

## Kazakh Judicial System in the International Legal Arena

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**Abstract:** Judicial system-this is one of the main components of the foundations of the state, one of the arms of the democratic development of the country on the path of social, economic and political modernization. Right to a hearing before an independent, impartial tribunal and the obligation of States to ensure the activities of such ships are docked at the fundamental international instruments of human rights: the Universal Declaration of Human Rights, the European Convention on Human Rights, OSCE documents (Vienna Document of the CSCE 1989 CSCE Copenhagen Document 1990), etc. *Proceeding* from this, the main priority of our political state was the formation and establishment of a new type of judicial system, courts provide full powers inherent in the rule of law, strengthening their high and responsible social role.

**Key words:** Kazakhstan • Judicial system • Supreme Court and local courts • International instruments  
• human rights

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### INTRODUCTION

Currently, the judicial system of the Republic of Kazakhstan are the Supreme Court and local courts: the regional (and related), district (and related), specialized courts (military, financial, economic, administrative, juvenile and others) [1].

Under current law, the activities of all the subjects of the judicial system of the Republic of Kazakhstan is designed to ensure the rule of law, including and to the state. Consequently, the court has such authority, which has no legislative or executive power. Making decisions, the court may by law to deprive a person of liberty and even life for the crime away from natural or legal persons property, dissolve a political party, to make the public authority to rescind its decision and reimburse face damage caused by unlawful actions of officers, etc. Laws of the Republic of Kazakhstan, as well as many countries provide special corpus delicti-contempt of court, which shall be punished.

Features Kazakhstani judicial systems have their historical origins. Forming its basis there is still in the early Soviet years, when the leadership of the country at that time created its own institutions of power.

Subsequently, the system was subjected to changes, but did not affect the fundamentals of its existence, namely the political nature of the state in which the law was not defending a particular person and ideology, respectively, serving power, not a right.

The young state was not deemed possible in the construction of the judicial system to take advantage of the principle of separation of powers, which had already existed for almost a hundred years in European countries. Rejected and the liberal-democratic ideology of separation of powers and the diversity of forms of ownership and a number of natural human rights.

For maintenance of power needed powerful secret police. The court's role was reduced to the level of service punitive machine and about any separation of powers could not be considered. Courts initially were part of the judiciary and were provided to the general procedure, like all public bodies. The decisions Soviet authorities 1920-1930'th indicated that the People's Commissariat of Justice aims to manage and supervise the judicial part of the whole territory of the republic.

Tips conceptually represented the power of people, sovereignty appropriating legislative and executive and supervisory functions of the state. The basic principle of

law that time was the principle of socialist legality, which was based on class ideology. Rule of law in a democratic society designed to protect the interests of citizens, representing the interests of the totalitarian state [2].

**Becoming a Legal System in Kazakhstan after the Collapse of the Soviet Regime:** Only in 1990 due to the changed political situation, November 23, 1990 the Supreme Soviet of the Kazakh SSR adopted the Law "On the Judicial System of the Kazakh SSR". The law appeared principles reflecting new goals of the judiciary, "the comprehensive strengthening of a democratic constitutional state", "ensure democracy and further development of self people".

Some changes were made and the institution of electing local judges. Under the new law, judges of the courts at the district level are not elected in the general election the citizens of this locality and the Regional Council of People's Deputies. Also changed the procedure for the election of judges of the regional level: these powers were transferred from regional Soviets of People's Deputies to the Supreme Soviet of the Kazakh SSR.

However, this legal act, could not go beyond the union legislation. No changes were aspects of organizational support vessels Ministry of Justice of the Kazakh SSR and justice departments of the executive committees of the regional Soviets of People's Deputies. The Minister of Justice also all had the right to submit proposals to the plenum of the Supreme Court of the Kazakh SSR proposals on giving guidance to courts for clarification on the application of the national legislation [3].

Only after the collapse of the Soviet state and the acquisition of Kazakhstan's independence in the history of the judiciary of the Republic, along with the implementation of political and economic transformation aimed at creating a democratic society and the rule of law, began radical reform of the whole system of justice, which includes not only the courts but also other law enforcement government institutions.

