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МУНДАРИЖА

Ш.Туйчиева Теоретические основания и критический анализ подхода к урегулированию инвестиционных споров в контексте статьи 63 Закона Республики Узбекистан «Об инвестициях и инвестиционной деятельности»	3
У.Шарахметова Укрепление в семье личных и имущественных прав обязанностей супругов на основе принципа равенства	7
Ж.Тўраев Ходимларнинг меҳнат ҳуқуқлариغا риоя қилиниши бўйича давлат назорати ва текширувнинг назарий ва амалий аҳамияти	11
Д. Имамова Определение применимого права для внешнеэкономических сделок в условиях цифрового пространства	15
Х.Шарипова Правовое регулирование облачных технологий в контексте международного сотрудничества	17
I.Abdikhakimov Quantum computing and its impact on cybersecurity: redefining legal frameworks for a post-quantum era	20
I. Rahmatulloyev Prokuratura organlarining fuqarolik huquq va burchlarini amalga oshirishdagi ishtiroki	24
S. Tatar, N. Dilboboev Means of international investment dispute resolution	28
Э.Инамджанова Особенности преподавания коллизионного права в современном образовательном процессе	40
J.Askarov Sun'iy intellekt yordamida sog'liqni saqlashni rivojlantirish: huquqiy takomillashtirish	46
T.Pulatov Digital Financial Assets as an Object of Civil Rights	50
Д.Имамалиева Развитие механизмов альтернативного разрешения споров на международной и национальной арене	57
SH.Almosova Xalqaro shartnomalar ijrosini ta'minlash usullari va vositalari tahlili	62
A.Akramov A comparative analysis of international legal norms regarding the inheritance of digital property	69
E.Asadov Davlat moliyaviy nazoratida moliyaviy javobgarlik va uning yuridik tabiati	73
D.Abdullaeva The system of international control over the observance of human rights at work	88
M. Турдиалиев Определение и сущность искусственного интеллекта (ии) в контексте международной торговли	93
О.Хазраткулов Рақамли активлар билан боғлиқ муносабатларни фуқаролик-ҳуқуқий тартибга солиш масаласида хорижий мамлакатлар тажрибаси	102
M.Турсунова Применение налоговых льгот к дипломатам: от теории к практике	109
A.Норкулов Virtual makonda raqamli identifikatsiya tizimlarini huquqiy tartibga solishning ahamiyati e	118
Sh.Abdumalikov Mualliflik huquqi obyektlarining raqamli identifikatsiyasi: huquqiy tabiati va o'zbekistonda joriy etish istiqbollari	121
D.Avezov Organizational and legal issues of early termination of the powers of local council deputies	124

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ORGANIZATIONAL AND LEGAL ISSUES OF EARLY TERMINATION OF THE POWERS OF LOCAL COUNCIL DEPUTIES

Annotatsiya. Mazkur maqolada Mahalliy kengash deputati mandatining muddatidan oldin tugatilishi ikki konstitutsiyaviy tamoyilning kesishuvida joylashgan: saylovchilar tomonidan berilgan mandatning barqarorligi va vakilning uni saylagan shaxslar oldidagi javobgarligi asoslari tadqiq etilgan. O'zbekistonda mazkur masalaga oid qoidalar Konstitutsiya, «Mahalliy davlat hokimiyati to'g'risida»gi qonun, «Viloyat, tuman va shahar xalq deputatlari Kengashi deputatining maqomi to'g'risida»gi qonun, «Deputatni chaqirib olish to'g'risida»gi qonun hamda Saylov kodeksi bo'ylab tarqoq holda mavjud ekanligi asoslangan. Ushbu maqolada aynan shu tarqoqlikdan kelib chiqadigan tashkiliy-huquqiy muammolar tadqiq etilgan. Rossiya, Qozog'iston, Polsha va Germaniya tartibga solish tajribasini qiyosiy o'rganish bilan birgalikda formal-huquqiy tahlil metodidan foydalangan holda, tadqiqotda mandatning muddatidan oldin tugatilishining qonunda nazarda tutilgan asoslari to'rt guruhga tasniflangan. Maqolada barcha asoslarni yagona moddada birlashtirish, saylovchilar tashabbusini joriy etish, muvofiqsizlikni funksional mezon asosida belgilash va diskretionni tugatishni sud nazoratiga oid tartib-taomillar bilan almashtirish kabi bir qator taklif va tavsiyalar ishlab chiqilgan.

