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30-YEARS OF INDEPENDENCE OF THE REPUBLIC OF KAZAKHSTAN AND ACTUAL ISSUES OF THE COURT SYSTEM

This article reveals some theoretical and practical problems concerning the judicial system of the Republic of Kazakhstan. It is noted that the judicial system is currently at the stage of modernization. The judicial system is called upon to protect human rights, restore justice, and impose fair penalties. The level of public confidence in the state power as a whole depends on the quality of the judicial power.

The purpose of this article is to reveal the process of improving the judicial system of the Republic of Kazakhstan. At the same time, consider the main directions of modernization of the judicial system. These are the improvement of legislation, the creation of specialized courts, and increasing the authority of judges. The article analyzes the provisions of the new administrative procedural code. According to the authors, it is necessary to improve constantly the skills of judges in various areas of public life. It is concluded that the judicial power in Kazakhstan should be strong, independent, authoritative, competent, professional. This is the main challenge that facing the State now. The results of this article are significant both in theoretical and practical terms.

Key words: court, judicial system, modernization, justice, authority of the judiciary, three-tier model of justice.

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Қазақстан Республикасының 30 жылдық тәуелсіздігі және сот жүйесінің өзекті мәселелері

Бұл мақалада Қазақстан Республикасының сот жүйесіне қатысты кейбір теориялық және практикалық мәселелер ашылады. Қазіргі уақытта сот жүйесі жаңғырту сатысында тұр. Сот жүйесі адам құқықтарын қорғауға, әділеттілікті қалпына келтіруге, әділ жаза тағайындауға арналған. Қоғамның жалпы мемлекеттік билікке деген сенім деңгейі сот билігінің сапасына байланысты.

Осы мақаланың мақсаты – Қазақстан Республикасының сот жүйесін жетілдіру процесін ашу. Бұл ретте сот жүйесін жаңғыртудың негізгі бағыттарын қарастыру қажет. Бұл заңнаманы жетілдіру, мамандандырылған соттар құру, судьялардың беделін арттыру. Мақалада жаңа әкімшілік рәсімдік іс жүргізу кодексінің ережелеріне талдау жүргізілді. Авторлардың пікірінше, судьялардың қоғамдық өмірдің әртүрлі салаларында үнемі біліктілігін арттыру қажет. Қазақстанда сот билігі күшті, тәуелсіз, беделді, құзыретті, кәсіби болуы керек деген қорытынды жасалды. Бұл – мемлекет алдында тұрған басты міндет. Бұл мақаланың нәтижелері теориялық және практикалық тұрғыда өте маңызды болып табылады. Сот билігі азамат пен мемлекет арасындағы, адам мен адам арасындағы қоғамдық қатынасты мемлекеттік биліктің заңдылығы мен әділдігін бейнелейтін символ ретінде мемлекеттік басқарудың ең маңызды, қажетті буындарының бірі болып табылады.

Түйін сөздер: сот, сот жүйесі, модернизация, сот төрелігі, сот билігінің беделі, сот төрелігінің үш буынды моделі.

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30 лет Независимости Республики Казахстан и актуальные вопросы судебной системы

В данной статье раскрываются некоторые теоретические и практические проблемы, касающиеся судебной системы РК. Отмечается, что судебная система в настоящее время находится на этапе модернизации. Судебная система призвана защищать права человека, восстанавливать справедливость, назначать справедливые меры наказания. От качества судебной власти зависит уровень доверия общества к государственной власти в целом.

Цель данной статьи – раскрыть процесс совершенствования судебной системы Республики Казахстан. А также рассмотреть основные направления модернизации судебной системы, а именно совершенствование законодательства, создание специализированных судов, повышение авторитета судей. В статье был проведен анализ положений нового административного процедурно-процессуального кодекса. По мнению авторов, необходимо постоянное повышение квалификации судей в различных областях общественной жизни. Сделан вывод о том, что в Казахстане судебная власть должна быть сильной, независимой, авторитетной, компетентной, профессиональной. Это главная задача, которая стоит сейчас перед государством. Результаты данной статьи значимы как в теоретическом, так и в практическом плане. Судебная власть является самым ключевым звеном государственного управления, олицетворяющим законность и справедливость государственной власти.

