



ಸಂಖ್ಯೆ ಮತ್ತು ದಿನಾಂಕ

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ಸಂಖ್ಯೆ ಮತ್ತು ದಿನಾಂಕ (2 ಸಂಖ್ಯೆ ಮತ್ತು ದಿನಾಂಕ)

14:30 ಸಂಖ್ಯೆ ಮತ್ತು ದಿನಾಂಕ



Kendhoo' constituency member Ali Hussain speaking:

Ok, I just wanted to tell you we also have done I think currently it's in the committee itself we are working on some amendments to the prosecutor generals act as well right. We haven't finished that work yet. But it's in our committee. Because we have found that in the past like five years also there have been politically charged cases. So, basically the government has proposed some amendments to the prosecutor general's act as well. So, we are working on that. And then as he has mentioned we have finished the workings on the judicial service commission act and judicator act is going on. We are working on it. And police act we have done the framework. I think the rudimentary initial works we have done on the police act we have met almost all the stakeholders. And but since our chairman of this committee and one key member of this committee and she is also sitting at the judicial service commission as the member from the parliament. They are right now not here. They are on a visit to US. So, some of the works are like I mean a little bit on a slower side. But we are working on it. And currently we are also under the process of taking some no confidence motion against the Prosecutor general as well its pending before us. And I think tomorrow something or like we have to appoint some more judges to the supreme court. Some 4 judges for 4 slots. Yeah like 3 slots at least yeah, we have to appoint. And currently we don't have chief justice also. Because we have impeached him as well. And also on a routine basis we keep on actually giving our thoughts and our commitments or whatever we could do with respect to letters that we receive especially most of these letters come from jail actually the inmates their concerns their issues. That's why we have asked the judicial services commission and relevant authorities to have an audit with respect to the people who are in jail on like indefinite terms. Especially people without trial or without a judgement some people are like in remand and some people are in jail for like some for two years, three years, even for more than that some people are still I mean left in the prison. So, we have asked them to make an audit on that. Because we receive like so many letters expressing their concerns and about the conditions and asking for many things. So basically, that's an overview of what we are doing and like what we have done so far.

European Union Expert Mr.Pedro Gomes Pereira Speaking:

Thank you very much. I have, I have an initial procedural question. What is the difference between no confidence motion and impeaching a member of the judiciary?

Kendhoo' constituency member Ali Hussain speaking:

I think under the constitution in Maldives there is no distinction as such as been made in the constitution. I know in some jurisdiction like in US and impeachment and a no

confidence motion is completely two different things. And impeachment process they are the process itself is different and how these presume is also difference. And there is a total different process for no confidence motion. But our constitution does not make any distinction as such. But I'll tell you the supreme court tried to I mean bring by way of some judicial activism to make that distinction. But the constitution is so it doesn't distinguish between the two different like whether it is an impeachment or a no confidence motion. It doesn't make any distinction between a both of this.

Chairman Speaking:

Hassan.

Henveyru Hulhangu' constituency member Hassan Latheef speaking:

My name is Hassan Latheef. I am from the Maldivian democratic party. Well what we have in our constitution is removal of judges. So basically, may be interpreted as impeachment or no confidence. There is no such distinguish as Ali Hussain has mentioned. Can I add to what my colleges has just now said? In the 2018 election and 2019 parliament election the people of the Maldives as given clear mandate to M.D.P we have a president who is our candidate and also 65 seats out of the 87 are from M.D.P. So, we have a clear mandate to our manifesto. One of the five primary pledges of the party was reforming judiciary. So basically, that's one reason that we have a judiciary committee formed in the parliament. And we are mandated to appointment removal of judges, we have a say. It's the judges appointed by president and also from the judicial service commission. But we have a say in the appointment as well as removal of judges. And we are mandated under the house rules. It's in the section 121 of the house rules of the parliament. Judicial service commission, Department of judicial administration, Prosecutor general office, Labor tribunal, The Maldives arbitration center, Attorney general office, Tax appeal tribunal, The Maldives baa council, Clemency board, Parole board. Those we are mandated as the oversight body of the parliament on these offices and that's basically what we've been doing. And also drafting bills with regard to the relevant offices mentioned in the house rules. One of the key bill that I am involved in drafting is the police bill. Reform of police is essential for us. And also, we are going to introduce community policing which is not there up until now. So what we have in mind is introduce community policing basically to the islands and there would be a unit in each council, each island council and also the city council for instance in Male' there would be a small unit of not police, but people who will basically look in to the more of thought issues. Not purely criminal but more of thought issues like nuisance and trespassing things like that. So basically, we are trying to decentralize the police force. And also, I wouldn't say limit the powers of the police,