Starting reforms in the justice due to the adoption of 16 December 1991 the Constitutional Law "On the State Independence", where it was declared that the government of Kazakhstan is built and implemented on the basis of the principle of the separation of legislative, executive and judicial. Further elaboration of this principle has been in the Constitution of Kazakhstan in 1993. Here were identified basis for the organization and operation of the judiciary. By justice attributed the Constitutional Court, Supreme Court, Supreme Arbitration Court and

lower courts. Is not so much reform as the formation of a fundamentally new judicial system, since before it actually had no judiciary, no independent judiciary in the exact meaning of these concepts.

Solution of some problems of becoming legal system reflect the adoption in February 1994 Decision of the President of the Republic of Kazakhstan "On state program of legal reform in the Republic of Kazakhstan" in this document have been prioritized in the development of the judicial system: providing real separation of powers into legislative, executive and judicial branches, their co- operation with the system of checks and balances. This solution helped to bring the legal system of Kazakhstan in line with international standards and sets forth the following interrelated areas: the reorganization of the judicial system and legal proceedings; improving substantive and procedural legislation, reform of law enforcement and special bodies and advocacy [4].

The next significant stage of formation of the judicial system was the adoption of August 30, 1995 Constitution of the Republic of Kazakhstan. Were introduced by the Senate of the Parliament of the election of judges of the Supreme Court and assign ability all local judges by the President, provided the guarantee of the independence of judges, formed by the Supreme Judicial Council and the Qualification Collegiums of Justice, abolished the system of arbitration courts with the transfer of their functions of courts of general jurisdiction, strengthened their status and role in the system protection of human rights and freedoms. Thus, the basic law of the country laid the foundation for the construction of legal system and ensure its progressive development.

Adopted for the development of the constitutional provisions of the Decree of the President of the Republic of Kazakhstan, having the force of the Constitutional Law "On the status of judges and courts in the Republic of Kazakhstan" Constitutional Law "On the Judicial System and Status of Judges in the Republic of Kazakhstan", the laws "On Bailiffs", "On Enforcement production status and bailiffs, on the High Council of the Judiciary, "On the Qualification Collegiums of Justice", as well as Criminal, Civil, Criminal Procedure and the Penal Enforcement, Code of Civil Procedure, the Code of Administrative Offences and others have identified the basic norms the judicial system, contributed to the establishment of the judiciary as an independent and autonomous branches.

Thus, we can say that in Kazakhstan for a short time-scale events were held and the courts of the authority to protect the indictments or predominantly only government interests at the expense of the ordinary

citizen functions have become an independent State authority, self-resolving all litigation, guided only by the law, thereby significantly bringing the judicial system of Kazakhstan to the international standards of justice.

### **Improvement the Legal System in Kazakhstan and its**

**Features:** Posing the question of further improving the judicial system, it is very important to use the existing experience in the formation of the domestic judicial system and the determination of the principles of its operation, taking into account the specifics of the concrete historical situation in which those rules are put into effect, as well as the generalization of the outcomes obtained in practice. Historical experience, even negative, to avoid repeating the mistakes, including mistakes in the court building. In particular, by its very nature is opposed to arbitrary judicial power, but sometimes at the regional level, the court does not become a real third power. One reason for this phenomenon-the historical roots [5].

Besides the need to consider national experiences, deserves attention and the experience of foreign countries.

It should be noted that the last decade of XX century and the beginning of the XXI century in the context of growing globalization and increasing leveling of the social structure of both Kazakhstan and in the leading countries of the world there is a certain unification of states, their basic forms and components. In this transformation process of borrowing is inevitable and useful experience of the main state organs. In this regard, much attention has been paid to lawyers Kazakh foreign experience of building, or rather, attempts to build a legal state. Experience of France, Great Britain, United States in the management of state mechanism, ensuring the legality and legitimacy of the government, the right to influence society came to be regarded not as an alien and unworkable, but as a useful and affordable to use.