Ключевые слова: суд, судебная система, модернизация, правосудие, авторитет судебной власти, трехзвенная модель правосудия.

Introduction

The topic of scientific research of problems on further improvement of judicial system of the Republic of Kazakhstan was chosen due to the need of illustrating the most urgent and promising issues in the field of activities of the courts of the Republic of Kazakhstan. The problems of further improvement of the judicial system are of the greatest relevance, primarily due to the need of increasing the authority of the judicial power and strengthening public confidence in it. It is well known that the state of development of the judicial system is a measure development and safety level of the state and society itself. The topic of scientific research is challenging due to the lack of solid scientific research in this field.

The object of this research is the judicial system of the Republic of Kazakhstan. The subject of the research is the activities of the judicial authorities of the Republic of Kazakhstan.

The goals of the research are to highlight the specifics and features of the activities of the courts, reviewing the innovations in their activities in this area.

The objectives of the scientific research are to identify and reveal the content and specifics of the activities of the judicial authorities in the Republic of Kazakhstan, to reveal the problematic aspects of the activities of the courts that impede the implementation of effective justice, to reveal innovations in this area, to establish directions for further improving of activities of the judicial power.

During the course of writing this scientific work the following scientific research methods were applied: general methods (observation, comparison, description), general scientific methods (dialectical method, system analysis method), statistical method, formal legal method, and also comparative legal method. The following scientific approaches were also applied: systemic and structural-functional approaches

In the course of this research the following was unveiled:

- judicial body – the leading body of the state, the law enforcement instance that administers justice, possessing a set of multifaceted and comprehensive powers to resolve conflict situations, protects human rights and freedoms, the specifics of the activities of which are quite extensive.

- Among the most important functions of the judicial power is the law enforcement function aimed at restoring violated rights and protecting the rights and interests of citizens.

The constitutional development of Kazakhstan is based on the ideas of a legal, democratic, social state. These ideas were consolidated in the Constitution of the Republic of Kazakhstan. Article 1 of the general law maintains the desire of Kazakhstan to establish itself as a rule of law (Constitution, 1995).

The process of improving the country's legal system is underway in the Republic of Kazakhstan. A number of important legislative acts have been adopted, which contribute to the progressive development of state and public institutions, ensuring sustainable socio-economic development of Kazakhstan. The main directions of such improvement were determined in the Concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 (Concept of legal policy, 2009).

It should be noted that the Concept is a document of strategic importance. There the main ideas of the reformatory nature are reflected.

The idea of the rule of law means the consolidation of a person, his life, his rights and freedoms as the most important value for the state and the society. One of the conditions for the development of the rule of law is the development of a public administration system based on an effective legislative framework.

It should be noted that the core value is a person, his life, his rights and freedoms. Let us emphasize that human rights and freedoms are subject to protection in all spheres of the state. Almost all democratic states recognize that rights and freedoms are the most important social, political and legal institution. It is human rights that are the criterion of achievement and an indicator of the maturity and civilization of the society. The creation of an effective mechanism for the protection of human rights is the main task of the state. The state power is divided into three branches. The judicial branch occupies a special place. The judicial system is aimed to protect human rights, restore justice, and impose fair penalties.

The level of public confidence in the state power as a whole depends on the quality of the judicial power. The judicial system is currently at the stage of modernization (Bakytzhanova, 2020).

The main directions of such modernization are carried out in several directions. These are the improvement of legislation, the creation of specialized courts, strengthening the authority of judges. It should be noted that the issues of improving

the judicial system are revealed in scientific works from the history, theory and practice prospective (Ablaeva, 2020), (Shukenova Z., Alimbekova M., 2014).

Main part

The features of justice as the most efficient mechanism of protection of human rights

Human rights and freedoms are the universal values of the society and the state. Human rights are one of the important priorities of the activities of international organizations (UN, OSCE, UNESCO, UNDP) and other organizations.

