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## TRANSFORMATION OF THE JUDICIARY IN TAJIKISTAN AFTER 1991



Flag of Tadjikistan [1]



National Emblem  
of Tadjikistan [2]

**Introduction.** On August 24, 1990, the Supreme Council of the Tajik Soviet Socialist Republic of the XII convocation at an early session adopted the declaration of independence of the Tajik Soviet Socialist Republic [3].

On 9 September 1991, the supreme council (Majlisy Oli – in Tajik language) of the Republic of Tajikistan adopted a resolution on the state sovereignty of the Republic of Tajikistan [4].

After Tajikistan regained its independence in 1991, reforms began in all branches of power, including the judiciary. One of the main subjects of the judicial and legal reform was the system of courts of general jurisdiction headed by the Supreme Court of the Republic of Tajikistan. The undertakings of the adopted programmers aimed were at improving the organization and activities of the courts in order to safeguard their independence and independence. After the constitutional reforms, a unified judicial system built was in Tajikistan.

During the 1990s, there was a complicated process of formation of the statehood of the Republic of Tajikistan as an independent subject of the international arena. However, at the initial stage (1991–1992) the process of reforming the judicial system in Tajikistan stopped was at the indications of the civil war.

The political leadership of Tajikistan declared the country a secular state, legal and neutral in relation to various religions and ideologies. In this period, concrete steps in the formation of an independent judiciary are beginning. Since then, the process of implementing a number of programs aimed at increasing the authority of the courts has become more active. This was reflected not only in the improvement of the selection procedure and the formation of the judicial corps, but also in the creation of conditions for ensuring their independence, increasing material security, establishing responsibility for non-compliance with the court, as well

as in a significant expansion of the powers of the court. It out be should pointed that all these processes of formation of judicial power took place in conditions of instability in the country.

According to Grebennikov V., there are two problems in the judicial system that determine the quality and purpose of functioning: the uniformity and integrity of the judicial system. Uniformity means preserving and strengthening the judicial system and mobilizing it to perform fundamental tasks to achieve common ends. In addition, the whole is the internal structural unity of the system, the relative autonomy that ensures the necessary independence from the external environment [5]. By contrast, Khodzhaeva B. notes that for the adoption of a number of programs of judicial and legal reform in 1993 in the Supreme Court of the Republic of Tajikistan was created military college, and in 1994 Garrison military courts, which "made a significant contribution to the defense of human rights and freedoms in this period" [6].

On December 23, 1989, the USSR adopted the *law on the Constitutional Supervision Committee of the USSR*. According to Article 2 of the said law, the constitutional supervision committee of the USSR, as well as the relevant constitutional supervision bodies in the federal and autonomous republics exercised constitutional supervision in the USSR [7].

Based on this standard, on April 23, 1990, the Supreme Council of the Tajik Soviet Socialist Republic adopted a resolution on the establishment of a constitutional oversight committee in the Tajik Soviet Socialist Republic. The constitutional supervision committee of the USSR or its corresponding body in the federal (autonomous) republic of the USSR was created to control compliance with the norms of the constitution of the USSR or the constitution of the federal (autonomous) republics – draft laws and other normative acts submitted for consideration by

the Supreme Council of the USSR or the council of the federal (autonomous) republic, as well as laws adopted by the relevant Supreme Council (article 10 of the about law). As Cholikov K. points out, this was the first step towards the formation of a specialized body of constitutional control in Tajikistan [8].

Reform of the judiciary in the period 1992–1999.

On 10 March 1992, the *law of the Republic of Tajikistan on the procedure for the settlement of economic disputes in the arbitration courts of the Republic of Tajikistan adopted was* [9].

The prerequisites for the creation of economic courts in Tajikistan were:

- recognition of various forms of ownership, including private;
- the lack of unity of practice in economic disputes, the undesirability of the existence of a 2-tier system of arbitration: departmental and state;
- rejection of administrative and planned management methods;
- consolidation in the Constitution of the Republic of Tajikistan of the principle of separation of powers – judicial, legislative and executive (article 9 Constitution of the Republic of Tajikistan).

It was with the formation of market relations that there was a need to create an independent court specially adapted for the consideration of economic disputes between economic entities.

With the adoption of the Law of the Republic of Tajikistan dated March 10, 1992 "On Arbitration Courts of the Republic of Tajikistan" on the territory of Tajikistan, arbitrations and other similar bodies in the systems of ministries, state committees, departments, associations, concerns, other associations, as well as enterprises and organizations were abolished.

In accordance with article 2 of the said law, enterprises, various institutions, organizations, collective farms, as well as private and joint enterprises that had



the status of a legal entity could apply to the arbitration courts of the Republic of Tajikistan in order to protect their rights and resolve economic disputes. It is important to note that state arbitrations before the adoption of the above law existed in the system of executive bodies and were not part of the judicial system of the country and only after the adoption of the said law transformed were into arbitration courts.

