Judicial System of the Republic of Kazakhstan: Issues and Solutions

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INTRODUCTION

Judicial system of the Republic of Kazakhstan consist of Supreme Court, Regional (Oblastnoy) court (according to territory and geographical division in Kazakhstan 14 Oblast) and local courts. According to the Constitution of the Republic of Kazakhstan Court is independent branch of the Government. In fact it is difficult to say about judge independency. We have external impact factors influencing on final solution of Judge according to Constitution; inappropriateness to international standards; prevalence of legislative branch and executive branch and possibility of influence into judicial branch; wide function of the President in recognition of legislative and regulatory acts regarding the judicial system; not enough financial support for full independency. Internal impact factors are departments in every regional (Oblastnoy) court and local courts controlling the activity and work of judges; dependence of judges on Chairs of Supreme Court and on Chairs of Regional and Local Courts. Also one of the important issues is Judge Appointment system. The President is representing the candidate based on Supreme Judicial Board to Senate of Parliament for election or termination of Chairs of Supreme Court and Judge of Supreme Court, Chairs of Regional and Local Courts. Unfortunately the judges are not public elected.

At the same time Kazakhstan considers the reforming of court system. President signed the Law of the Republic of Kazakhstan “About changes and amendments into legislative acts on development of Arbitrage” for widening the out-of-court settlement. The Reforming of court system still continuing we believe for better.

The Republic of Kazakhstan got independence in 16th of December 1991 according to Declaration of Independence. We had joint political and economic system with Soviet Union now Russian Federation [1]. Now Kazakhstan is largest Central Asia country with population 16 500 000 people, among them Kazakhs makes up 63.6%, Russians 23.7%, Uzbeks 2.9%, Ukrainians 2.1%, Uygur 1.4%, Tatars 1.3%, Germans 1.1%, others 3.9% [2].

According to the Constitution Kazakhstan is a unitary republic. The first and only President is Nursultan Nazarbayev. The President is also the commander in chief of the armed forces and may veto legislation that has been passed by the Parliament. The prime minister chairs the Cabinet of Ministers and serves as Kazakhstan's head of government [3].

When the Soviet Union collapsed in December 1991, Kazakhstan inherited 1,410 nuclear warheads and the Semipalatinsk nuclear weapon test site. By April 1995 Kazakhstan had repatriated its nuclear warhead inventory back to Russia, destroying the nuclear testing infrastructure at Semipalatinsk by July 2000 [4].

We Are Members of next International Organizations:

- United Nations
- Euro-Atlantic Partnership Council
- Commonwealth of Independent States
- Shanghai Cooperation Organisation.
- OSCE
- Individual Partnership Action Plan—with NATO, Ukraine, Georgia, Azerbaijan, Armenia, Moldova, Bosnia and Herzegovina and Montenegro
- Turkic Council and the TÜRKSOY community. (The national language, Kazakh, is related to the other Turkic languages, with which it shares cultural and historical ties) [5].

The official languages are Kazakh, Russian. Ministry of Education develops the Multilanguage education policy to promote and improve the English language in Kazakhstan.

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The Main Religion Is Muslim: As Kazakhstan got Independence we have to build the new systems in politics, economy, education and legal too. This also touched the Court system of Kazakhstan. The question was remaining the old system or build new one. Of course, we decided to left old but during last 10 years we reconsider and reform the system.

The Judicial System of the Republic of Kazakhstan:
Judicial system of the Republic of Kazakhstan consists of the Supreme Court and local courts established in accordance with the Constitution of the Republic of Kazakhstan and Constitutional Law.

To Local Courts Refer:

- Region and equal level courts (city court of the capital of the republic, city courts of republican level cities, specialized court – Military court of the Republic of Kazakhstan and others);
- District and equal level courts (city, inter district, specialized court - military court of garrison and others).

In the Republic of Kazakhstan there can be created specialized courts (military, economic, administrative, juvenile and others).

Specialized courts (military, financial, economic, administrative, juvenile and others) can be set up in the Republic of Kazakhstan.