Kalit so'zlar: mahalliy xalq deputatlari Kengashi; deputat mandati; vakolatlarning muddatidan oldin tugatilishi; deputatni chaqirib olish; deputat immuniteti; lavozimlarning muvofiq kelmasligi; mahalliy o'zini o'zi boshqarish.

Abstract. The early termination of the mandate of a local council deputy lies at the intersection of two constitutional principles: the stability of a mandate conferred by voters and the accountability of the representative to those who elected him. In Uzbekistan the applicable rules are dispersed across the Constitution, the Law on State Power in the Localities, the Law on the Status of a Deputy of a Regional, District and City Kengash of People's Deputies, the Law on the Recall of a Deputy, and the Electoral Code. This article examines the organizational and legal problems that follow from that fragmentation. Applying formal legal analysis together with a comparative survey of Russian, Kazakh, Polish and German regulation, the study classifies the statutory grounds of early termination into four groups, reconstructs the procedure according to the subject that initiates it, and identifies five defects: an open ended clause allowing a Kengash to strip a mandate for conduct dishonouring the title of deputy; the absence of any voter initiative in the recall procedure; an undefined standard of systematic non

performance of duties; the dispersal of incompatibility rules across several acts without a unifying criterion; and the absence of an institution of suspension of powers. The article proposes consolidating the grounds within a single article, introducing a voters' initiative, defining incompatibility through a functional test, and replacing discretionary termination with judicially reviewable procedures.

Keywords: local Kengash of people's deputies; deputy mandate; early termination of powers; recall of a deputy; deputy immunity; incompatibility of offices; local self-government.

Аннотация. Досрочное прекращение мандата депутата местного кенгаша находится на пересечении двух конституционных принципов: стабильности мандата, предоставленного избирателями, и подотчётности представителя перед теми, кто его избрал. В Узбекистане соответствующие нормы рассредоточены по Конституции, Закону «О государственной власти на местах», Закону «О статусе депутата Кенгаша народных депутатов области, района и города», Закону «Об отзыве депутата», а также по Избирательному кодексу. В настоящей статье исследуются организационно-правовые проблемы, вытекающие из указанной фрагментарности регулирования. На основе формально-юридического анализа в сочетании со сравнительно-правовым обзором законодательства России, Казахстана, Польши и Германии в исследовании проведена классификация установленных законом оснований досрочного прекращения полномочий по четырём группам, реконструирована процедура в зависимости от субъекта её инициирования, а также выявлены пять недостатков правового регулирования: открытая (неопределённая) формулировка, позволяющая кенгашу лишать мандата за поведение, порочащее звание депутата; полное отсутствие института инициативы избирателей в процедуре отзыва; неопределённость критерия систематического неисполнения обязанностей; рассредоточение норм о несовместимости должностей по нескольким актам при отсутствии единого критерия; а также отсутствие института приостановления полномочий. В статье предлагается объединить все основания в рамках единой статьи, ввести институт инициативы избирателей, определить несовместимость должностей на основе функционального критерия, а также заменить дискреционное прекращение полномочий процедурами, подлежащими судебному контролю.

Ключевые слова: местный Кенгаш народных депутатов; депутатский мандат; досрочное прекращение полномочий; отзыв депутата; депутатский иммунитет; несовместимость должностей; местное самоуправление.

Introduction

The Kengashes of people's deputies of regions, districts and cities are the representative bodies of state power in the localities and the only local institutions whose members hold a mandate conferred directly by voters. The mandate arises from an election, is personal, cannot be transferred to another person, and as a rule expires together with the term of the council itself. Early termination is therefore an exception to the ordinary life cycle of a representative relationship. Because it removes a title that voters have granted, the grounds and the procedure for early termination are questions of constitutional significance rather than matters of the internal housekeeping of a council.