The unified system of arbitration courts, according to article 8 of the Law "On Arbitration Courts of the Republic of Tajikistan", consisted of:

- the Supreme Arbitration Court,
- the Arbitration Court of the Gorno-Badakhshan Autonomous Region,
- the arbitration courts of the regions.

Legislation on the organization and fundamentals of the activity of economic courts continued to improve be in subsequent years. On 4 November 1995, a new Constitutional Law "On Economic Courts of the Republic of Tajikistan" adopted was, which regulated in detail the procedure for the formation of economic courts, the basic principles of their activities and powers. The Arbitration Court with its internal system operated before the adoption of Constitutional Law "On Economic Courts of the Republic of Tajikistan" (November 4, 1995). Because of this law, the Arbitration Court renamed was into Economic Court. In the system of economic courts, along with regional courts, the Economic Court of the city of Dushanbe formed was.

On 6 November 1994, the *Constitution of the Republic of Tajikistan* adopted was in a general referendum [10]. According to article 9 of the Constitution of the Republic of Tajikistan, state power exercised is because of its division into: legislative, executive and judicial.

The Constitution of the Republic of Tajikistan also enshrines such

principles of justice as equality of all before the law and the court (article 17 of the Constitution of the Republic of Tajikistan), right to judicial protection (article 19 of the Constitution), independence of the judiciary (article 84 of the Constitution), independence of judges and their subordination only to the Constitution and laws (article 87 of the Constitution), transparency of judicial process (article 88.3 of the Constitution), language of judicial proceedings (article 88.4 of the Constitution), etc.

In accordance with article 84.2 of the Constitution of the Republic of Tajikistan, judicial authority in the country exercised is by:

- Constitutional Tribunal of the Republic Of Tajikistan,
- Supreme Court of the Republic Of Tajikistan,
- Supreme Economic Court of the Republic Of Tajikistan,
- Military Courts,
- Court of the Gorno-Badakhshan Autonomous Region,
- Court of the Sogdinsky Region,
- Court of the Khatlon Region,
- Court of the capital city of Dushanbe,
- Local Courts of general jurisdiction,
- Economic Court of the Gorno-Badakhshan Autonomous Region,
- Economic Court of the Sogdinsky Region,
- Economic Court of the Chatlon Region,
- Economic Court of the capital city of Dushanbe.

It should be noted that the constitution of the Republic of Tajikistan did not indicate the possibility of creating specialized courts in the country, such as administrative, juvenile, family, financial and others courts. In contrast, article 84.3 of the Constitution of the Republic of Tajikistan states that constitutional law shall determine the procedure for the establishment, organization and operation of courts.



In my opinion, this provision gives a preliminary possibility for the establishment of specialized courts in the country, since the norms of the constitution of the Republic of Tajikistan do not prohibit the possibility of establishing specialized courts. It would be worthwhile to send a response request to the Constitutional Court of the Republic of Tajikistan in order to translate article 84.3 of the constitution of the Republic of Tajikistan.

According to article 85.5 of the Constitution of the Republic of Tajikistan, the establishment of extraordinary courts in the country allowed is not. However, as indicated above, the judicial power in the country exercised is also by the courts of war. I believe that the institution of courts – martial in peacetime is an extraordinary institution, and that such courts abolished should be. The Constitution of the Republic of Tajikistan set the term of performance of duties of the judge – is 10 years (article 84.4 of the Constitution).

In 1995, Tajikistan adopted a package of laws on the formation of the country's judicial system and the status of judges, namely:

– *Constitutional law of the Republic of Tajikistan of 3 November 1995 № 84 on the Constitutional Court [11]*,

– *Constitutional law of the Republic of Tajikistan of 3 November 1995 № 86 on the judicial system [12]*,

– *Constitutional law of the Republic of Tajikistan of 3 November 1995 № 90 on the Supreme Court of the Republic of Tajikistan [13]*,

– *Constitutional law of the Republic of Tajikistan of 3 November 1995 № 92 on the status of judges [14]*,

– *Constitutional law of the Republic of Tajikistan of 3 November 1995 № 96 on military courts [15]*,

– *Constitutional law of the Republic of Tajikistan № 102 of 4 November 1995 on economic courts [16]*.

According to article 4 of the *Constitutional Law of the Republic of Tajik-*

*istan of 3 November 1995 no 84 on the Constitutional Court [11]* – the Constitutional Court of the Republic of Tajikistan consisted of seven judges: the president of the constitutional court, his deputy and five judges of the constitutional court, one of whom was to be a representative of the Gorno-Badakhshan Autonomous Region. A judge of the Constitutional Court of the Republic of Tajikistan may be elected among citizens of the Republic of Tajikistan aged not less than 30 years and not older than 65 years, having a higher legal education and at least 10 years of professional experience. According to Article 5 of the said law, the term of powers of judges of the constitutional court is 10 years, and if the term of powers expires during the period of consideration of the case, these powers of the judge extended are until the final consideration of the case.

