



## Some issues on improving the judicial system of the Republic of Kazakhstan

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**Abstract.** This article discusses some issues related to improving the judicial system of the Republic of Kazakhstan. It is emphasized that the judiciary occupies a special place in the mechanism for protecting human rights. The importance of the category of justice for the judicial system is considered, the norms of the current legislation are analyzed, and it is concluded that the term “impartiality of judges” means justice.

Justice is impossible if the court is biased, and accordingly, biased justice gives rise to unfair decisions and leads to a low level of citizens' trust in the state as a whole.

The article also discusses such a problem as the high workload of judges, and it is proposed to introduce the institution of assistant judges. The legal experience of foreign countries in which the institute of judicial assistants operates is analyzed. World practice shows that assistant judges directly contribute to improving the quality of the administration of justice.

Particular attention is paid to the process of expanding the specialization of courts. An analysis of the administrative form of legal proceedings is carried out, as well as the provisions of the new Administrative Procedure Code.

In conclusion, this article concludes that the judicial system must be stable and conservative, and a unified judicial practice must be formed.

**Key words:** judicial system, human rights, fairness, justice, institute of assistant judges, specialization of judges, conciliation procedures, administrative process.

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## Introduction

The constitutional development of Kazakhstan is based on the ideas of a legal, democratic, social state. These ideas were enshrined in the Constitution of the Republic of Kazakhstan. Article 1 of the Basic Law enshrines Kazakhstan's desire to establish itself as a law-governed state. [1].

The idea of a law-governed state means securing a person, his life, his rights and freedoms as the most important value for the state and society. We emphasize that in a democratic state there must be an effective mechanism for protecting rights and freedoms on the part of the state.

Creating an effective mechanism for protecting human rights is the main task of the state. In modern world practice, the constitutions of democratic states enshrine the principle of dividing state power into three branches. This division is aimed at preventing abuse of power by government bodies, professionalizing the actions of civil servants, and creating effective government bodies that society trusts. The constitutional reform, which began in 2022, affected the entire state mechanism. And, above all, the judicial system. Because the level of public trust in government as a whole depends on the quality of the judiciary.

Let us note that in the "Concept of Legal Policy until 2030" dated October 15, 2021, Section 5 stipulates that the key criterion for the effectiveness of law enforcement agencies and their employees will be the degree of public trust. This is especially coming to public trust in the judicial system [2].

In the process of constitutional reform and in order to create the most effective mechanism for the protection of human rights, the Constitutional Court was created. Although this body is not part of the judicial system, its powers are also aimed at protecting human rights. Every citizen of the Republic of Kazakhstan can contact this body if he believes that a normative legal act does not comply with the Constitution of the Republic and directly affects his rights and freedoms enshrined in the Constitution.

Thus, the judiciary occupies a special place in the mechanism for protecting human rights. All over the world, when it comes to protecting human rights, the focus is on the judicial system. The main goal of the judicial system is to protect human rights, restore justice, and impose fair penalties. Accordingly, in a democratic state special attention is paid to improving the judicial system. The judicial system has been reformed. This is the introduction of specialization of courts, increasing the status of courts and judges, a new system for selecting judges, and the introduction of conciliation procedures. Let us note that the legal science of Kazakhstan pays special attention to the process of improving the judicial system [3].

## Research methods

In preparing this study, a scientific review of domestic and foreign sources was carried out, also an analysis of the norms of current legislation was carried out. In the research process, universal scientific methods such as dialectical, analysis and synthesis, induction and deduction were used. General methods such as comparative legal, systemic, structural and functional were

also used. The combination of these methods made it possible to objectively and fully disclose this topic, draw certain conclusions, and develop recommendations and proposals.

## **Discussion and Results**

Human rights and freedom are universal values of society and the state. Let us note that in the theory of law, human rights are understood as his possibilities of action. At the same time, we emphasize that human rights are recognized as absolute, inalienable, natural and, accordingly, the state, as the main political institution, undertakes to protect and ensure human rights.

In the issue of protecting human rights, a special place is given to the judicial system. The court is the most important government body carrying out activities for the protection of human rights and justice. Justice is a special type of state activity carried out by the court on the basis of current legislation. Justice is always associated with legal proceedings in various spheres of public life. We emphasize that the administration of justice is entrusted by society and the state exclusively to the judiciary. According to the Basic Law, the Courts of the Republic are the Supreme Court of the Republic, local and other courts of the Republic established by law. The establishment of special and emergency courts under any name is prohibited in Kazakhstan. In this regard, the opinion of scientists E.E. Duisenov and A. Zh. Shpekbaev that the judicial power is established by the Constitution and, accordingly, cannot be eliminated or transformed without changes to the Constitution itself is fair. [4:153].