The unity of legal system of the Republic of Kazakhstan is provided by:

- General and single principles of justice, established by the Constitution and the Constitution law, procedural and other laws;
- Implementation of legal power in single forms of legal proceedings, established by the laws;
- Applying of existing legislation of Kazakhstan by all courts;
- Legislative support of single status of judges;
- Obligatory fulfillment of legal acts on the territory of the Republic of Kazakhstan;
- Financing of all courts only from the Republican budget.

The Supreme Court consists of the Chairman, Chairmen of commissions and judges.

Total number of judges of the Supreme Court is established by the President of the Republic of Kazakhstan on presentation of the Chairman of the Supreme Court.

The Bodies of the Supreme Court Are:

- Supervisory commission;
- Commission on civil cases;
- Commission on criminal cases;
- Plenary meeting of the court.

Under the Supreme Court of the Republic of Kazakhstan there was established the Committee on judicial administration, exercising functions of organization and technical maintenance of court activities. The Committee and its territory units -administrators of courts of oblasts, cities of Astana and Almaty, form an integrated system of bodies on maintenance of activities of local courts.

Supreme Court of Kazakhstan is a top judicial body for civil, criminal and other cases that supervises activities of courts and provides clarifications on matters of judicial practices.

Supreme Court Structure: Supreme Court comprises Chairperson, chairpersons of collegiums and judges.

Chairperson, chairpersons of collegiums and judges of Supreme Court of the Republic of Kazakhstan are elected by Senate upon recommendation of President of the Republic of Kazakhstan. Chairpersons of regional and similar courts, chairpersons of their collegiums and judges are appointed by President of the Republic upon recommendation of Supreme Judicial Board of the Republic.

- The Supreme Court bodies are: Oversight Collegium, Collegium for Civil Cases, Collegium for Criminal Cases, Plenary Session of the Court[6].

According to the Constitution the Court system is Independent Branch of the Government. Nevertheless there are still several issues.

Legislative documents on judicial system in the Republic of Kazakhstan:

Constitutional Law "On the Judicial System and Status of Judges" from 25th of December 2000, # 132-II

Criminal Procedure Code of the Republic of Kazakhstan from 13th December 2007

Civil Procedure Code of the Republic of Kazakhstan from 13th of July 1999 with changes 03 July 2013

Instability of the legislation, as well as the frequency of amendments and additions and as a consequence - the growth of legal negativism, not only in society, but among lawyers, advocates and law users, including and judges, which negatively affects the quality of justice. Therefore the Presidential Decree of 4th May, 2005 ? 1568 "On measures to further exploiting the potential of the Constitution of the Republic of Kazakhstan" the requirement to bring the system of existing legislation into conformity with the Basic Law remains relevant today. [7]

Low quality of laws leads not only to judicial and investigative errors, but contribute to the abuse and certain parts of unscrupulous judges, investigators, prosecutors and investigators who use gaps, contradictions and other shortcomings of the law for their own selfish interests.

Many of the defects of lawmaking in his annual addresses specifically draws attention to the Constitutional Council of the Republic, noting in particular that "some laws are made without proper conceptualization, often contradictory and often unreasonably changes to them generate instability of the current legislation and law enforcement practice ".[8] In this regard it should be noted that the capacity of the courts effectively enough to affect the state of the current legislation by applying the law given to them by Art. 78 of the Constitution of the Republic of Kazakhstan, the courts do not use enough. Analysis of the reports of the Constitutional Council from 2000 to 2007, showed that in 2000 the Constitutional Council received six calls from courts in 2001 - seven, in the period from 2002 to 2007 - an average of just under 2 treatments per year, despite the fact that every year the body of constitutional control points in his letters to the significant number of laws and other normative legal acts that infringe upon the rights and freedoms of citizens.

Financial and Organizational Support Authority: I believe that the development and implementation of the financial and organizational support should be provided by the Committee on Court Administration, since it is responsible committee for organizational, logistical and other support of the local court (paragraph 1 of the Committee on Court Administration of Supreme Court of Kazakhstan, approved. Presidential Decree of October 12, 2000 ? 471). Consideration of other issues like mentioned above distracting from their main constitutional duty - the justice. Therefore need to separate between justice and organizational support of courts, as mentioned in 1994 [9], as well as exceptions of chairmen from court supporting activities and replacethm by competent authority[10]. This has been continues and requires urgent clear legislative solution.