In accordance with articles 31–32 and 37–38 of the *Constitutional Law of the Republic of Tajikistan of 3 November 1995 No 86 on the judicial system [12]*, judicial colleges for civil cases and judicial colleges for criminal cases were established in the Court of the Khatlon Region, the Court of the Sogdinsky Region, the Court of the Gorno-Badakhshan Autonomous Region and the Court of the capital city – Dushanbe, which consider complaints against decisions and judgments of courts and instances on appeal (formerly – cassation instances). In accordance with art. 33–36 of the said law in the Court of the Khatlon Region, the Court of the Sogdian Region, the Court of the Gorno-Badakhshan Autonomous Region and the Court of the capital city – Dushanbe were established Presidencies.

In accordance with art. 15–21, 22–26, 28, 29, 30, 40–41 *Constitutional Law of the Republic of Tajikistan of 3 November 1995 № 90 on the Supreme Court of the Republic of Tajikistan [13]* – the Supreme Court of the Republic of Tajikistan consisted of:



- Plenum of the Supreme Court of the Republic of Tajikistan (articles 15–21),
- Presidium of the Supreme Court (articles 22–26),
- Judicial College of Civil Affairs (article 28),
- Judicial College of Criminal Affairs (article 29),
- Judicial College for Military Affairs (article 30),
- Higher Qualification College of Judges of the Supreme Court (articles 40–41).

The *Constitutional Law of the Republic of Tajikistan on the Status of Judges in the Republic of Tajikistan* adopted was on November 3, 1995 [14], consists of 6 chapters and 24 articles. It defines the requirements for judges, guarantees of the independence of a judge, as well as the procedure for the election and appointment of a judge to a position, establishes the procedure for the termination of his powers, encouragement and responsibility of judges. The material and social security of judges has been determined.

In accordance with article 1 of the *Constitutional Law of the Republic of Tajikistan of 3 November 1995 № 96 on military courts* [15] – military courts are organized within the armed forces of the Republic of Tajikistan on the principle of territoriality at the place of deployment of troops and consist of military courts of garrisons and the judicial college for military affairs of the Supreme Court of the Republic of Tajikistan.

In the Republic of Tajikistan, there are four military courts:

- 1) In the Gorno-Badakhshan Autonomous Region - Military Court of the Khorogsky Garrison,
- 2) In the Khatlon region - Military Court of the Khatlon Garrison,
- 3) In the Sogdian region – Military Court of the Khudzhansky Garrison,
- 4) In the capital Dushanbe – Military Court of the Dushanbe Garrison [17].

In accordance with the *Constitutional Law of the Republic of Tajik-*

*istan № 102 of 4 November 1995 on economic courts* [16] – the Supreme Arbitration Court of the Republic of Tajikistan renamed was the Supreme Economic Court of the Republic of Tajikistan.

In accordance with the *Decree of the president of the Republic of Tajikistan of 27 November 1996 № 613 on approval of the regulations on the qualification colleges of judges of the courts of the Republic of Tajikistan* [18] in the Supreme Court of the Republic of Tajikistan was established Higher Qualification College of Judges of the Supreme Court of the Republic of Tajikistan, - the members of which were are elected by the Plenum of the Supreme Court. In contrast, in the Supreme Economic Court of the Republic of Tajikistan was established a qualifying College of judges of the Supreme Economic Court of the Republic of Tajikistan, – the members of which were elected by the plenum of the Supreme Economic Court (paragraph 1 of the Decree). In accordance with point. 2 and 3 of the Decree of procedure in the Court of the Gorno-Badakhshan Autonomous Region, the Court of the Khatlon Region, the Court of the Sogdian Region and the Court of the capital city of Dushanbe, Qualifying Colleges of Judges were also established, – the members of which were selected among the judges of local courts, judges of district courts and judges of military courts, as well as district courts by the Conference of Judges of these courts.

### **3. Reform of the judiciary in the period 2000–2013.**

On 6 August 2001, Tajikistan adopted the *Constitutional Law on the courts of the Republic of Tajikistan* [19] as indicated in Article 2 (5) of the law; the courts of Tajikistan shall administer justice in the areas of constitutional, civil, economic, criminal and criminal-administrative offences. On the other hand, pursuant to article 143 of that law, all the relevant legislation on the judicial



system of the country adopted by 4 November 1995 repealed was, with the exception of the law of the Republic of Tajikistan of 3 November 1995 on the Constitutional Court. In accordance with article 2 of the said Law, the exclusive task of the courts is the administration of justice.

In accordance with art. *Constitutional Law of the Republic of Tajikistan of 6 August 2001 № 30 on the courts of the Republic of Tajikistan* [19] – the Supreme Court of the Republic of Tajikistan consisted of:

- Plenum of the Supreme Court of the Republic of Tajikistan (articles 26–29),
- Presidium of the Supreme Court (articles 30–32),
- Judicial College of Civil Affairs (article 34),
- Judicial College of Criminal Affairs (article 35),
- Judicial College for Family Affairs (article 35.1),
- Judicial College for Criminal-Administrative Affairs (article 35.2),
- Judicial College for Military Affairs (article 36).

