important to note that in modern legal literature the modern judicial corps is assessed as completely formed [3].

Professor A. Abdumajidov quite correctly makes an argumentation that it was accepted to call a judicial corps as a sum of state employees engaging

the position of judges. The circle of such official persons is comparatively wide and diverse [4]. M. Rustambayev and U. Tukhtasheva suppose that traditionally the notion "judicial corps" includes only professional judges [5]. M. I. Kleandrov writes that the judicial corps consists of acting judges [6]. However, M. Rustambayev and U. Tukhtasheva note that the process of formation of a judicial corps is composed of two main stages: 1) formation of reserves and selection of nominees for judge's position; 2) appointment or election [7].

At the same time, we note that the procedure of selection and appointment for the judicial position has its specifics depending on the level and types of a court, as well as the position which will be occupied by a future judge.

A. A. Mirzayev believes that "...the formation of a judicial corps in accordance with such principles as what requirements are put before nominees for judge's position, who checks the nominees for their consistence with the established criteria and etc. depends on whether the independence of a judge is ensured completely or not" [8].

The judge is an indivisible attribute of judges' corps. That's why the formation of the judges' corps is inseparably connected with judge's status established by legislation.

The judge's status in the Republic of Uzbekistan was defined by the Law of the Republic of Uzbekistan "On Courts" of December 14, 2000, # 162-II [9].

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All judges the Republic of Uzbekistan shall have an integrated status (art.60 of the Law). The independence of a judge is protected by the Constitution and laws and is ensured by an envisaged procedure of the administration of justice. The Constitution defines that the position of a judge shall be incompatible with deputy's mandate, with entrepreneurship activity. The procedure of dismissal of a judge from bench and termination of judge's authority are also regulated by article 72 of this Law – the decision on dismissal of a judge from position is accepted regarding the judges of higher judicial instances on the presentation of the President by the Senate of the Oliy Majlis (parliament), other judges – by the President of the Republic of Uzbekistan on the presentation of the Supreme Qualification Commission for Selection and Recommendation for judges' position under the President of the Republic of Uzbekistan.

Studying the experience of foreign states shows that formation of the judicial corps in a number of countries are determined in their Constitutions and laws.

In accordance with the Constitution of the USA the judicial power of the United States, shall be vested on one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish (section 1, article III)[10]. The inferior courts are the US Courts of Appeals, US District Courts, Courts of each state (including the State Supreme Courts) and county courts of states. The chief justice and members of the US Supreme Court, all judges of Appellate and District Courts are appointed by the President with the advice and consent of the Senate for an indefinite term (section 2, article II of the Constitution)[11]. Judges of Federal courts are elected for life. The judges retain their position as long as their conduct is irreproachable. The lower instance of the judicial system is represented by magistrate courts, the magistrate judges are appointed by Federal district courts.

In order to get judge's status, then to prolong his service a certified lawyer must receive the approval of special commissions of a state (consisting of members of the Supreme Court and representatives of the state prosecution) and get the support of electors. A judge may be deprived of inviolability only through the impeachment procedure.

In the United States the independence of the judicial system is incarnated in a number of institutions which guarantee that judges make their decisions on law, but not on his own whim or on the will of others including other branches of government. Here are five components of judicial independence: the constitutional means of protection used by US judges; independent judicial management; disciplinary authority of a court if

judge acts wrongfully; mechanism of overcoming the conflict of interests; ensuring effective judicial decisions[12].

An independent organ of the judicial power is the Federal Commission for Appointing Punishments (Paragraph 991, section 20, the Code of US Laws). It is composed of seven members with a casting vote right and a member without such right.

The chairman of the commission, three vice-chairs and three members (all with a voting right) are appointed for five years by the US President after consultation with representatives of judges, prosecutors and other persons and with the consent of the Senate of US Congress. As minimum, the three of the appointed must have a work experience as a judge. According to position a member of the commission without a casting vote is the US Attorney General or a person appointed by him.

The nominees are selected among experienced practicing lawyers both from government and private organs, from state courts and inferior courts or from scientific community [13].