In the process of judicial reform, in which questions were raised about the place of the judiciary in the state mechanism, its essence, the legal status of judges, their powers in the field of law-making, etc., particularly great importance to study and timely use of the experience of foreign countries, especially those where the judicial system in the current form was formed a long time and has not been recently a radical change.

Study of the development of the judicial system, taking into account national peculiarities and traditions provides the necessary knowledge of lawyers, identifying

and comparing matching and opposing factors in the development of the judicial systems of different states, the factors that are necessary for integration into the judicial system in Kazakhstan.

If you make a comparative legal analysis of the judicial systems of different countries, including the Republic of Kazakhstan, we can identify common features across a variety of forms and principles of functioning of the judicial system [6].

The judiciary can not be the same in unitary and federal states. In unitary states, there is usually a single system of general courts. In a federal state can be a single system (Canada), but it is possible and a separate system of federal courts and a separate system of courts of the subjects of the Federation (a vivid example of the judicial system in the United States). With this system, the federal courts apply only federal laws, the courts also states - and the federal laws and the laws of your state.

In the first instance courts (magistrates, police courts, district courts, judicial districts, etc.) are considered for the first time all the cases. Next instance-cassation. This is either a higher court or supreme courts, sometimes officially called cassation. They sit only in the professional judges, but do not consider the facts, evidence and check things only in terms of compliance with the law in the judicial process.

In most countries, the second appellate authority are special or high courts where you can make a complaint to the trial court's decision. Here the process is repeated the same manner as the first instance, but perhaps attracting new witnesses, the presentation of additional evidence [7].

This diagram of the system of general courts in several countries has its own characteristics. Courts of First Instance considered most criminal and civil cases related to their competence. Supreme courts may consider individual cases established by the constitution or by law, in the first instance, sometimes a jury or lay judges. The instruments of constitutional law outlined the various bodies and officials, one of the tasks which is to promote the judiciary. And above all, it is the prosecutor's office. The prosecutor's office handles criminal prosecution of persons who have committed crimes. Acting as a representative of the state, it supports public prosecution in court (in the affairs of private prosecution prosecutor's office is not involved), oversees all detention facilities in the countries of totalitarian socialism oversees legality.

Judicial system in Kazakhstan, Germany and the USA: a comparative analysis.

Kazakhstan interested in the experience of USA age-old tradition of respect for the judiciary. Strengthening powers of judges, their lawmaking and political role in the machinery of government-successfully passed stage state-legal mechanism USA, whose experience in the resolution of such problems could provide support in dealing with similar problems in Kazakhstan.

For Americans, the principle of judicial independence is realized in the system of institutions providing a situation in which judges make decisions in accordance with the law and not on a whim or to someone's will, including other branches of government. Can be divided into a number of components of judicial independence, providing constitutional protection to judge the USA:

- Independent control of the judiciary means of the judiciary;
- Legal disciplinary system, acting as judges, admitting violations and misdemeanors;
- The need for self-control and avoid bias;
- Way to resolve conflicts between different interests and ensure the effectiveness of judicial decisions [8].

A fundamental element of independence of the judiciary USA, admittedly, it is the protection guaranteed by the Constitution of the judges. Judges "shall hold their Offices during good behavior" and they "receive for their services a salary that can not be diminished during their Continuance in Office" and they "can be removed from office on impeachment conviction of treason, bribery or other high Crimes and Misdemeanors ". In other words, longer tenure, dismissal of the complexity and maintaining a high level of wages are the main factors contributing to the independence of the United States Judges [9].

Are also important traditions and unwritten rules for judges and their work. In the same example, the U.S. is not made contact with the judges due to being in the production chores, excluding themselves litigants and their lawyers, who act in accordance with the procedural rules.

For appointment to the post of judge in the United States takes into account such criteria candidates as judicial philosophy, reputation, previous employment, judicial experience, ideological views, party affiliation, personal acquaintances and affection, community groups, whose interests are represented by the candidate and, finally, qualification, assessment which give private organizations such as the American Bar Association.

## CONCLUSION

Institutional element of judicial independence is very important, but not the main and includes institutions to monitor the conditions in which judges administer justice.