An important step in the implementation of judicial and legal reform in the Republic of Tajikistan is the creation of the Council of Justice of the Republic of Tajikistan, which began its activities in 2000. The Council of Justice of the Republic of Tajikistan established based on the *Decree of the President of the Republic of Tajikistan of 14 December 1999* [20]. Carrying out checks on the activities of the courts, as well as securing the judicial system with an adequate number of staff. All these powers of the Ministry of justice of the Republic of Tajikistan transferred were to the newly created Council of justice of the Republic of Tajikistan. According to paragraph 1 of the Decree – the Council of Justice of the Republic of Tajikistan consisted of seven members: the Chairman, the first deputy Chairman, the deputy Chairman (secretary of the Council of Justice),

the President of the Supreme Court of the Republic of Tajikistan, the state adviser to the President of the Republic of Tajikistan on personnel policy issues and a representative of the Parliament of the Republic of Tajikistan.

On June 6, 2000, the Law of the Republic of Tajikistan No. 4 *on the Council of Justice of the Republic of Tajikistan* adopted was [21]. According to article four of the Law, the tasks and powers of the Council of Justice of the Republic of Tajikistan in relation to the courts of the Republic are: carries out measures to improve the judicial and legal system and increase the role of the judiciary in the country; organizes the selection and training of candidates for judges, professional development of judges and court staff; considers and submits, in accordance with the established procedure, proposals to the President of the Republic of Tajikistan on the appointment and release of judges of military courts, courts of the Gorno-Badakhshan Autonomous Region, regional, Dushanbe city, city and district courts and judges of economic courts of the Gorno-Badakhshan Autonomous Region, regional, Dushanbe city; develops and submits in accordance with the established procedure to the President of the Republic of Tajikistan for submission to the Majlisi Namoyandagon Majlisi Oli of the Republic of Tajikistan (Parliament of the Republic of Tajikistan) proposals on the formation of courts of the Republic; considers proposals on personnel, financial, organizational and logistical support of courts; submits proposals to the President of the Republic of Tajikistan on the judicial system, the number of judges, people's assessors and employees of the court apparatus; maintains judicial statistics and performs its analysis; submits proposals to the President of the Republic of Tajikistan on awarding judges and assigning qualification classes.

It noted be should that the powers of the Council of Justice did not extend



to the activities of the Constitutional Court of the Republic of Tajikistan, the Supreme Court of the Republic of Tajikistan, and the Supreme Economic Court of the Republic of Tajikistan.

The next step in the reform of the judiciary in the country is the establishment in 2010 of a judicial college in family matters in the Supreme Court of the Republic of Tajikistan, as well as the introduction in the courts of general jurisdiction of the specialization of judges in family matters [22].

**4. Reform of the judiciary after 2014.**

On 26 July 2014, a new *Constitutional Law of the Republic of Tajikistan on the courts of the Republic of Tajikistan* adopted was in Tajikistan [23]. In accordance with article 3 (1) of the above-mentioned law, the judicial system in the country defined was as follows:

- Constitutional Tribunal of the Republic Of Tajikistan,
- Supreme Court of the Republic of Tajikistan,
- Supreme Economic Court of the Republic of Tajikistan,
- Military Courts of the Republic of Tajikistan,
- Court of the Gorno-Badakhshan Autonomous Region,
- Court of the Sogdinsky Region,
- Court of the Chatlon Region,
- Court of the capital city of Dushanbe,
- Local Courts of general jurisdiction,
- Economic Court of the Gorno-Badakhshan Autonomous Region,
- Economic Court of the Sogdinsky Region,
- Economic Court of the Chatlon Region,
- Economic Court of the capital city of Dushanbe.

However, in accordance with Article 3 (3) of the above law, the establishment of extraordinary courts in the country, as well as courts not provided for by the Constitutional Law of the Republic of Tajikistan of 26 July

2014 on the courts of the Republic of Tajikistan, prohibited was. A similar rule was contained in the previous constitutional law of the Republic of Tajikistan of 6 August 2001 on the courts of the Republic of Tajikistan. At the current stage of development of the judicial system in Tajikistan, the establishment of specialized courts in the country (such as administrative, financial, juvenile or other) is not possible without making significant amendments to the above constitutional law, as well as to the norm of article 84 (3) of the Constitution of the Republic of Tajikistan 1994.

According to article 12 (1–3) of the said Law, a person who is at least 30 years old, has only the citizenship of the Republic of Tajikistan, a higher legal education, speaks the state language, and has work experience as a judge is elected or appointed to the post of judge of the Supreme Court, Supreme Economic Court, Court of Gorno-Badakhshan Autonomous Region, Courts of the Regions and Court of the City of Dushanbe at least 5 years.

A person who has only the citizenship of the Republic of Tajikistan at least 25 years old, has a higher legal education, speaks the state language, has completed compulsory military service (except for women, and is also appointed to the post of judge of the courts of cities and districts, military courts of garrisons, the Economic Court of the Gorno-Badakhshan Autonomous Region, economic courts of the regions and the city of Dushanbe men who have military tickets, except for persons who have served in the military as part of the mobilization conscription reserve), as well as having a professional work experience of at least 3 years.