In Uzbek law these questions are regulated by several acts adopted at different times and pursuing different purposes. Article 3 of the Law on the Status of a Deputy of a Regional, District and City Kengash of People's Deputies enumerates eight grounds of early termination and adds an open clause permitting a council to terminate a mandate in exceptional cases. The Law on the Recall of a Deputy establishes a separate ground and a separate procedure resting on a ballot of the voters of the constituency. Incompatibility between the mandate and certain offices is governed by electoral, anti corruption and public service legislation. The competence of the council to adopt the relevant decision follows from the Law on State Power in the Localities and from the model rules of procedure approved by the Senate. No single act consolidates these rules, and the terminology used across them is not uniform.

Scholarship in Uzbekistan has concentrated on the rights, duties and guarantees of the deputy, and much less on the loss of the mandate [insert Uzbek sources]. Comparative literature on recall has examined the tension between recall and the free mandate (Twomey, 2011; Qvortrup, 2011; Welp & Whitehead, 2020), and the Venice Commission has set out a general position on the imperative mandate and on practices functionally equivalent to it (Venice Commission, 2009). The local level in Central Asia, however, remains largely outside that literature, and the interaction between a discretionary power of the council and a ballot based recall has not been analysed.

The aim of this article is to identify the organizational and legal defects in the current regulation of early termination of the powers of local council deputies in Uzbekistan and to formulate proposals for their elimination. Four research questions are addressed. First, how may the statutory grounds be classified, and is the list exhaustive? Second, which subject takes the decision on each ground, and what procedural guarantees accompany it? Third, is the recall mechanism operable in its present form? Fourth, by what criterion should offices incompatible with the exercise of a deputy mandate be determined?

2. Materials and Methods

The study is doctrinal. The primary materials are the Constitution of the Republic of Uzbekistan in the version adopted by the referendum of 30 April 2023, the Law on State Power in the Localities No. 913-XII of 2 September

1993, the Law on the Status of a Deputy of a Regional, District and City Kengash of People's Deputies No. 706-II of 2 December 2004 as amended up to 2024, the Law on the Recall of a Deputy No. 708-II of 2 December 2004 as amended up to 2024, the Electoral Code No. ZRU-544 of 25 June 2019, and the model rules of procedure and model regulations on standing commissions approved by Resolution of the Senate No. SQ-360-IV of 31 July 2021.

Four methods are applied. Formal legal analysis is used to establish the content of the norms and to expose gaps, overlaps and evaluative terms. The systemic and structural method is used to classify the grounds by their legal nature and to reconstruct the procedure by initiating subject. The comparative legal method is applied to Russia, Kazakhstan, Poland and Germany, chosen because they represent, respectively, a ballot based recall constrained by a judicial finding, an assembly based termination, a referendum addressed to the body as a whole, and a system that rejects recall entirely. The historical method traces the amendments of 2018, 2019, 2021 and 2024 in order to establish the direction of legislative development.

Two limitations should be stated. Decisions of local Kengashes on the early termination of deputy mandates are not published in a consolidated register, and no official statistics on recall ballots are available for the period under review. The article therefore advances no quantitative claim about the frequency of early termination and confines itself to the normative and institutional analysis of the mechanism.

3. Results

3.1. Classification of the grounds

The eight enumerated grounds fall into four groups distinguished by their legal nature. The volitional group contains a single ground, the written application of the deputy to relinquish his powers. The objective group comprises death, a judicial declaration of death or of missing status, a judicial finding of incapacity, and loss of citizenship of the Republic of Uzbekistan; here the council merely records a fact that has already occurred. The status based group consists of election or appointment to an office incompatible with the exercise of deputy powers. The sanction based group comprises the entry into legal force of a conviction, recall by voters, and termination in exceptional cases by decision of the council.