Judge Retirement Salary: One of the most pressing problems for the judiciary of the country is the question of financial and social security of judges after retirement. This problem is considered in the Charter of Judicial Policy. The Constitutional Council of the Republic
of Kazakhstan paid additional attention on financial assurance. So, in 2007 in the Letter of the Constitutional Council of the Republic stated: "Not fully implemented in law and in practice the constitutional requirement (Article 80) that the financing of courts and judges with housing provision" shall ensure "full and independent administration of justice"... In fact in 2007 the state budget provided the purchase of housing for judges, which is only 5% of the whole needs. [11]. In 2008, the Constitutional Council mentioned again that "the Article 80 of the Constitution says the funding of courts and judges with housing provision" shall ensure full and independent justice ", in practice insufficiently, which often puts judges in a dependent position from the local authorities and promotes corrupt practices. [12] Commission on Human Rights, in 2004 pointed to the significant factors "that should be seen as weakening the independence of judges and social protection of judges retiring or retired" [13].

In addition, today differentiation of salaries of judges, depending on the court, the level of performed work inconsistent with the Constitutional Law "On the Judicial System and Status of Judges in the Republic of Kazakhstan". Judges have the same status in the whole country and only difference authority (Section 1, Art. 23). In practice the salaries of judges of the Supreme Court significantly exceeds salaries of judges of local courts.

Special attention is required the new entered structure Inter Plenary Meetings which is improper to Constitution of the Republic of Kazakhstan. Inter Plenary Session is meeting of local, regional courts and whole...[14], Establishment of these meetings is legitimacy issue related to their competence, is questionable.

First, the establishment of these bodies is not consistent with Law "On the Judicial System and Status of Judges in the Republic of Kazakhstan". The structure of regional and local courts provided by law, include only Plenary Session (Section 3, Article.11), but not the competence to manage and work jointly with other authorities, or Inter Plenary Meetings with any other bodies under the Chairmanship of the Courts (Articles 9 and 14).

Second, on some issues related to the competence of these body, they substitute activities Disciplinary and Qualification Board and the Commission on Judicial Ethics. For example, according to the Duties on the organization of meetings and Inter Plenary Session of the local courts, their jurisdiction referred the following issues:

- Discuss the results of investigation of complaints of citizens and companies;
- Judicial compliance and ethics;
- consideration of letters, private decisions (definitions), the information provided in relation to the chairmen of boards and judges of the regional courts, the president and judges of district and local courts and staff.

Third, according to regulations on list of Inter Plenary Session participants (which includes the Chairman of the Regional Court, chairman of the regional - qualifying board; chairmen of the boards of the regional court, branch chairman of the Union of Judges, Chairman of the Commission on Judicial Ethics) violate the principle of equality of the status of all the judges in the Republic, as judges of the regional and equivalent courts denied the right to participate in the Inter Plenary Session important to them issues, which increases the dependence from Chairman other judges. And although, according to section 6.4 of the Regulation on the organization of Meetings and Inter Plenary Session of the local courts, the decisions of these advisory bodies are advisory in nature, however, because of the nature referred to the issues of their competence, in practice the courts are perceived as such decisions guide to appropriate actions and decisions.

Thus, it can be concluded that the composition Inter Plenary Session and its competence are characterized by centralization, unity of command and submission, which suggests that the judicial system established managerial and administrative bodies, which contradicts with the Constitution and international standards. It seems that the regulation Sessions and operational meeting of the local courts, is in contradiction with Law "On the Judicial System does not meet the constitutional idea and content of the judiciary and, in fact, creates a real opportunity for the superior courts and the chairmen of influence on judges.

In this regard, it appears that at the legislative level should be clearly defined list of vessels functions and organizational issues, including the relationship between the courts of different judicial units and the Committee on Court Administration at the Supreme Court of Kazakhstan.