The maximum age of tenure of a judge for women is 58, and for men – 63 years.

In accordance with article 15 (1) of the Law, judges are elected or appointed for a term of 10 years.



According to article 16 of the Law, judges of the Supreme Court and the Supreme Economic Court of the Republic of Tajikistan elected by are the Majlisi Milli Majlisi Oli of the Republic of Tajikistan (Parliament of the Republic of Tajikistan) on the proposal of the President of the Republic of Tajikistan. However, judges of the Court of Gorno-Badakhshan Autonomous Region, courts of regions and the city of Dushanbe, military courts of garrisons, courts of cities and districts are appointed by the President of the Republic of Tajikistan on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan, and judges of the Economic Court of Gorno-Badakhshan Autonomous Region, economic courts of regions and the city of Dushanbe are appointed by the President of the Republic of Tajikistan on the proposal of the Chairman of the Supreme Economic Court of the Republic of Tajikistan.

According to article 23 (3) of the Law, the Supreme Court of the Republic of Tajikistan carries out its activities in the following composition:

- Plenum of the Supreme Court of the Republic of Tajikistan,
- Presidium of the Supreme Court,
- Judicial College of Civil Affairs,
- Judicial College for Family Affairs,
- Judicial College of Criminal Affairs,
- Judicial College for Criminal-Administrative Affairs,
- Judicial College for Military Affairs.

According to article 24 of the Law, the Plenum of the Supreme Court of the Republic of Tajikistan is composed of the Chairman of the Supreme Court of the Republic of Tajikistan, his First Deputy, deputies, Secretary of the Plenum and judges of the Supreme Court of the Republic of Tajikistan. The Chairman of the Supreme Court of the Republic of Tajikistan convenes the Plenum of the Supreme Court

of the Republic of Tajikistan in necessary cases, but at least twice a year.

According to article 25 (1) of the Law, the Plenum of the Supreme Court of the Republic of Tajikistan: 1) approves the number and composition of the Presidium of the Supreme Court of the Republic of Tajikistan, the Presidium of the Court of the Gorno-Badakhshan Autonomous Region, the courts of the regions, the city of Dushanbe on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan; 2) approves the chairmen and the composition of the judicial collegiums of the Supreme Court of the Republic of Tajikistan on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan; 3) elects the Secretary of the Plenum of the Supreme Court of the Republic of Tajikistan on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan; 4) hears reports on the work of the Presidium and judicial boards of the Supreme Court of the Republic of Tajikistan, the Presidium of the Court of Gorno-Badakhshan Autonomous Region, regional courts, the city of Dushanbe, military courts of garrisons, cities of districts; 5) provides guidance on the results of generalizations of judicial practice in order to ensure uniform practice and correct application of laws and other regulatory legal acts of the Republic of Tajikistan; 6) considers the submission of the Prosecutor General of the Republic of Tajikistan on giving guidance to the courts on issues of judicial practice in civil, family, criminal cases and cases of administrative offenses; 7) hears reports of the Chairmen of the Court of the Gorno-Badakhshan Autonomous Region, the courts of the regions, the city of Dushanbe, military courts of garrisons, cities and districts on the practice of applying laws and other regulatory legal acts of the Republic of Tajikistan, as well as on the implementation of the guidance clarifications of the Plenum





of the Supreme Court of the Republic of Tajikistan; 8) creates, on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan, the Scientific Advisory Council of the Supreme Court of the Republic of Tajikistan from among scientists and specialists in the field of law, approves its position and composition; 9) approves the editorial board of the journal "Bulletin of the Supreme Court of the Republic of Tajikistan" on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan; 10) considers the submission of the Chairman of the Supreme Court of the Republic of Tajikistan on the inconsistency of the guiding explanations of the Plenum of the Supreme Court of the Republic of Tajikistan with the legislation of the Republic of Tajikistan; 11) appeals to the Constitutional Court of the Republic of Tajikistan in connection with the compliance of the law and other normative legal acts applied or to be applied in the case under consideration with the Constitution of the Republic of Tajikistan; 12) exercises other powers provided for by this Constitutional Law and other regulatory legal acts of the Republic of Tajikistan.

According to article 28 (1–3), the Presidium of the Supreme Court of the Republic of Tajikistan consists of the Chairman of the Supreme Court of the Republic of Tajikistan, his First Deputy, deputies and judges of the Supreme Court of the Republic of Tajikistan. The number and composition of the Presidium of the Supreme Court of the Republic of Tajikistan approved is by the Plenum of the Supreme Court of the Republic of Tajikistan on the proposal of the Chairman of the Supreme Court of the Republic of Tajikistan. The Prosecutor General of the Republic of Tajikistan or one of his deputies attends the sessions of the Presidium of the Supreme Court of the Republic of Tajikistan.