but the correct terminology would be to decentralized and restructure the police. One of the other bills that is in the committee with the effect of the bill would be to restructure the court system. I think the courts act will do that. It also under in the drafting stage and also, I wouldn't say again cleaning up the courts. We have removed judges from the supreme court as well as some magistrates. So, it's an ongoing process as my colleagues have mention we have two more coming in few days. So, basically that's the committee is about. And the work that we've been doing so far. Thank you.

Kendhoo' constituency member Ali Hussain speaking:

I just added like a little point because he mentioned about we have actually mandate to appointment like of judges with respect to supreme court only. But for the high courts and other lower courts the appointment is left with the Judicial service commission. But when it comes to the supreme court judges like there is the room for like Majlis to decide. It needs the confirmation from the Majlis. So, we have mandate to deal with supreme court judges only with respected appointment. But for the removal like of course we have to be involved in each and every removal of judge. A judge cannot be removed automatically by the judicial service commission or by anybody. By anybody I am saying because in the last year also like the supreme court tried, I mean they categorically said a judge of civil court has been removed or she is not a judge anymore. She can't be sitting as a judge and all that. That is why I mentioned because they tried doing that. Only the parliament can remove a judge.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

Thank you very much. That's perfect I understand I think have reviewed the constitution, I have had the opportunity to meet with the commissioners of the JSC last week. I have two questions and about appointments and removal. Appointment of supreme court justices and removal of judges in general. For the appointment of the supreme court judges if my understanding is correctly the president nominates submits it to parliament, this commission will then conduct the necessary interview questioning and so force. And then will be elevated to the house floor or lower to the house floor where the entire parliament can then vote on whether that person should become a supreme court justice or not. My question is what are the criteria for the judge or for the president to nominate a candidate?

Kendhoo' constituency member Ali Hussain speaking:

Well criteria of a judge is in the constitution. So, basically, it's very straight forward. As for the appointment it's in section 148 which basically says the president is the head

of state shall appoint the judges of the supreme court after consulting the judicial service commission and the confirmation of the appointees by the majority of the members of the parliament present and voting. That's the basic process.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

So, it's not a simple majority, but rather a simple majority of those present. So, if there is 10 people in the parliament and there is 6 people, will be appointed. Okay, interesting. It's 2/3 of those present or to; we would have 10 people, if we get 7 then he is out. But that's on the house rules. The minimum requirement is on the house rule. May I ask by any chance do we have the house rules available in English? No. okay. It might be a way that it existed? Okay.

Henveyru Hulhangu' constituency member Hassan Latheef speaking:

Also, the qualifications of the judge, be the four. Be a Muslim and follower of a Sunni school of Islam. Be 25 years of age. Has not been convicted of any offence for which a haddhu is prescribed in Islam. Criminal breach of trust or bribery. Be off sound mind, which is very difficult to determine. Well, that's B, C and they needs to be certain degree of experience as well. And fun is enough. The people who drafted the constitution deliberately decided that the person need not to be a Maldivian. So, we can have foreign judges as well.

Kendhoo' constituency member Ali Hussain speaking:

He was a part of the group who actually drafted the constitution, that's why he is saying funny. So deliberate.

Chairman speaking:

quorum is in section 49 of this rule. It says a 25% of the parliament members should be present. Yeah.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

Appointment is easier than removal in the sense that the removal of any judge. So, let me see if I got this correct, the judicial service commission has indicated to me that they will conduct an inquiry into the ethical behavior of a judge. Because of course if in the course in their investigation, they identify and a legit criminal offence they have the power not to fire or not to remove but they have the power to suspend pending the removal for further investigation. Right? By the prosecutor general's office or the

police or the anti-corruption commission who ever then has the jurisdiction to do that. So, upon reaching their conclusion, the JSC reaches their conclusion, submits it to this committee, this committee will then review the facts to reach the decision which will they then will submit to parliament to again to the floor to the parliament with which the least 23 quorum and 2/3 majority and then they can remove that judge. Is that my understanding correct?