One of the most popular mechanisms for protection of human rights is the protection of a legitimate interest by contacting the competent authority (court, prosecutor's office, internal affairs bodies, anti-corruption bodies) (Abdrasulov Y.B., Abakassov M.S., 2014).

In the human rights protection issue the special place is given to the judicial system of the state. The Court is the most important body for human rights protection and justice. Justice is a type of state activity carried out by the court based on the Constitution of the Republic of Kazakhstan and the current legislation of the Republic of Kazakhstan, associated with litigation in various areas of law.

The administration of justice is entrusted by the society and the state exclusively to the judicial power. The justice is the mechanism for ensuring the rights and freedoms of the individual. The Constitution of the Republic of Kazakhstan stipulates that justice is administered only by the court (clause 1 of article 75 of the Constitution of the Republic of Kazakhstan). The administration of justice is exercised in the form of decision-making on the issues of protection and implementation of human and citizens' rights, government bodies and organizations. The judges who administer justice are independent and report exclusively to the law.

In other words, the justice can be characterized as the law enforcement activity of courts aimed at considering and resolving civil, criminal, administrative, investment disputes. At the same time, justice is a strictly regulated activity based on the principles of legality, publicity, transparency, fairness, competition and equality.

We would like to note that Russian scholars consider justice inseparably from the concept of the rule of law (Bayev V.G., Meshcheryakova S.V., 2014).

We believe that this judgment is especially noteworthy. Indeed, if there is the rule of law the

independent justice exists, and ultimately there is public confidence in the protection of their rights through the system of courts.

Continuing this thought, let us turn to the constitutional norms. So, in paragraph 2 of article 13 of the Constitution of the Republic of Kazakhstan, the right of everyone to judicial protection of their rights and freedoms is guaranteed. In the Republic of Kazakhstan, the judiciary is recognized as an independent branch in the system of state bodies. That is why courts do not belong to the law enforcement agencies. Although, by their intended purpose, the courts protect and defend human rights and restore the violated justice.

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On May 21, 2007 the amendments and additions were introduced to the Constitution of the Republic of Kazakhstan, which further strengthened the importance of the judicial power, according to which the right of the court to issue a warrant for arrest and detention was enshrined. Without a court's sanction, an arrested person can be detained for a period not exceeding 72 hours (paragraph 2 of article 16 of the Constitution of the Republic of Kazakhstan) (Constitution, 1995). Thus, the special role and efficiency of the courts in the issue of protection of human rights and freedoms was directly secured in the constitutional norms.

Nowadays the courts of the Republic of Kazakhstan are assigned the main role in ensuring and protecting of human rights. The legal science of Kazakhstan pays special attention to the process of improving the judicial system. Accordingly, the role of the legal education system is growing. The development of legal science and legal education is analyzed in special studies of leading Kazakhstani scientists (Ibrayeva, A., Usseinova, G., Tursynkulova, D., 2018), (Ibrayeva A., Kassymzhanova A., Otyshiyeva A., Yergali, A., Seifullina A., 2018).

Let's emphasize some features of the courts of the Republic of Kazakhstan.

Only in the court the state in form of its bodies can be attracted as a defendant. At the same time,

the state bodies must be legal entities – paragraph 1 of art. 43 Code of Civil Procedure of the Republic of Kazakhstan.

The state may also bear responsibility in the highly developed states and international human rights courts. For instance, according to the European Convention for the Protection of Rights and Fundamental Freedoms, the European Court of Justice is entitled to review complaints in connection with the violation of the right to life, to liberty and personal security, to freedom of thought, conscience and religion, to freedom of expression, to free movement and choice of residence, etc. (Convention, 1950).

In this regard, it should be emphasized that the court is an independent body among others from the state and its bodies.

2) The court is entitled to review any case related to its jurisdiction. This provision underlines the special role and the status of the courts. According to paragraph 1 of article 14 of the Constitution of the Republic of Kazakhstan each and all is equal before the law and the court. In other words, the courts have the feature of exclusiveness. The administration of justice can only be carried out by the court.