The classification is not merely descriptive. Only the sanction based group involves an evaluative judgement about the conduct of the deputy, and only that group therefore requires procedural guarantees. Uzbek law, however, provides a detailed procedure for one member of the group alone, namely recall, while leaving the remaining two to the ordinary decision making of the council or to the criminal process.

3.2. Termination by decision of the Kengash

Article 3 provides that in exceptional cases the powers of a deputy may be terminated early by a decision of the relevant Kengash, and that conduct dishonouring the high title of deputy may serve as a ground for considering such a question. Three defects follow. The expression excep-

tional cases is nowhere defined, so the council determines both the norm and its application. No procedure attaches to the clause: the law prescribes no quorum, no evidentiary standard, no right of the deputy to be heard, no time limit and no obligation to state reasons. And no right of appeal is expressly provided against a decision adopted under it.

The clause also duplicates, in substance, the second ground of recall, which concerns acts that grossly violate the norms of morality and deputy ethics and damage the authority of representative bodies. The same conduct may therefore end a mandate either through a ballot of voters accompanied by notification, a right of defence, a turnout threshold and judicial review, or through a single vote of the council accompanied by none of these. Since the council itself chooses which route to follow, the regulation creates a structural incentive to avoid the more demanding procedure. This is the central organizational defect identified by the study.

3.3. Recall by voters

Recall rests on four grounds: violation of legislation capable of giving rise to criminal, civil, administrative or other liability; acts grossly violating the norms of morality and deputy ethics; systematic failure without valid reason to perform the duties established by legislation, including the assignments of the council and its bodies; and failure to fulfil obligations towards the political party that nominated the deputy.

The procedure is composite. The decision on the necessity of recall is adopted by the council itself. The basis for considering the question may be a request of law enforcement bodies submitted in the established manner or a proposal of the nominating political party. The materials are transmitted to the territorial prosecutor for preliminary examination and for a conclusion to the committee on deputy ethics, after which the council decides whether the question has been raised with sufficient foundation. If it has, the decision is forwarded to the Central Election Commission, which within ten days forms the constituency commission and fixes the time and place of the ballot. Polling stations are formed no later than twenty five days and precinct commissions no later than twenty days before the vote, and voter lists are made available ten days in advance. The ballot is secret and offers a choice between supporting and opposing the recall. The deputy is notified in writing within three days of receipt of the materials, receives copies of them, and is entitled to meet voters and to speak in his own defence at meetings and sessions where the question is examined.

A deputy is considered recalled if more than half of the voters taking part vote in favour. Recall is refused if fewer than half do so, or if fewer than thirty three per cent of the voters included in the list take part. An equality of votes preserves the mandate. The results are registered within five days and published, and the powers of the deputy are terminated from the moment of registration. Expenses are met from the State Budget, and violations may be challenged before the Central Election Commission, the terri-

torial election commission or a court.

Three organizational findings follow. First, voters possess no right of initiative at any stage: the mechanism is opened and filtered by the body of which the deputy is a member, on the impulse of law enforcement bodies or of a party. The institution is therefore formally imperative but functionally delegated. Second, the participation floor of thirty three per cent, combined with the absence of a voter initiative, exposes the mechanism both to boycott and to disuse. Third, the ground concerning obligations towards the nominating party introduces an element of party control over the mandate, which the Venice Commission has treated as difficult to reconcile with the representative character of the mandate (Venice Commission, 2009).

3.4. Criteria of incompatibility

The Law on the Status of a Deputy does not itself enumerate the offices whose holding is incompatible with a deputy mandate; it refers to offices incompatible under the law. The relevant prohibitions are scattered across electoral, anti corruption and public service legislation, and no unifying criterion is stated in any of them. Comparative practice suggests three functional criteria: separation of powers, where the office would place the deputy in the position of supervising his own acts; subordination, where the office is accountable to the council of which he is a member; and conflict of interest, where the office creates economic dependence on decisions of that council. None of these criteria is expressed in Uzbek law, and no procedure or time limit is prescribed for the deputy to choose between the two positions.