According to article 29 (1), the Presidium of the Supreme Court of the

Republic of Tajikistan: 1) supervises civil, family, criminal and administrative cases in accordance with the procedure established by the procedural legislation of the Republic of Tajikistan, checks the legality and validity of judicial acts; 2) considers the submission of the Chairman of the Supreme Court of the Republic of Tajikistan or the conclusion of the Prosecutor General of the Republic of Tajikistan and his deputies on the need to resume criminal proceedings in view of newly discovered circumstances; 3) considers the application of the parties, the prosecutor, and other persons participating in the case for the revision of the decision adopted by the Presidium on newly discovered circumstances, which changed the decision of the court of first instance or adopted a new decision; 4) considers criminal cases considered by the former Supreme Court of the Union of Soviet Socialist Republics and the courts of the Union republics of the former Union of Soviet Socialist Republics against citizens of the Republic of Tajikistan on the protests of the Chairman of the Supreme Court of the Republic of Tajikistan, the Prosecutor General of the Republic of Tajikistan, his deputies and supervisory complaints; 5) reviews materials summarizing judicial practice and judicial statistics; 6) considers issues of organizing the work of the Presidium, judicial collegiums, the office of the Supreme Court of the Republic of Tajikistan; 7) hears reports of the chairmen of the judicial boards of the Supreme Court of the Republic of Tajikistan, the Court of Gorno-Badakhshan Autonomous Region, the courts of regions, the city of Dushanbe, military courts of garrisons, courts of cities, districts and judges on their activities; 8) hears reports of the Chairmen of the Court of the Gorno-Badakhshan Autonomous Region, courts of regions, the city of Dushanbe, military courts of garrisons, courts of cities



and districts on the practice of applying laws, resolutions of the Plenum of the Supreme Court of the Republic of Tajikistan and other regulatory legal acts of the Republic of Tajikistan; 9) considers and resolves issues of providing practical assistance to the courts of the republic in the correct application of legislation; 10) exercises other powers provided for by the legislation of the Republic of Tajikistan.

According to article 70 (3) of the Law, the following structures operate in the Court of the Gorno-Badakhshan Autonomous Region, the courts of the regions and the city of Dushanbe:

- The Presidium of the Court;
- Judicial College of Civil Affairs,
- Judicial College of Family Affairs,
- Judicial College of Criminal Affairs,
- Judicial College of Criminal-Administrative Affairs.

According to article 111 of the Law, in order to select and nominate worthy candidates for the position of judge and strengthen guarantees for the independence of judges, as well as conduct qualification certification of judges, consider the issue of disciplinary responsibility, a Qualification College of Judges of the Republic of Tajikistan being created. The composition of the Qualification Board of Judges elected is for the term of office of judges.

In accordance with article 112 (1-4) of the Law, the composition of the Qualification Board of Judges is elected at the conference of judges of the Courts of the Republic consisting of the Chairman, deputy chairman and 11 members, including: two judges from the Supreme Court of the Republic of Tajikistan; two judges from the Supreme Economic Court of the Republic of Tajikistan; one judge from the courts of the Gorno-Badakhshan Autonomous Region; two judges from the Courts of Khatlon Region (one of whom is a judge of the economic court of the region); two judges from

the Courts of Sogdian Region (one of whom is a judge of the economic court of the region); two judges from the Courts of the city of Dushanbe (one of whom is a judge of the court of the military garrison); two judges from the courts of cities and districts of republican subordination.

To elect members of the Qualification Board of Judges, the Chairman of the public association "Association of Judges of the Republic of Tajikistan", formed in accordance with the procedure established by the legislation of the Republic of Tajikistan, convenes a conference of judges of the courts of the Republic of Tajikistan. A conference of judges convened to elect members of the Qualification Board of Judges considered is to have taken place if at least two thirds of the judges of the Republic of Tajikistan took part in it. A judge considered elected is to the members of the Qualification Board of Judges if he received more than half of the votes of the judges who took part in the voting.

On 26 July 2014, the new *Constitutional Law of the Republic of Tajikistan on the Constitutional Court of the Republic of Tajikistan* adopted was in Tajikistan [24]. According to article 1 of the Law, the Constitutional Court of the Republic of Tajikistan is an independent judicial authority for constitutional supervision, established in order to ensure the supremacy and direct action of the norms of the Constitution of the Republic of Tajikistan. The Constitutional Court of the Republic of Tajikistan consists of seven judges, one of whom is a representative of the Gorno-Badakhshan Autonomous Region. The Constitutional Court of the Republic of Tajikistan has the right to start its activities, if at least two thirds of its members elected are. The Chairman, Deputy Chairman and judges of the Constitutional Court of the Republic of Tajikistan elected are by the Majlisi Milli Majlisi Oli of the Republic of Tajikistan on the



proposal of the President of the Republic of Tajikistan. A person who has only the citizenship of the Republic of Tajikistan, higher legal education, at least 30 years of age and professional work experience of at least 7 years elected is to the post of judge of the Constitutional Court of the Republic of Tajikistan. The age limit for holding the position of a judge of the Constitutional Court of the Republic of Tajikistan is 63 years for men and 58 years for women. A judge of the Constitutional Court of the Republic of Tajikistan elected is for a term of 10 years. If the term of office of a judge of the Constitutional Court of the Republic of Tajikistan expires during the consideration of a case with his participation, then his powers remain until the end of the consideration of this case (articles 7 (1–2), 8 (1–2) and 9 (1-2) of the Law).