So, the status of judges in France is regulated by the laws adopted on February 5, 1994: The Law on High Board of Magistrates and Law on Status of Magistrates. All judges are appointed for life by the President of France. The Magistrates' High Board introduces nominees to consideration of the President, or provides conclusions on nominees presented by the Minister of Justice. The judges' corps of France involves magistrates – members of courts and prosecutors in the Cassation court and tribunals of first magistrates – members of courts and magistrates – employees of prosecution. The members of judges' corps have the right to move from one category to another.

The principle of irremovability spreads only to the members of courts. Magistrates are appointed to judge's positions by the decree of the President of the Republic on the basis of binding conclusion for the government or on the motion of the High Board of Magistrates[14].

According to the Constitution of Japan, all judges are independent and adhere only to the Constitution and laws; they act following the voice of their conscience (part 3, art. 76)[15].

The Supreme Court is composed of the chief justice, appointed by the Emperor on presentation of the Cabinet of Ministers, and 14 judges, appointed by the Cabinet of Ministers. The appointment of judges of the Supreme Court is confirmed by all people's referendum during the nearest elections for the Chamber of representatives. On reaching the age of 70 a judge of the Supreme Court retires and goes to pension. The judges of inferior courts are appointed by the Cabinet of Ministers from a list of persons suggested by the Supreme Court. All judges are appointed to their positions for a term of ten years. The appointments are realized by the Cabinet of

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Ministers usually on the basis of the list of nominees composed by the Supreme Court ( the Chief Justice of the Supreme Court is appointed by the Emperor). After ten years the judge may be appointed again for his position, and until he reaches the retirement age, established by law (65 or 70 years of age).

A section of the Constitution is dedicated to the organization of the judicial power in the Russian Federation. According to article 119, "Judges may be citizens of the Russian Federation over 25 years of age with a higher education in law and a law service record of not less than five years. The federal law may introduce additional requirements for judges of the courts of the Russian Federation". In accordance with the Law of RF "On status of judges", "Code of judicial ethics", of December 19, 2012, the requirements to judges may be divided into 3 groups: 1) General requirements produced to the behavior of judges. In particular, the requirements for ensuring priority in professional activity, requirements for ensuring judge's status, for accepting ranks, awards, gifts and etc. 2) Principles and rules of professional conduct of judges. In particular, principles of independence, objectivity and impartiality, equality, competence and honesty of judges. 3) Principles and rules of judicial conduct during out of bench activity. In particular, observing the principle of depoliticization, nonparticipation in the acts of political and social character, necessity to avoid connections which are capable of interfering duly to perform his professional obligations. For the purpose of establishing the knowledge, habits and skills necessary for work as a judge in a definite type of court there is formed a qualification commission for taking qualification exam for a position of a judge.

Driving from the said above it should be noted that the formation of the judicial corps is urgent not only in the Republic of Uzbekistan, but also in foreign countries.

The judicial corps is an inherent element of a strong legal state. In this regard it is possible to draw

a conclusion that the formation of the judicial corps is of dynamic character. As the world experience shows that there is no a single standard for formation of the judicial corps as an organizational-legal element of judge's status.

It is possible to agree with the opinion of I.B.Reshetnikov that in the world there is, most likely, no ideal system of law, and will never be, but it is important to have a wish and to make an effort to seek ways which are capable to improve as soon as possible what already exists. And it does not mean that one system must be replaced with another. The matter is how to use the national and foreign experience of our time for development of optimal procedure which would be able to protect those whose rights are violated. Without studying the international experience today it is impossible to imagine the development of any national legal system, any sphere of law [2].

According to our deep conviction the judge's corps" is a sum of civil servicers, judges who are vested with constitutional and lawful authorities to administer justice and who perform their obligations on professional basis. Considering the specifics of its legal systems each state forms its judicial corps on the basis of learning the international and foreign experience. That's why, we think that scientific-theoretical study of formation specifics of the judicial corps of foreign countries and the practice of applying the national judicial legislation prove opportunities for effective realization of judicial corps formation under modern conditions.

What is most critical is a qualitative and timely formation of the judicial corps as an important organizational-legal element of judge's status which strengthens the independence of judges under the conditions of deepening democratic reforms and development of a civil society.

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