3) Openness of proceedings in civil and criminal cases in all courts and court's instances (Article 29 of the Code of Criminal Procedure of the Republic of Kazakhstan, Article 19 of the Code of Civil Procedure of the Republic of Kazakhstan), the judicial acts are announced publicly (Criminal Procedure Code, 20). The mass media has the right to attend court hearings. Openness and transparency in the activities of the courts points to the democratic beginning of the legal proceedings.

4) Immediate fulfilment of the enacted court acts (court orders, decisions, rulings, decisions) throughout the territory of the Republic of Kazakhstan (Resolution, 2003). It should be noted that the approved and enacted court decisions bear the signs of bindingness and indisputability.

5) Sovereignty of the courts. The judge, while delivering the justice, is independent, obeys only the Constitution and the law, no interference in the activities of the court while delivering the justice is permitted and this may lead to liability under the law, and in specific cases, judges are non-accountable (paragraphs 1, 2 of Article 77 of the Constitution of the Republic of Kazakhstan).

6) Resolution of a specific case by the courts and restoration of violated benefits, rights and freedoms. Citizens go to court for judicial protection and restoration of their violated rights and freedoms. Judicial power is administered only by the court

(paragraph 1 of article 75 of the Constitution of the Republic of Kazakhstan). The judicial power is a special branch in the system of checks and balances on the principle of separation of powers, since it influences the executive and legislative branches of the government by resolving disputes and complaints on the actions of these bodies and their officials.

7) Exercising of judicial control and supervision over the activities of courts by the Supreme Court of the Republic of Kazakhstan. It is carried out by the Supreme Court of the Republic of Kazakhstan in the following forms:

- by adoption of normative decisions on the issues of judicial practice;
- by adoption by the Supreme Court of the Republic of Kazakhstan of orders defining the main directions and prospects of the activities of courts and judges;
- consideration of candidates for the positions of chairmen and chairmen of judicial collegiums of local and other courts and the Supreme Court of the Republic of Kazakhstan (Suleymenova).

The Control over the activities of the judicial power is also exercised through the prosecutorial supervision (Omiralay, 2010).

Nowadays the functions of the prosecutor are being strengthened. Thus, the amendments and additions were made to the Law of the Republic of Kazakhstan dated June 30, 2017 "On the Prosecutor's Office". The subparagraph 1) of Article 13 is set forth in the following version: "When exercising supervision over the legality of enacted judicial acts, the prosecutor, in the manner and within the limits established by law: 1) requests criminal, civil, administrative cases and cases of administrative offenses from the court, for which judicial acts entered into legal force, as well as materials on the execution of the sentence, examines the legality of the adopted acts and, if there are grounds, protests them". These changes come into force on July 1, 2021 (Law, 2017).

8) Law-enforcement function of the courts' activity. It is the courts that are empowered to resolve issues within their competence through constitutional, civil, criminal, administrative and arbitration proceedings in compliance with procedural rules, creating guarantees of legality and fairness of decisions taken by the courts (Kasymov).

9) The law enforcement function of the courts' activity, which is defined as the established experience of legal regulation of public relations and aimed at the legal resolution of the case. Judicial enforcement has especially become more effective

in connection with formation of specialized courts (economic, administrative, financial, juvenile) in the Republic of Kazakhstan.

10) The most important social feature of the judicial power is objectivity and impartiality.

The justice is not possible if the court is biased. Nobody has the right to influence a judge. This principle was secured in article 77 of the Constitution of the Republic of Kazakhstan. Thus, the judge is independent, while administering of justice, he subordinates only to the Constitution of the Republic of Kazakhstan and the Law. Any interference to the activities of courts in the administration of justice is unacceptable and entails liability under the law. Judges are not accountable on specific cases (Constitution, 1995).

It must be recognized that today in many modern states there is still no effective justice that could protect a person from encroachments on his rights and freedoms, from the arbitrariness of the authorities, from interference in his life, rights and freedoms. There are also problems of ineffectiveness of justice in the Republic of Kazakhstan. All this leads to a low level of citizens' confidence in the courts.