Kendhoo constituency member Ali Husain speaking

Not exactly. We don't go to the details or factual details. We just looked into the procedural aspects. I mean we examined the documents that we have and then we see if they have followed the procedures well. If they have conducted an inquiry, and what they have found? But not in details like about each and every fact exactly. We let the house decide on that.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

And due process afforded in this observation, so we were just determining the legality. Yes. What I am saying is the judge that this motion has been submitted against, can he come either by himself or with through a lawyer to present why he feels that the procedure may not have been legal to you?

Kendhoo constituency member Ali Husain speaking:

We just make sure that it's been done at the level of JSC. Whether he is been given notice that if the case is been actually explained to him. And if he is being given the like I mean opportunity to defend himself by representation of lawyer and if enough time was given. We actually check those things. But we don't bring them, or we don't give them, we haven't given opportunity for them to come over here. We see there will be I mean like two ways. They represent a lawyer there, they explain everything, they defend the JSC and then there is no need for them to come over here and then talk about the same things. Because it's been already done. So, we just look into the procedural aspects of it rather than going to substantial details of the case. We just see if the proper procedure has been followed.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

I fully understand. And it's just I have to try to understand all possibilities and that's why I ask these questions. So, if the judge or the person in question that is being that a decision against has been reached by or recommendation for his removal has been

reached by the JSC, what is the appeal's recourse that they have of that decision. I mean that they could fundamentally disagree with the decision, which is their right. My only question is to whom would they complain that to?

Kendhoo constituency member Ali Husain speaking:

That's a good question. Actually, yeah like I mean but it's a decision we feel that's a political decision that we take like before take the decision we check if the proper procedure has been followed. Of course, that can naturally as natural law demands that they can, I mean it will be in the best interest to give him the right to first appeal. Maybe we can consider I mean this committee as the appeal process. That could be a good idea. I mean it's not a bad idea. I think it's a good idea. So, that they will have an opportunity to I mean, I mean, take their arguments or if they feel that they are being agreed by the decision of the JSC they can talk about that. If there is a procedure or a mistake or error in interpreting what whatever they have said or in the if there if they feel that there is a mistake in the interpretation of the statute itself while applying the law by the Judicial Service Commission. I think it's a fair deal. I mean that could be done, it's a good, it could be a good way forward. I mean I consider something like, okay. Everything good.

Chairman speaking:

Sir is going to explain it because we have Judicial Service Commission Act. We amended it in a form appeal process. He is going to pair you. Yeah.

Henveyru Hulhangu' constituency member Hassan Latheef speaking:

Yeah, this was elected September yeah, yeah. So, basically it covers. There is a process of appeal and the opportunity to appeal for the judge who is in question after the decision is been made by the Judicial Service Commission.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank

Hess speaking:

And whom the appeal is to?

Henveyru Hulhangu' constituency member Hassan Latheef speaking:

To the to the appeal committee. That is to be established by the Judicial Service, Judicial Administration. Sorry, not the JSC.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank

Hess speaking:



So, let me just see if I understood.

(after some time)

Kendhoo constituency member Ali Husain speaking:

It has I mean basis, because they also in the constitution it says that any administrative if you agreed by the decision of an administrative decision it should have the right to appeal. So, you should have the recalls I mean to a judicial process. So, I definite, I think for me I think there is something we can, and we have to think about as well. Because there will be other days as well you know, like we also have to think about if I become a judge like, like if I feel by the decision of the JSC and then if I have nowhere to go and appeal nowhere and no place to go and knock I think it's, it's likely unfair. I feel that way.

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

No. it's, it's a transformation.

Kendhoo constituency member Ali Husain speaking:

Yeah, yeah, exactly yeah..

Head of Cooperation section at EU Delegation to Sri Lanka and the Maldives Mr. Frank Hess speaking:

You have a hard task to move asking different questions and putting all of these things on table whether it's from a judiciary or whether it's from yourselves...

(after some time)

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