3.5. Immunity and the absence of suspension

A deputy may not be prosecuted, detained, arrested or subjected to an administrative penalty imposed by a court within the territory concerned without the consent of the relevant council, which resolves the submission of the prosecutor within ten days. Refusal of consent constitutes a circumstance excluding criminal proceedings and entails the termination of the case. A higher prosecutor may ask a higher council or the Legislative Chamber to quash the decision and remit the question. Consent is not required where the offence was committed outside the territory of the constituency.

Two problems arise. Refusal of consent terminates the proceedings rather than merely suspending them, which converts a procedural guarantee of independence into a substantive immunity from liability. And Uzbek law knows no institution of suspension of powers: throughout a criminal proceeding the deputy either exercises his mandate in full or loses it outright, with no intermediate status.

4. Discussion

The fragmentation described above is not a purely technical defect of legislative drafting. Because the grounds of early termination are distributed across several acts, and because two of them cover substantially the same conduct while offering radically different levels of protection, the choice of procedure determines the outcome, and that choice belongs to the same body that formulates the accusation. A guarantee that can be avoided

at the discretion of the accusing body is not a guarantee. This explains why an elaborate recall procedure may co-exist with an almost unused ballot mechanism.

Comparative material points to two corrective techniques. The first, exemplified by Russian regulation, is to require that an evaluative ground be reduced to a specific unlawful act established by a court before the question of removal may be put to voters. This preserves accountability while removing the discretion of the assembly to characterise conduct. The second, exemplified by German and Polish regulation, is to exclude the removal of an individual councillor altogether and to confine political sanction either to the body as a whole or to the operation of statutory incompatibility. Uzbek law currently combines the weakest features of both models: it permits individual removal, and it permits it without a judicial finding.

Five proposals follow. First, all grounds of early termination should be consolidated in a single article of the Law on the Status of a Deputy, and the clause on exceptional cases should be repealed; termination for conduct should be possible only through the recall procedure or on the basis of a court decision that has entered into legal force. Second, a voters' initiative should be introduced: an initiative group formed at a meeting of voters of the constituency and supported by the signatures of not less than five per cent of the voters registered in that constituency should oblige the council to place the question on the agenda of its next session. Third, the term systematic non performance should be defined in the law as absence without valid reason from more than half of the sessions of the council or of the commission of which the deputy is a member during a calendar year, established on the basis of the records of the secretariat. Fourth, incompatibility should be codified through the three functional criteria identified above, supplemented by an exhaustive list of offices, with a period of ten days for the deputy to make his choice and automatic termination on the expiry of that period. Fifth, an institution of suspension of powers should be introduced for the period between the consent of the council to prosecution and the entry into force of the judgment, and any decision terminating a mandate should be subject to judicial review at the suit of the deputy concerned.

These proposals carry a cost that should be acknowledged. Strengthening the voters' initiative increases the risk that recall will be used against deputies for lawful but unpopular votes, which is precisely the objection raised in the comparative literature against the imperative mandate. That risk is contained by coupling the initiative with the requirement of a factual ground established by a court, so that the initiative determines whether the question is put and the court determines whether it may be put at all.

5. Conclusion

The statutory grounds for the early termination of the powers of a local council deputy in Uzbekistan may be grouped into volitional, objective, status based and sanction based, and the list is not exhaustive because an open clause permits termination in exceptional cases. Proce-

dural guarantees are distributed unevenly across these groups: a detailed procedure exists only for recall, while the discretionary ground carries none. The recall mechanism, although regulated in detail, is not operable in its present form, since voters cannot initiate it and a participation floor of thirty three per cent applies. Offices incompatible with a deputy mandate are determined without any unifying criterion.

The elimination of these defects requires consolidation of the grounds within a single article, repeal of the discretionary clause, introduction of a voters' initiative coupled with a judicially established factual ground, a statutory definition of systematic non performance, functional criteria of incompatibility, and an institution of suspension of powers accompanied by judicial review. Further research should address the practice of local Kengashes once decisions on early termination become publicly accessible, and should extend the comparison to the other states of Central Asia

Foydalanilgan adabiyotlar ro'yhati

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