"Under the same conditions, judges often accept different decisions, this causes a negative reaction in society, information is spread that all courts are corrupt," – said the Head of the state, speaking at a meeting on the modernization of the judicial system (Tokayev 2020).

It should be noted the presence of corruption offenses among the judiciary. For example, the arrest of a judge of the Supreme Court of the Republic of Kazakhstan upon receiving a large sum of money was a real blow to the judicial image. President of Kazakhstan K. Tokayev mentioned the case of receiving a bribe by a judge of the Supreme Court as flagrant and called on the leadership of the court to draw conclusions (Tokayev 2020).

Thus, it can be concluded that human rights can only be ensured through the implementation of effective justice. It should be noted that a special feature of justice – its focus on the fair resolution of disputes and the harmonization of public relations.

Some problems preventing implementation of effective justice in Kazakhstan

Today, a lot of criticism is turned to the activities of the courts in the Republic of Kazakhstan. Earlier in the Republic of Kazakhstan the legal reform was underway, but we can say that it was not fully implemented, since the goals of the judicial reform were not achieved, and many of its provisions mainly remained declared and unachieved (Omiralay 2010).

There are many obstacles on the way of implementation of an efficient justice. The judicial power needs further reforming. One of the problems hindering the implementation of efficient justice in Kazakhstan is the high degree of workload of judges.

In this regard, new methods, new institutions of supporting the judges are required. Mr. Alimbekov M.T. argues about this in his scientific work. He believes it is necessary to found in Kazakhstan the institute of assistant of judges. The institute of assistant of judges is highly developed in many countries. "Their responsibilities would include the study of cases and other materials received for consideration, preparation of analytical, informational and reference materials that are necessary for the judges to make decisions, control of the work of the secretary of the court session" (Alimbekov 2009).

The Chairman of the Supreme Court of the Republic of Kazakhstan J. Asanov emphasizes that the workload on judges has doubled over the past five years. For example, in Nur-Sultan and Almaty, judges make decisions on 16 cases every day (Asanov).

And further, the Chairman of the Supreme Court of the Republic of Kazakhstan Zh.K. Asanov emphasizes that citizens appeal every fifth civil case and every third verdict. Let's turn to the statistics. According to the official statistic information the number of decisions made in civil cases by district and equivalent courts in relation to the number of registered cases has increased for 12 months of 2020.

In this regard, we would like to note that the introduction of the institute of assistants to the chairmen of judges and assistant of judges (or the organizer of the trial) may have a positive impact on the organization of the work of judges. In this case, the judge will only focus only on the study of the legal case. Judicial Assistants will contribute to the efficient use of office time and contribute to the administration of effective justice in general. Today the institute of assistant judges exists in many developed countries, such as the USA, Russia, France, England, Italy.

In 2018, a pilot project "Judge's Assistant" was introduced in Nur-Sultan, within the framework of which assistants appeared at the district courts of Nur-Sultan. 29 assistants of judges were selected from among the current professional civil servants of the court from the internal pool (Satayeva, 2018).

Analysis of foreign sources demonstrates a positive attitude of judges to the institution of assistants. Thus, Russian judges believe that

their success is 90% depends on the work of their assistants. At the same time, the key skill for an assistant of judge is the ability to correctly apply the rules of law, to quickly find the rules that regulate these particular legal relations. We would like to emphasize that a good lawyer is not the one who knows all the rules, but the one who knows where to find the relevant rules. An important skill for an assistant of judge is the ability to track all changes in the field of law enforcement. Also, the assistant must be aware of changes in legislation, the formation of judicial practice (Shukenova2014).

In general, in the Republic of Kazakhstan, the institution of assistant of judges needs legislative consolidation, practical regulation and further improvement.

Another problem in the implementation of effective justice is increasing of the authority of judges. Now the mass media have published a lot of materials that negatively affect the authority of the judiciary. This is especially concern the corruption in the judicial power. In open internet sources many materials have been published about the corruption of judges, undermining the image of the judicial power. Many of these materials are unreliable and biased. All this negatively affects the judicial power and its authority. In Kazakhstan, the judicial power must be strong, independent, authoritative, competent, and professional. This is the main goal facing the state now (Alimbekova 2019).