In accordance with the Decree of the President of the Republic of Tajikistan of 9 June 2016 [25], the council of justice of the Republic of Tajikistan liquidated was and its powers transferred to the Supreme Court of the Republic of Tajikistan and the Supreme Economic Court of the Republic of Tajikistan. The preamble of the Presidential Decree stated that in order to bring regulatory legal acts in line with the Constitution of the Republic of Tajikistan, as well as to strengthen and improve the structure of the judiciary, to liquidate the Council of Justice of the Republic of Tajikistan. The reason for the liquidation of the council of justice was the constant interference of the executive authorities in the activities of the courts. In his doctoral thesis, Muradov A. indicates that the status of the Council of Justice of the Republic of Tajikistan did not allow referring this body to the elements of the judicial system of Tajikistan, since the council was subordinated and was under the control of the president of the Republic of Tajikistan, who is *de facto* representative of the executive power [26].

**Conclusions and prospects for the development:**

1. The Constitution of the Republic of Tajikistan of 6 November 1994 did not specify the possibility of establishing specialized courts in the country, such as administrative, juvenile, family, financial and other matters. On the other hand, Article 84 (3) of the constitution states that the procedure for the establishment, organization and operation of the courts is to determine by constitutional law.

In my opinion, this provision may provide a preliminary opportunity for the establishment of specialized courts in the republic, since the provisions of the constitution of Tajikistan do not prohibit the possibility of their creation. To this end, I would like to send a reply to the Constitutional Court of the Republic of Tajikistan in order to translate the norm of article 84 (3) of the constitution of the Republic of Tajikistan, namely: is there a legal possibility to create specialized courts in the republic according to the Constitutional Law of 26 July 2014 on the Courts of the Republic of Tajikistan.

2. In accordance with article 85 (5) of the Constitution of the Republic of Tajikistan, the establishment of extraordinary courts in the country is not permitted. In contrast, judicial power in the country exercised is among others by military courts. In the Republic of Tajikistan there are four military courts: in the Gorno-Badakhshan Autonomous Region – this is the military court of the Khorogsky garrison, in the Khatlon region – this is the military court of the Khatlon garrison, in the Sogdian region – this is the military court of the Khudzhansky garrison, in the capital Dushanbe – this is the military court of the Dushanbe garrison. I believe that the institution of military courts in peacetime is an extraordinary institution and that military courts should be abolished, as should the Judicial College of the Supreme Court of the Republic of Tajikistan for







include: 1) submitting an application for the appointment of a judge to a post; 2) deciding on a judge's violation of the requirement of non-compliance with the post held; 3) ensuring that a disciplinary body of the Higher Council of Justice conducts disciplinary proceedings against judges; 4) setting up a body to deal with cases in the 6) making a decision to dismiss a judge from his / her post; 7) consent to the detention of a judge, his arrest and detention; 8) making a decision on the temporary suspension of a judge in the administration of Justice; 9) taking measures to ensure the credibility of the administration of justice and the independence of judges; 10) making a decision on the transfer of a judge from one court to another, as well as the decision the judge; 12) determination of the number of judges for individual courts; 13) provision of binding advisory opinions on draft laws on the establishment, reorganization or liquidation of courts; the judicial system and the status of judges; generalization of proposals of courts and judicial authorities regarding the provisions on their status and functioning; 14) appointment and dismissal of members of the qualification commissions of judges of the Republic of Tajikistan.

In my opinion, the Higher Council of Justice of the Republic of Tajikistan should consist of 20 members, namely:

1 – President of the Higher Council of Justice (elected by the members of the Council),

1 – President of the Constitutional Tribunal,

1 – President of the Supreme Court of the Republic Of Tajikistan,

1 – President of the Judicial College of Civil Affairs of the Supreme Court,

1 – President of the Judicial College of Family Affairs of the Supreme Court,

1 – President of the Judicial College of Criminal Affairs of the Supreme Court,

1 – President of the Supreme Economic Court of the Republic of Tajikistan (or President of the Judicial College for Economic Affairs of the Supreme Court (in case of unification of the Supreme Court and the Supreme Economic Court into one Higher Judicial instance – the Supreme Court of the Republic of Tajikistan),

4 – Presidents of the Court of the Khatlon Region, the Court of the Sogdinsky Region, the Court of the Gorno-Badakhshan Autonomous Region and the Court of the capital city- Dushanbe,

4 – Presidents of the Economic Court of the Khatlon Region, the Economic Court of the Sogdinsky Region, the Economic Court of the Gorno-Badakhshan Autonomous Region and the Economic Court of the capital city – Dushanbe,

1 – appointed by the President of Tajikistan,

1 – elected by the Achbori Majlisy Oli (Parliament) of the Republic of Tajikistan,

1 – elected by the Congress of Advocates of Tajikistan,

1 – elected by the National Conference of Prosecutors,

1 – elected by the Congress of representatives of higher law schools and institutions

Scientific Tajikistan.