In short, the United States, the judicial system is based on three institutional pillars:

- Judicial meeting with the main function of the development of procedures and rules of court procedures;
- The administration of the USA. Courts, federal courts disposing budget, personnel issues, logistics and other economic and ancillary matters;
- Federal Judicial Center, in charge of research in the area of judiciary and matters pertaining to the administration of justice.

We must recognize that the USA judicial system is quite specific, it is difficult to imagine how it worked in the context of the current elements of Kazakhstan. Nevertheless, some elements of the Kazakh and American judicial systems are the same, they can be compared and evaluated. In practice it is necessary to use Kazakh and unique experience gained over the centuries of German courts, since the legal system in Germany is closer to Kazakhstan.

German Constitution distinguishes five main branches of Justice (general, work, social, financial and administrative) and establishes the corresponding five systems of ships, each of which is headed by its own highest judicial body. In this general courts jurisdiction over all civil and criminal cases that do not fall within the competence of the administrative courts and other specialized courts. Activities of general courts is governed by the Judiciary, the relevant laws and regulations on them. Federal Supreme Court heads the system of general courts.

Substitution of judge positions in the courts of individual land occurs differently. In some lands judges are appointed by the Prime Minister, in the other - the Minister of Justice of the land. In some states a judicial appointment preceded the election of the candidate of a special commission-an elected committee of MPs land, judges and lawyers. In most lands, moreover, judicial appointments in any of the courts of the earth requires the agreement of all the ministers-members of the Cabinet. All judges are appointed for life. Directly by the federal parliament of Germany for a period of 12 years only elected judges of the Federal Constitutional Court: half of them are elected by the Bundestag and half-the

Bundesrat. Detuning thread can judge from office only in exceptional cases and only after the implementation of very complex procedures [10].

Analysis of the norms of the German legislation on the judicial system in Germany indicates a special concern of the legislator ensuring independence of the judiciary and individual judges in particular. Kazakh lawyers say: effective safeguards of judicial independence so much that almost anyone not concerned about the situation in which the judges shall be appointed by the Minister of Justice, as it incumbent on the judge to appoint a citizen to go through all the difficult steps of sufficient education and training, which went through a trial period, received a positive recommendation from the judges specially chosen body (presidential Council), etc. in this case, the focus is not on a competitive selection process in Kazakhstan and careful training judicial candidate. With a large number of candidates for judge is expedient to use the experience of Germany, significantly increasing demands on candidates for judgeships.

#### REFERENCES

1. Constitutional Law of the Republic of Kazakhstan dated December 25, 2000 <sup>1</sup> 132 "On the Judicial System and Status of Judges". "Bulletin of the Parliament of the Republic of Kazakhstan", 2000. On February 23, pp: 410.
2. Decree of the President of Kazakhstan dated 23 September 1993 <sup>1</sup> 1352 "On the State program of priority measures to combat crime and strengthen the rule of law in the Republic of Kazakhstan for 1993-1995" // CSE "Legislation".
3. The Constitutional Law On Judicial System and the Status of Judges in the Republic of Kazakhstan, dated 25 December 2000.
4. Smykalin, A., 2001. The judicial system of Russia in the beginning of XX century. Russian justice.
5. The status, procedure of formation and organization of the activity of the Supreme Judicial Council and the Qualification Collegium of Justice are determined by the Law On Supreme Judicial Council, dated 28 May 2001 and the Law On Qualification Collegium of Justice, dated 1 July 2001.
6. Daniel John Meador, 1991. American courts. -Saint Paul. Minnesota West Publishing Company, S., pp: 544.
7. German Law on Judges, 1993. Bonn.
8. Commercial laws of Kazakhstan March 2010 An assessment by the EBRD.
9. European Union-Kazakhstan Civil Society Seminar on Human Rights Judicial System and Places of Detention: Towards the European Standards Almaty, 29-30 June 2009.
10. Kazakhstan Judicial Assistance Project. ANNUAL REPORT 2006. November 1, 2006. This publication was produced for review by the United States Agency for International Development. Chemonics International Inc. produced its contents.