**Requirement for Candidates:** Imperfection requirements for candidates for the judge and the procedure involves formation of the judiciary appointment (election) on these positions some of those professional and personal qualities which do not correspond to their position, as well as the requirements of judicial ethics[15];
Monitoring of Judge Performance: It is essential to develop and implement objective indicators for evaluation of judge performance, which shall be used in determining the quality and effectiveness. In practice, the "low rate" is determined on the number of canceled court decisions, no matter whether it was the result of culpable violation (ie procedural violations) or innocent (ie due to a miscarriage of justice). Although Section 3, Article. 39 of the Law on Judicial System unambiguously states: "The cancellation or modification of a judicial act by itself does not entail liability of the judge, if this were not serious violations of law, which is specified in the judicial act by a higher court." Giving an explanation for this in 1998, the Plenum of the Supreme Court pointed out that "a flagrant violation of the law is to be understood the obvious and substantial violation of the law, which was committed by the judge intentionally or due to its bad faith, negligence or ignorance of the law. Gravity of the violation of the law shall be set by the court to cancel or modify the judgment on this case and is reflected in the decision of this court. Revocation or modification of the judgment relating to the assessment of evidence, can not be blamed judge" [16]. However, today, this requirement is ignored - regardless of fault judge, any reversal of judgment assessed as "low rate". Meanwhile, as rightly pointed out the ex-chairman of the Supreme Court TK Aytmuhambetov: "Arithmetic performance indicators of judges when cancel quantity regardless of its foundation and character admitted gaps, added together, can negatively affect both the selection of qualified judges and the fate and career fair judge" [17].

According to § 15 of Regulation on the Judicial jury [18], the basis for its consideration of the materials on determining suitability judge is the decision of the Regional Plenary Session or of the Supreme Court on transfer to Judicial jury consideration, on having low levels of the justice (1) or two or more disciplinary sanctions for violation of the law in court cases (2).

Such regulation raises a number of questions and, above all, on what criteria should be defined concepts such as "professional unfitness judge", "poor performance", "breaking the law" because nor Law "On the Judicial System or Regulation on Judicial jury did not give their definitions. Meanwhile, all these concepts are estimates, which does not exclude the possibility of abuse and subjective discretion in their application.

Provided by Law "On the Judicial System and Regulations on the Judicial jury bases for having responsibility and the grounds for recognizing professional judges unfit gives to persons who initiating excitation relevant power. Thus, the legislator gives them power to decide what is criteria for professionally unfit. This regulation, gives power to choose what in one case one decision and in other case another decision.

According to Regulation on Judicial System there have not defined criteria for decision especially: 1) list of authority persons, who initiate the disciplinary proceedings; 2) full range of criteria for staring the procedure. That is why it is necessary:

- To add additions and amendments to Law on Judicial System and except practice on rulemaking the questions in secondary legislation;
- To neutralize judicial corporatism and effectiveness of social control should be introduced in the Republican Disciplinary and Qualification and regional disciplinary professional boards and Judicial Jury - public figures.

Authority of Regional Chairmen: One of the particular problem is Regional courts with judicial review, which bring the broad powers of the Chairpersons of the courts in dealing with personnel and organizational issues are quite powerful influence on the judges and for their independence. Powers of court chairmen in their entirety to determine such important issues of the legal status of judges, as their career growth, attracting judges accountable, deprivation of his powers, getting qualification classes, etc. Procedures for the appointment of chairmen of courts and judicial boards leads to the bureaucratization of the judiciary, establish between judges court presidents and relations of power and subordination.

The judge called the law a carrier of the judiciary, which is guaranteed by the Constitution of the Republic of Kazakhstan’s independence and constancy of his status and other similar situations where questions related to this status depends on the will of the president of the court, is in the position of an ordinary clerk, who was forced to conform its activities with instructions and orders of his superior.

Regulating the legal status of presidents of courts, giving them a fairly broad power, the legislator comes, apparently, from the presumption of integrity, objectivity, high level of professionalism, legal awareness and legal culture. However, as practice shows, not all chairmen have such qualities, as evidenced by the facts attracting not only judges but also the chairpersons to disciplinary action, depriving them of their powers for negative reasons and even criminal prosecution. [19]
The study points to a formal recommendation plenary sessions and the impact on their adoption opinions chairman, neglect opinion of the judges. In particular, it is indicated that in practice, the final decision on all the most important issues " usually takes the presiding judge alone, or offers" an opinion ", which, as a rule, is adopted. College presidents of the courts orders are no discussions in plenary sessions, not approved by the numerical formulations of supervisory boards are not taken by secret ballot for elections to their compositions, etc."[20] " Judges hardly vote against the nominations, although sometimes know not with their best sides " [21].