Another problem for the judiciary is the further improvement of the professional qualifications of judges. Today, the cases that are considered in courts affect various spheres of public life among them are technological areas, IT, new technologies and digitalization, issues of intellectual property protection. For a full and detailed examination of incoming cases in this area, judges should improve skills and knowledge. We believe it is necessary to advance skills of judges in various areas of public life.

Innovations in judicial power

In general, the process of improving the activities of the judicial system continues in Kazakhstan. Among the innovations in the activities of courts can be attributed to the expansion of the specialization of courts. In order to improve the investment attractiveness, the expansion of the specialization of courts was carried out.

Investment litigation was established on January 1, 2016. For instance, to ensure the protection of investments at the Supreme Court, a specialized collegium was created to review disputes with the participation of large investors.

The International Council was formed in the judicial system of Kazakhstan, which includes competent experts and scientists who are qualified to give opinions while reviewing the investment disputes.

It should be noted that according to the Decree of the President of the Republic of Kazakhstan dated January 10, 2018, specialized investigative courts were organized in the Republic, which started to function on July 31, 2018.

According to Article 55 of the Code of Criminal Procedure of the Republic of Kazakhstan, the jurisdiction of investigating judges includes issues on authorizing investigative actions, including consideration of petitions and submissions from pre-trial investigation bodies, as well as other participants involved in the course of the criminal process listed in part 2 of Article 55 of the Criminal Procedure Code RK.

The Code of Criminal Procedure of the Republic of Kazakhstan contains norms aimed at ensuring judicial protection of the rights, freedoms and legal interests of individuals and legal entities. The novelty is that complaints about actions (inaction) and decisions of the prosecutor, criminal prosecution bodies are considered by the investigating judge. Article 106 of the Criminal Procedure Code of the Republic of Kazakhstan/

Despite all the above features, it is necessary to outline the changes occurring today in the activities of the courts. On June 10, 2020, the President of the Republic of Kazakhstan has signed the Law of the Republic of Kazakhstan “On Amendments and Additions to the Civil Procedure Code of the Republic of Kazakhstan on the Implementation of Modern Forms of Courts’ Operation, Reduction of Excessive Court Procedures and Costs”. The adopted amendments are aimed at improving the format of the courts’ job, the work on modernizing of the activities of courts continues, the court costs and court procedures are being reduced.

According to innovations, the main task of the courts is to resolve the conflict between the parties. The law gave the judge more powers to reconcile the parties and seek consensus in the current dispute. It was the judge who was given the responsibility for searching the truth, he must be active in resolving the case, he must ask more clarifying questions, show common sense and logic. Previously, judges were limited within the framework of the materials provided to them on the case.

In the context of the innovations, for the first time judges on their own initiative are empowered to take measures to collect case materials, to verify the

validity of the parties’ arguments, all these measures are aimed at overall and objective resolution of the court case.

Due to innovations, after the announcement of the decision the judge is obliged to clarify the legal basis for the decision, further digitalization of the trial is taking place, video conference communications means are widely used to transmit and receive information from the participants of the process – Skype, WhatsApp, Zoom, trials are conducted online. All introduced amendments are aimed at ensuring that the laws comply with new realities of life.

Moreover, in 2021, under instruction of the President of the Republic of Kazakhstan K. Tokayev, introducing of three-tier model of justice with a clear division of powers is planned in Kazakhstan. The essence of the three-tier model is as follows. In this model, three links are responsible for the criminal process: the police, the procurator and the court. Each of the powers of these three bodies is clearly delineated. Each of these authorities creates a filter through which each case must pass before it goes to the next body.

Major changes are being introduced to the system of administrative courts and administrative justice. It should be noted that the administrative courts were created in 2004 and they review the cases of administrative offenses and challenging decisions of bodies or officials authorized to consider such cases. That means that the administrative courts are currently focused on reviewing of administrative cases on the basis of the Code of Administrative Offenses.