When creating the Higher Council of Justice of the Republic of Tajikistan, it is worth paying attention to the formation of the Higher Council of Justice in Ukraine in accordance with the *Law of Ukraine of December 21, 2016 № 1798-VIII on the Higher Council of Justice* [27].

*The scientific article examines the problems of development and transformation of the judicial system of the Republic of Tajikistan after 1991 in various periods of the formation of the judicial system in this state: 1992–1999, 2000–2013, and 2014–2021. The problem of the*



*simultaneous existence in the judicial system of the Republic of Tajikistan of two higher judicial instances is investigated: the Supreme Court of the Republic of Tajikistan and the Supreme Economic Court of the Republic of Tajikistan. The problem of liquidation of the Council of Justice of the Republic of Tajikistan (2016) being is studied. An analysis is made of the activities of the Constitutional Court of the Republic of Tajikistan, the system of courts of general jurisdiction (including military courts), as well as the system of economic courts of the republic. The activities of the Plenum of the Supreme Court of the Republic of Tajikistan, the Presidium of the Supreme Court of the Republic of Tajikistan, the High Qualification Board of Judges of the Supreme Court of the Republic of Tajikistan, the Judicial Chambers of the Supreme Court of the Republic of Tajikistan, as well as the Judicial Chambers of the second instance courts are analyzed. An analysis is made of the problem of the functioning of the courts of districts of republican subordination and the procedure for appealing against decisions of these courts to a higher authority. An analysis is made of the problem of dual supervision in the consideration of cases, namely through the Presidium of the courts of the second instance (Court of the Khatlon Region, Court of the Sogdinsky Region, Court of the Gorno-Badakhshan Autonomous Region, Court of the capital city of Dushanbe) and the Presidium of the Supreme Court of the Republic of Tajikistan. The problem of development and elimination of military courts being is studied. An analysis of the norms of legislation on the structure and status of the judicial system of the Republic of Tajikistan in various periods carried is out. The purpose of the study is a comparative analysis of the transformation of the judicial system in the Republic of Tajikistan*

*after 1991 during various periods of the formation of the judicial system in this state: 1992–1999, 2000–2013 and 2014–2021, as well as an analysis of publications and studies of the development of the judicial system of this state. These goals and problems are the focus of this work.*

**Key words:** Tajikistan, judicial system, Supreme Court, Supreme Economic Court, Plenum, Presidium, Constitutional Court, Military Courts, Council of Justice.

**Буренко Р. Трансформація судової системи в Таджикистані після 1991 року**

*У науковій статті досліджуються проблеми розвитку та трансформації судової системи Республіки Таджикистан після 1991 року у різні періоди становлення судової системи у цій державі: 1992–1999, 2000–2013, 2014–2021. Досліджується проблема одночасного існування у судовій системі Республіки Таджикистан двох вищих судових інстанцій: Верховного Суду Республіки Таджикистан та Вищого Господарського Суду Республіки Таджикистан. Досліджується проблема ліквідації Ради Юстиції Республіки Таджикистан (2016). Проводиться аналіз діяльності Конституційного Суду Республіки Таджикистан, системи судів загальної юрисдикції (зокрема військових судів), і навіть системи економічних судів республіки. Аналізується діяльність Пленуму Верховного Суду Республіки Таджикистан, Президії Верховного Суду Республіки Таджикистан, Вищої Кваліфікаційної Колегії Суддів Верховного Суду Республіки Таджикистан, судових колегій Верховного Суду Республіки Таджикистан, а також судових колегій судів II інстанції. Проводиться аналіз проблеми функціонування судів районів республіканського підпорядкування та порядку оскарження рішень даних судів до*



вищої інстанції. Проводиться аналіз проблеми подвійного нагляду у розгляді справ, а саме через Президії судів II інстанції (Суд Хатлонської області, Суд Согдійської області, Суд Гірничо-Бадахшінської автономної області, Міський Суд столиці Душанбе) та Президія Верховного Суду Республіки Таджикистан. Вивчається проблема розвитку та ліквідації військових судів. Проводиться аналіз норм законодавства про влаштування та статус судової системи Республіки Таджикистан у різні періоди. Метою дослідження є порівняльний аналіз трансформації судової системи в Республіці Таджикистан після 1991 року у різні періоди становлення судової системи у цій державі: 1992–1999, 2000–2013 та 2014–2021 роки, а також аналізу публікацій та досліджень розвитку судової системи даної держави. Ці цілі та проблеми є метою даної роботи.

**Ключові слова:** Таджикистан, судова система, Верховний Суд, Вищий Економічний Суд, Пленум, Президія, Конституційний Суд, Військові Суди, Рада Юстиції.

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