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ISSUES OF IMPROVING THE JUDICIAL SYSTEM AND THE RULE OF LAW OF THE REPUBLIC OF KAZAKHSTAN

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The formation, functioning and development of an independent judiciary is one of the priorities of a democratic and legal State. Such State is based primarily on two basic principles: the rule of law and the division of State power into branches (legislative, executive and judicial). It should be noted that the principle of the rule of law will not be fully implemented if the judicial authorities do not occupy a worthy position in the mechanism of state power. This undoubtedly suggests that the autonomous and independent position of the judiciary is necessary for its normal functioning and reform.

The judicial system is one of the main components of the foundations of the state, one of the levers of the democratic development of the country on the path of social, economic and political modernization. The principle of separation of the branches of government and their interaction serves as a guarantee of the democracy of the state mechanism.

The attitude of citizens to the state legal policy and the level of trust in the authorities largely depend on the quality of the administration of justice. A strong and independent judiciary is one of the fundamental guarantees of harmonious interaction between the state and civil society, the main tool for protecting the constitutional rights of citizens[1]. It is necessary to increase the demands on the current judges and candidates for this position, and consider increasing the age from which a citizen can be appointed a judge.

The judicial power in the Republic of Kazakhstan performs a number of important functions, the legal foundations of which are enshrined in the Constitution. These functions characterize the judiciary, first, as an independent branch of state power, second, as a system of state bodies with a particular mechanism of checks and balances in relation to other branches of government, third, as a state power, operating on the basis of specific principles, forms and methods, fourth, as the organs administering justice [2].

Ideally, the judiciary should perform the function of deterrence, restriction of the legislative and executive branches of government, legal control of their activities. This function is conditioned by the very essence of the judiciary, which is called upon to administer justice. Justice in a broad sense is an activity aimed at establishing compliance of the behavior of all citizens, the activities of all state bodies from top to bottom, all non-governmental organizations with the law, legal regulations. Consequently, we can talk about justice only when the judiciary has the legal ability to evaluate the activities of state bodies from the point of view of the current law.

This function is expressed, firstly, in the fact that the courts must verify the applicable legal norms with the norms of the Constitution of the Republic of Kazakhstan. The judicial power in Kazakhstan functions in accordance with the Constitution of the Republic of Kazakhstan dated August 30, 1995, article 75 (part 4) of which establishes: "The judicial system of the Republic is established by the Constitution of the Republic and the constitutional law" [3]. The Constitutional Law of the Republic of Kazakhstan dated December 25, 2000 No. 132 "On the judicial system and the status of Judges of the Republic of Kazakhstan" defines the structure of the judicial system, the judicial system and the status of judges, as well as the main issues of the administration of justice in the Republic of Kazakhstan [4].

Courts should not apply laws and other normative legal acts, no matter what body they are adopted, if they contradict the Constitution. The Constitution of the Republic of Kazakhstan states that if the court finds that a law or other normative legal act subject to application infringes on the rights and freedoms of a person and citizen enshrined in the Constitution, it is obliged to suspend the proceedings and apply to the Constitutional Council with a submission on the recognition of this act unconstitutional. This right is granted to all courts, both local and the Supreme Court, and is actually used by them as a mechanism to restrain unconstitutional rulemaking, both by Parliament and other state bodies with the authority to adopt regulatory legal acts.

Noting the exceptional importance of the function of restraining and limiting the rule-making activities of the legislative and executive authorities, it should be said about the incompleteness of this function. The Constitution of the Republic of Kazakhstan recognizes a person, his life, rights and freedoms as important values of the state. Therefore, the restraint and restriction of actions of the legislative and executive branches of government that infringe on the constitutional rights and freedoms of citizens, follow from the constitutional provision. After all, the courts are also called upon to protect the state as a whole. Analyzing the constitutional provisions, it can be established that the interests of the state must also be protected in court. Moreover, the interests of the State can be protected both by applying to the Constitutional Council and by declaring organizational and practical measures aimed at infringing on the interests of the State unconstitutional.

