

Improving the Procedures for Recognizing the Powers of a Deputy as an Important Factor in Ensuring the Rule of Law in Elections

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ABSTRACT

The article examines the organizational and legal support for the recognition of the powers of deputies by local Kengashes. As a result of the study, it was revealed that there is no procedure for the implementation of this authority of local Councils. In order to exercise this authority, the author developed proposals to assign to the standing commissions on issues of regulations and deputy ethics a preliminary review of the recognition of the powers of deputies, ensuring equal representation of political parties in these commissions, holding repeat elections in case the powers of deputies are declared invalid.

Recognition of the powers of deputies is a unique institution. Article 24 of the Law of the Republic of Uzbekistan “On Local State Power” refers it to the main powers of the Kengashes of People's Deputies (hereinafter referred to as local councils). This power authorizes and obliges the local councils to exercise control over the implementation of electoral legislation. Increasing the effectiveness of the exercise of this authority is an important factor in ensuring the rule of law in the conduct of elections.

It should be noted that in Article 44, which has lost force of the Law of the Republic of Uzbekistan "On elections to regional, district and city Kengash of people's deputies"¹, in the event that the local Kengash recognized the powers of individual deputies as invalid, new elections were held in the respective constituencies. This provision has not been included in the Electoral Code.

In accordance with Article 93 of the Electoral Code, new elections in the respective electoral districts are held in the event of early termination of deputy powers. However, in the legislation of Uzbekistan, the recognition of the powers of a deputy as invalid is still not determined by the case of early termination of his powers.

In the course of studying the practice of recognizing the powers of local councils deputies, it was revealed that when considering this issue, no cases of violation of electoral legislation were raised. As you know, in the elections in Uzbekistan, there are such cases as “family voting” and other violations, especially the registration of deputies without vacating their positions, the

¹ Закон Республики Узбекистан от 5 мая 1994 года «О выборах в областные, районные и городские Советы народных депутатов» (утратил силу 26.06.2019 г.) // <https://lex.uz/docs/67440>.

occupation of which, according to the law, is incompatible with the exercise of the powers of a deputy. As a result of such a formal approach, the committed offenses were not studied and considered.

An analysis of shortcomings in the recognition by the local councils of the powers of deputies shows that one of the main reasons for their admission is the non-compliance with the procedures and requirements for the preparation of issues considered at the session. In the course of considering this issue, as a rule, local councils hear information from the chairman of the relevant regional, district or city election commission (hereinafter referred to as TEC) and make decisions. At the same time, the implementation of Article 11 of the Model Rules of the Regional, District, City local councils (hereinafter the Model Rules of the local councils) is not ensured, according to which the issues submitted for discussion of the session must be preliminary considered by the relevant standing committees and draft decisions of the local councils should be prepared².

It should be noted that in 2000 the institution of recognition of the powers of a deputy was also applied to parliamentarians. According to Article 45 of the Law of the Republic of Uzbekistan "On Elections to the Oliy Majlis of the Republic of Uzbekistan", which has become invalid, if the Oliy Majlis recognizes the powers of individual deputies as invalid, new elections are held in the respective constituencies. Later in 2003, the institution of recognition of the powers of a deputy of the Oliy Majlis was excluded from the legislation.

At the same time, up to now, the legislation of Uzbekistan has not regulated the procedure for exercising this authority. In some countries, the exercise of this power is entrusted to mandate committees or commissions³. According to the Law "On the mandate commission and committees of the Supreme Council of the Republic of Uzbekistan"⁴, which was in force until 1995, the mandate commission did not consider this issue.

Recognition of the powers of a deputy can, following the example of parliament, be excluded from the jurisdiction of the local councils and leave the exercise of this function only to the TEC as well as the CEC. However, TECs do not have their own apparatus like the CEC, their chairmen and members carry out their activities on a voluntary basis. Due to these reasons, the above and other shortcomings are allowed in the activities of the TEC. Therefore, ensuring the implementation of the electoral legislation, strengthening the responsibility of the TEC requires the preservation and development of such a form of parliamentary control as recognition of the powers of a local councils deputy.