We would like to note that the Code of Administrative Offenses regulates relations on the observance of public order and the prevention of offenses. This means that this code does not regulate the procedure for resolving of disputes between an individual and the state. We would like to note that all public law disputes in the court are regulated by the norms of the Civil Procedure Code of the Republic of Kazakhstan.

However, in civil proceedings, the court is procedurally passive, exempted from collecting evidence on its own initiative and bases its decision only on the evidence, participation in the study of which was provided on an equal basis by each of the parties.

That is why it has been necessary to adopt a new Administrative Code. The purpose of the new Code is regulation of order for carrying out of administrative procedures, internal administrative procedures of the state bodies, as well as the procedure for resolving

disputes in the field of public legal relations. Earlier, there was no such code in Kazakhstan. This Code is called the Administrative Procedural Code. This legislative act was adopted by the Parliament of the Republic of Kazakhstan on June 29, 2020 and it shall be enacted on July 1, 2021 (Administrative Procedural Code).

While analyzing the provisions of this Code, the following innovations can be distinguished.

1. This code has combined in itself the norms of the currently acting Laws of the Republic of Kazakhstan “On Administrative Procedures” and “On the Procedure for Considering Applications of Individuals and Legal Entities”. Also, after enactment of this Code, a number of norms of the Civil Procedure Code of the Republic of Kazakhstan will be terminated, including chapters 27-29, as well as the norms of other codes and laws, For instance, the Administrative Code, the Code “On Taxes and Other Mandatory Payments to the Budget” and many others. The staff of judges of administrative courts will increase, where disputes in this area of legal relations will be considered, as well as in the appellate board for civil cases. A new specialized cassation board of the Supreme Court will appear (Pan N.)

Also the most recent in the administrative process from the point of view of law enforcement are the institutions of mediation, amicable agreement. This was not possible until recently. For instance, the tax authorities had to litigate till the final court’s instances, if the decision was not in their favor.

2. The Code specifies a separate administrative form of legal proceedings. It should be pointed out that noted that the special litigation, expressed in the Code of Civil Procedure does not reflect the public law nature of such cases. That is why the cases on public rights should not be considered in the civil proceedings, where the parties are equal. Whereas in administrative legal relations, a private person is in an unequal position to the state. Therefore, the new Code will regulate the relationship of citizens with non-governmental organizations and individuals. For instance, with national companies, private bailiffs, private notaries. In other words, those subjects to whom part of the state powers are delegated and who have some regulatory and executive authority and administrative functions.

3. According to the Code on Administrative Procedure, administrative procedures and administrative court proceedings will be carried out based on the uniform principles. Let’s point out some principles:

- the principle of the priority of rights. In other words, all doubts, contradictions and ambiguities of the legislation on administrative procedures should be interpreted in favor of a participant in the administrative procedure;

- prohibition of abusing the formal requirements. This principle prohibits to the administrative body, an official from refusing to implement, restrict, terminate the right of a participant in an administrative procedure, as well as impose on him an obligation in order to comply with requirements not provided by law;

- protection of the right to confidence. This principle means that the trust of a participant in an administrative procedure in the activities of the administrative body and official is protected by laws;

- active role of the court. Let’s focus on this principle. Here, the court is not limited by explanations, statements, petitions of the participants in the administrative process, the arguments presented by them, evidence and other materials of the administrative case, comprehensively, fully and objectively examines all the factual circumstances that are important for the correct resolution of the administrative case. Also, the court may, on its own initiative or a motivated petition of the participants in the administrative proceeding, collect additional materials and evidence. The court has the right to express its preliminary legal opinion on the legal grounds related to the factual and (or) legal aspects of the administrative case. We qualify this principle as an novation, according to which the role of the court changes.