Therefore, under the current conditions, it is necessary to give constitutional powers to the Supreme Court of the Republic, creating a Constitutional Chamber under it to consider claims about the compliance of the above-mentioned acts of state bodies with the Constitution, etc. The real judicial power may arise as a result of the acquisition of qualitatively new functions by the court, which will raise its authority carrying out fair justice. Speaking of this, believe that we should rely on the experience of foreign countries. Almost all over the world there are courts for the protection of the country's Constitution. The courts of the USA, Russia, Kyrgyzstan, Uzbekistan, Turkey, Pakistan differ from the courts of other countries not only in the separation of powers, but also in the right of constitutional supervision. For example, there are no separate constitutional courts in the United States, any court at the federal or state level can decide on the constitutionality or unconstitutionality of an act or decision of the executive branch, if it is necessary to make a decision on the case under consideration. Believe that we also have a real need to endow the Supreme Court of the Republic of Kazakhstan with additional functions or to painlessly create a Constitutional Court of the Republic on the basis of the Constitutional Council of the Republic of Kazakhstan [5].

Thus, the courts must protect the fundamental principles of the state: social harmony and political stability, economic development for the benefit of the whole people, Kazakh

patriotism, democratic methods of public life. Criminal, administrative and civil legislation provides for measures applied against persons who attempt to violate these principles. This is based on article 39 of the Constitution that any actions capable of violating interethnic harmony are recognized as unconstitutional. The courts must also protect the sovereignty of the republic. There are internal and external sovereignties. Consequently, actions are possible both inside and outside, aimed at limiting, infringing on the sovereignty of the republic. In certain cases, such actions may become the subject of judicial review.

The specifics of the judiciary is the procedure established by law for the administration of justice. This procedure is strictly regulated. The main purpose of this is to ensure that a lawful, reasonable and fair decision is made.

Abdrasulov E.B. notes that in the law enforcement activities of state bodies to ensure the effective impact of legal norms on public relations, a huge role is assigned to the judicial system, which acts as the bearer of judicial power, and courts (judges) are the elements from which the judicial system is built. This is especially relevant for the modern stage, characterized by a rapid process of formation and development of the rule of law, institutions of a democratic society, strengthening of guarantees for the exercise of political, economic, social rights and freedoms of citizens.

Many State bodies partially or fully perform a human rights function, but it still does not reflect their social role and purpose. The judicial power has a pronounced law enforcement character, as a result of which the judicial form of protection of rights and legally protected interests is the most detailed and regulated in detail. The activity of the court for the protection of rights is called justice, while the activity of other bodies for the same protection is not justice. This emphasizes the fundamental difference between justice and other forms of protection of rights and interests, which ensures effective observance of civil (personal), political, economic, social and cultural human rights [6].

The increasing role of the court in society, the recognition of the independence of the judiciary at the constitutional level objectively requires theoretical justification and development of state policy in the field of justice.

Judicial power at the present stage of development of the Republic of Kazakhstan is based on the ideas of legal statehood, placing emphasis on the democratic principles of the long-term development of the judicial system.

The unity of the judicial system is the most important principle governing the organization of judicial power in the Republic of Kazakhstan. This principle is based on the provisions of section 8 of the Constitution of the Republic of Kazakhstan and article 1 of the Constitutional Law of the Republic of Kazakhstan dated December 25, 2000 No. 132 "On the judicial system and the status of judges of the Republic of Kazakhstan".

The judicial system of the Republic of Kazakhstan consists of the Supreme Court of the Republic of Kazakhstan and local courts established in accordance with the Constitution and the said constitutional law. The Supreme Court of the Republic of Kazakhstan and local courts constitute a single judicial system. The stability of the judicial system of Kazakhstan is expressed in the fact that the creation of any courts other than those directly provided for by the Constitution and constitutional laws on the judicial system, in other words, extraordinary courts is not allowed, it is directly prohibited by the Constitution of the Republic of Kazakhstan.