At the same time, the definition of a permanent commission responsible for preparing the issue of recognizing the powers of a deputy seems illogical, since the permanent commissions and other bodies of the newly elected local councils are also formed at the first session. It is known from official sources that at the first session of the first convocation of the Oliy Majlis, a mandate commission was first formed, and then, on its recommendation, the issue of recognizing the powers of deputies was considered, which was also practiced in the local councils⁵. However, since 2000, the liquidation of mandate commissions and the consideration of this issue at the

² Примерный регламент областного, районного, городского Кенгаша народных депутатов. Утвержден Постановлением Сената Олий Мажлиса Республики Узбекистан от 31 июля 2021 года за № ПС-360-IV // <https://lex.uz/docs/5578238>.

³ Калугина Т. В. Проверка и подтверждение полномочий вновь избранных депутатов представительного органа как одна из форм его самоорганизации (конституирования) // Вестник Северо-Восточного государственного университета. – 2016. – №. 25. – С. 86-90.

⁴ Закон Республики Узбекистан от 14 июня 1991 г. «О мандатной комиссии и комитетах Верховного Совета Республики Узбекистан» // Ведомости Верховного Совета Республики Узбекистан, 1991 г., № 8, ст. 200.

⁵ Постановление Олий Мажлиса Республики Узбекистан «О признании полномочий депутатов Олий Мажлиса Республики Узбекистан» от 23 февраля 1995 года // Ведомости палат Олий Мажлиса Республики Узбекистан, 1995 г., №4, ст. 9.

session without prior preparation has not changed the situation for the better.

In improving the procedures for recognizing the powers of deputies, there is no way to rely on foreign experience. With the exception of Azerbaijan, Belarus, Kyrgyzstan, Tajikistan, Ukraine and some CIS countries, there is no such institution in foreign countries. For example, the recognition of the powers of members of a municipality in Article 144 of the Constitution of Azerbaijan is attributed to the powers of municipalities⁶. However, in the CIS countries this institution was inherited from the former union and is carried out almost uniformly. Consequently, when improving the institution, it will be necessary to rely on national experience, norms and principles of representative democracy.

The results of a study of the organization of the activities of representative bodies show that without the formation of a single body that summarizes the views of various parties on the issue of recognizing the powers of a deputy, it will be difficult to reach a common agreement. It would be logical to appoint a permanent commission on issues of reglament and ethics (hereinafter referred to as CIRE) responsible for preparing this issue. At the same time, it is necessary to ensure the representation of deputies from all political parties in the CIRE. It is the CIRE that will serve to harmonize the opinions and proposals of the participants in the electoral process, which are formed in the course of participation in the elections, including observation. The presence of this mechanism will contribute to the adoption of effective measures to eliminate the identified shortcomings and further improve the mechanisms for implementing the electoral legislation.

Summarizing the results of the study of the local councils practice on recognizing the powers of deputies and the identified shortcomings made it possible to come to the following conclusions and make suggestions for improving national legislation:

1. In order to ensure the possibility of electing representatives of all political parties to the CIRE, it would be advisable to establish separate requirements for entities that have the right to make proposals for candidates for its chairman, deputy chairman and members. Only party groups that have at least three deputies in the local councils have this right. Consequently, if less than three deputies are elected from a political party, it will not be able to nominate its representative to the CIRE.
2. In order to objectively consider and carefully prepare the issue of recognizing the powers of the local councils deputies, it is considered necessary to determine in the Model Rules of the local councils the submission by party and deputy groups of information on the election results for discussion at the local councils. Also, in the Model Regulations of the local councils, it is proposed to ensure collegiality, openness, taking into account public opinion and proposals of the participants in the electoral process, and other democratic principles in the organization and implementation of the activities of party groups.
3. In order to effectively consider the issue of recognition of the powers of a deputy by the local councils, it is necessary to determine that in this process the violations committed during the elections, or rather the degree of their influence on the voting results, are studied. Also, it would be logical to determine the number of deputies, in case of recognition of their powers as invalid, it can be the basis for recognizing the elections themselves in the local councils as invalid.
4. Since the powers of a deputy may be declared invalid due to violations committed during the elections that affected the voting results, it would be advisable to determine in the legislation that in this case repeated elections are held, and not new ones. This also proceeds from the norm, according to which the recognition of the powers of a deputy as invalid is not the basis

⁶ <http://mykpzs.ru/konstituciya-azerbajdzhana-red-2002-rus/>

for the early termination of his powers. Such a definition will reduce the time for organizing and conducting elections.

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