4. Within the administrative proceedings framework, the plaintiffs will be able to go to court with the following types of claims:

- claims for disputing with the requirement to cancel the administrative act in whole or in part;

- lawsuits for compulsion, according to which the plaintiff may require the adoption of a favorable administrative act, the adoption of which was refused or not accepted due to the inaction of an administrative body or an official;

- claims for the commission of an action, according to which the plaintiff may demand to take certain actions or refrain from such actions that are not aimed at the adoption of an administrative act;

- claims for recognition, in which the plaintiff can demand to recognize the presence or absence of any legal relationship.

5. Administrative cases will be considered by specialized district and equivalent to them administrative courts, while some categories of cases will be considered by the Supreme Court of

the Republic of Kazakhstan and the court of the city of Nur-Sultan according to the rules of the court of first instance.

6. According to the new Code, both state bodies and other subjects are recognized as entities vested with power. These are self-regulatory organizations based on compulsory membership, private notaries, private bailiffs, etc. In this regard, a new legal category “administrative body” is established, which is recognized as any organization vested with power by law.

7. The main distinctive feature of the new type of legal proceedings of the administrative the civil – will be the strengthening activity of the court in the evidence-gathering process. According to this principle, the court will find out the circumstances of the case, regardless of the parties’ petitions. In this case, the burden of proving will be vested on the body that adopted the legal decision, with the exception to certain cases (for instance, while filing a claim on compelling the administrative body to make a certain decision).

Conclusion

The purpose of this scientific research is to study the current state of affairs in the activities of the courts in the Republic of Kazakhstan, to consider the specifics of the judicial power, as well as to consider issues of further improving of their activities.

It should be pointed out that nowadays in the Republic of Kazakhstan there are many transformations aimed at improving functioning of their activities, in particularly, a lot of attention was paid to the introducing of preventive measures that facilitate the resolution of disputes without bringing them to court.

The results obtained during the course of this research:

- An independent justice is closely interrelated with the rule of law, which in turn is a guarantee that citizens feel confident in the protection of their rights and freedoms in the courts. As statistics show, there are more than a million cases are considered in the courts every year in Kazakhstan.

- Justice is characterized as the law enforcement activity of the courts aimed at considering civil, criminal, administrative, investment disputes, the main principles of which are openness, transparency, fairness, competition, equality.

- The paper highlighted the features inherent exclusively to the courts in the Republic of

Kazakhstan, which include: the possibility of bringing state bodies to court as a defendant, the possibility of considering any issue by the courts related to its jurisdiction, openness of court proceedings, prompt execution of judicial acts that have entered into force, independence of courts, restoration of violated benefits, rights and freedoms, supervision by the Supreme Court of the Republic of Kazakhstan.

- During the research the following main problems were revealed in the activities of the courts’ work: a high degree of workload of courts, which negatively impacts the implementation of effective justice, problems of increasing the authority of judges, improving the professional qualifications of judges. Undoubtedly, due to the efforts of the Head of State of the Republic of Kazakhstan, all conditions are provided for the effective functioning of the courts in Kazakhstan. However, despite this, there are still some problems.

Conclusions made during this research study:

- The efficient operation of the courts’ activities depends on many factors. Taking into account the ongoing digitalization of the work of the judicial power in the Republic of Kazakhstan, the introduction of new technologies, we note that the state continues to pay close attention to improving the work of the courts. Nowadays, due to the efforts of the Head of the State, all conditions are created for functioning of the activities of the courts. According to international indicators, Kazakhstan has risen from 78th to 68th place in the “Independence of Courts” index in the Global Competitiveness Index. According to the polls conducted on the study of the professionalism of the work of the courts, about 12 thousand respondents were interviewed in the Republic of Kazakhstan in 2015. The general level of satisfaction of the respondent with the activities of the courts was 71.3%. This is a good indicator.

- The republic has recently undergone many changes in the field of courts’ activity. Innovations were made to the Civil Procedure Code of the Republic of Kazakhstan, in terms of strengthening the status of a judge in the search for truth, focus on objective resolution of disputes, and resolution of cases. Judges began to have broad powers than they had previously.

The results and conclusions obtained as a result of this research work can be applied while further improvement of the activities of the courts in the Republic of Kazakhstan.

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