Paragraph 4 of Article 75 of the Constitution of the Republic of Kazakhstan of August 30, 1995 provides for a ban on the establishment of special and extraordinary courts, under

whatever name. At the same time, the analysis of section VII "Courts and justice" of the Constitution of the Republic of Kazakhstan shows that the activities of specialized courts are not prohibited, since there is no provision for them. Consequently, the solution of this issue is delegated to the constitutional laws. And, first of all, the Constitutional Law "On the judicial system and the status of Judges of the Republic of Kazakhstan" allows the creation of specialized courts that must meet the requirements that ensure the unity of the judicial system of the Republic. One of the current trends in the development and reform of the judicial system of the Republic of Kazakhstan is the further course on the specialization of courts. This provision is also provided for by the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, which stipulates that "the main vector of development of the judicial system is the specialization of courts and judges ...".

With the development of a democratic state, in which progressive changes are taking place, it is necessary to pay great attention to improving the level of information and legal support for judicial activities, by expanding the boundaries of openness, transparency of judicial proceedings and other types of judicial activities.

The judge is the bearer of judicial power in the State. He is constitutionally empowered to administer justice on a professional basis. All judges have equal status and legal standing. Depending on which part of the judicial system judges work in, they differ only in competence. Judges in the Republic of Kazakhstan are independent and irremovable. In addition, in the administration of justice, they must be impartial and rely only on the law in their decisions. S.A. Akimbekova believes that impartiality is a quality, the essence of which is the requirement of an unbiased and fair attitude to each subject of legal proceedings [7].

Serious concern is caused by the frequent violations of the current legislation by judges. In accordance with article 39 of the Constitutional Law of the Republic of Kazakhstan "On the Judicial system and the Status of Judges of the Republic of Kazakhstan", a judge may be brought to disciplinary responsibility for committing a disciplinary offense. A disciplinary offense is a culpable act (inaction) in the performance of official duties or in off-duty activities, as a result of which the provisions of this Constitutional Law and (or) the Code of Judicial Ethics were violated, which resulted in the diminution of the authority of the judiciary and damage to the reputation of the judge.

A judge may be brought to disciplinary responsibility:

- 1) for gross violation of the law when considering court cases;
- 2) for committing a defamatory offense contrary to judicial ethics.

The said law does not explain what is meant by a gross violation of the law by a judge. In this regard, it is necessary to regulate this rule, which provides for the responsibility of a judge in the administration of justice. Proceeding from the above, it is proposed to introduce amendments and additions to the content of the norm under consideration, which will serve as an additional guarantee of an objective and impartial review of court cases [8].

In order to implement the original idea of forming the composition of the Council as foreign experts and legal scholars, the Council is proposed in the Law of the Republic of Kazakhstan "On the Supreme Judicial Council of the Republic of Kazakhstan" from

December 4, 2015 No. 436-V to provide for the possibility of including individual representatives of the Scientific Advisory Council and the International Council at the Supreme Court of the Republic of Kazakhstan. Noting the importance of the position of the Chairman of the Supreme Court of the Republic of Kazakhstan, it is necessary to establish special

conditions for appointment to this position, when choosing, paying attention to extensive practical experience, significant work experience as a judge, significant achievements in the development of the judicial system.

The proposed measures to improve the norms of Kazakh legislation in the field of courts and the judicial system will provide a guarantee for an objective and impartial approach to the requirements imposed on judges, courts and the judicial system as a whole.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ МЕМЛЕКЕТТІК БИЛІК ИНСТИТУТТАРЫНЫҢ ҰЙЫМДАСТЫРЫЛУЫ

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Ғылыми жетекші: Ботагарин Р.Б. - Академик Е.А. Бөкетов атындағы Қарағанды университеті, конституциялық және халықаралық құқық кафедрасының қауымдастырылған профессоры.

Әр мемлекеттің өзіне тән, ортақ көрінісі – бұл мемлекетті ұйымдастыруда және мемлекеттік құрылымында өзіне ғана тән үйлесімді ерекшеліктің болуы, осыған байланысты мемлекеттің аумағы оның ішкі құрылысын анықтайтын құрамды бөлшектерге бөлінеді. Сол аумақтық құрылымның көлемінде мемлекеттік аумақтық бөлшектерінің жүйесі қалыптасады. Мемлекет құрылымы – мемлекет нысанының екінші элементі. Бұл ұлттық, мемлекеттік қатынастарды, әкімшілік-аумақтық жүйені, олардың ерекшеліктерін бейнелейді, соның ішінде конституциялық құрылым бұл – сол елдің