Both scholars and practitioners, including judges repeatedly raised the issue of changing the procedure for the appointment of chairmen of courts on the procedure for the election of judges from among its members on an alternative basis for a short period (for example, for two or three years ) [22]. This issue has been initiated at the official level. For example, at a meeting of the working group on improving the system of justice and law enforcement agencies of the State Commission on development and democratic reforms proposed introduction of rotation for the chairmen of district courts every two years (replacement is done automatically on the basis of the maximum length of tenure as a judge) [23].

In recent years, the judicial body of the republic replenishes representatives of law enforcement agencies - prosecutors, police and other security services. Given that common to all of these bodies is set by the relevant laws principle of unity of command and subordination, the employees of these bodies for a long time in the service they are formed qualities that are not consistent with the principle of independence, i.e. they formed installation execution orders, instructions, etc. and also shows a tendency to accusatory. Therefore, seem to be quite reasonable suggestions made in the legal literature, the need for legislation to establish a transition period (not less than 5 years) after leaving the law enforcement / military service in order to neutralize the specified professional deformation passing through mandatory retraining [24] and compulsory availability of legal practice. [25]

Of particular concern is the latent corruption in the judiciary, judges’ exposure of corruption. [26] Note academician S. Zimanova expressed as early as 2001 that " corporate interests, cronyism, widespread corruption among civil servants, which to some extent it was difficult to avoid the transition from an authoritarian system to democracy, from a planned centralized economy to market, provide for the organization and effectiveness of the judiciary in the Republic of significant negative impact often exceeding conceivable limits "][27] and to this day remains relevant.

P. 1 section 11 of the UN Convention against Corruption on October 31, 2003, ratified by Kazakhstan on May 4, 2008, provides that " Each State Party shall take measures to strengthen judicial integrity and the judiciary and to prevent opportunities for corruption among " [28-30].

Meanwhile, had and have been instances when the principle of judicial independence turns into its opposite. This is most clearly evident in cases where the law contains contradictions, gaps, etc. flaws that allow them to interpret ambiguous. Such incidents, coupled with the low professionalism of the specific judges, their low level of legal awareness and legal culture are fertile ground for making them not only miscarriages of justice, but also of corruption offenses. Therefore pose a particular problem, as are currently issues related not only to the improvement of professionalism, but also with the morality of the judge, his sense of justice.

It is also essential to make KZoS rate similar to paragraph 3 of the Decree of the President of the Republic of Kazakhstan on April 22, 2009 ¹ 793 "On additional measures to strengthen the fight against crime and corruption and further improve law enforcement in the Republic of Kazakhstan ", setting a legal mechanism to ensure transparency property status of judges and their relatives during the period of the judges in this position and for a certain period after the termination of judicial office (e.g. within 5-7 years ), providing for their obligation to provide information on the origin of property whose value exceeds their official income.

Also activities of the courts and other support services to ensure judicial activity requires its improvement

REFERENCES


14. See: Order of the Chairman of the Supreme Court on September 7, 2005 ¹ 162 "On approval of the" Regulations on the organization of meetings and plenary operational meeting of the local courts."

15. Improve the professional level of judges would greatly contribute to the introduction of the mandatory provisions of the law by judges passing training courses, the results of which must be certified. The results of this evaluation should take into account when deciding on the career development of a particular judge. It should also be a clear system of formation of career growth.


19. See, for example, the Presidential Decree "On the appointment and dismissal of presidents of the chambers, the president and judges of local courts of the Republic of Kazakhstan" for 2007: January 8, number 239, May 11, number 327, dated March 26, number 301, dated October 28, number 430, dated December 19, number 496, number 504 on December 30.


22. See, for example Zhalmuhanbetov K. This Court - independent court / / Kazakhstan Pravda. 2000. September 22.

24. See: The concept of integrated research status and prospects of improving the judiciary (with the support of the Ford Foundation). Moscow: Center for Justice Assistance in Regional Public Fund Indem 2006.