From the point of view of legal theory, the main thing in the judicial process is the search for truth, the definition of justice. The concept of justice is a philosophical and ethical category. Law in determining justice is based on assessing the actions of an individual from the point of view of moral and moral categories. In jurisprudence, one of the meanings of this term is the compliance of the act with punishment. In public life, justice is understood as a balance of interests and rights of a person, acceptance of his individual qualities and behavior.

Let us turn to the ideas of the ancient Greek thinker Aristotle. He proposed a definition of justice as equal treatment, but only for equals. And accordingly, on the contrary, unequal treatment, but only for unequals. Thus, Aristotle connects justice with the principle of equality [5].

According to academician M.K. Suleymenov “by justice we can understand moral ideas about fair behavior in the exercise of subjective civil rights that have developed in society and are recognized by law, customs and judicial practice” [6].

In our opinion, justice in law means achieving a compromise between the interests of individuals, social groups and their values. That is why law and justice are inseparable and complement each other. And even more, justice is the main idea of law.

Let's turn to the norms of current legislation. The category of justice is enshrined in Article 7 of the Constitutional Law “On the Constitutional Court of the Republic of Kazakhstan” as follows. Judges of the Constitutional Court after their appointment take an oath and undertake to be impartial in their activities, to obey only the Constitution of the Republic of Kazakhstan, to ensure its supremacy [7].

In this case, the term “impartiality” means fairness. Accordingly, the judges of the Constitutional Court in their decisions search for justice and consolidate this idea at the highest level.

Article 39 of the Criminal Code of the Republic of Kazakhstan stipulates that punishment is applied in order to restore social justice. Article 52 of this Code stipulates that a person found guilty of committing a criminal offense is given a fair punishment, within the limits established in criminal law [8].

Let us turn to the provisions of the Criminal Procedure Code. So, in Art. 8 stipulates that one of the main objectives of the criminal process is a fair trial. And further, Part 2 of Article 57 of this Code stipulates that the judge presiding over the case must take all measures to ensure a fair hearing of the criminal case. Let us note that the term “justice” is mentioned 12 times in the Criminal Procedure Code [9].

Let us turn to the norms of the Code of the Republic of Kazakhstan “On Administrative Offences”. Thus, part 2 of Article 55 of this act stipulates that an administrative penalty must be “fair, consistent with the nature of the offense, the circumstances of its commission, and the identity of the offender.” The judge evaluates the actions of the subjects. According to Part 1 of Article 844 of this Code, the judge, having recognized the administrative penalty imposed by the resolution as unfair due to its excessive severity, not corresponding to the nature of the offense committed, the identity of the perpetrator or the property status of the legal entity, mitigates the penalty, guided by the general rules for imposing an administrative penalty[10].

In this norm, justice is the requirement to take into account the nature of the offense, the circumstances of its commission, as well as the identity of the offender. Thus, the concept of justice is enshrined in law, but at the same time this category is associated primarily with the activities of the judiciary.

We believe that justice is an evaluative category closely related to the concept of morality. We especially note that the principle of justice can be fully realized with a high level of legal awareness and legal culture of citizens and society as a whole, as well as with the effective functioning of democratic institutions.

Let us note that Russian scientists propose to consider justice inextricably from the concept of the law-governed state, arguing that these are paired legal categories [11].

We believe that this judgment deserves attention. Indeed, where there is a law-governed state, there is independent justice, and, ultimately, there is public confidence in the protection of their rights through the court system.

Justice is impossible if the court is biased. Of course, the bias of justice gives rise to unfair decisions. This ultimately leads to a low level of citizen trust in the state as a whole.

Head of State K. Tokayev, speaking at a meeting on modernization of the judicial system, noted: “Judges, under the same conditions, often make different decisions, this causes a negative reaction in society, information that all courts are corrupt is spread” [12].

Thus, we can conclude that human rights can only be ensured if effective and objective justice is implemented. It is necessary to note a special feature of justice - it is aimed at the fair resolution of disputes and the harmonization of social relations.

There are many obstacles to the implementation of effective justice. One of the problems hindering the implementation of effective justice in Kazakhstan is the high workload of judges.

In this regard, new methods and new institutions for supporting judges are needed. The Chairman of the Supreme Court of the Republic of Kazakhstan (2010-2011) Professor M.T.

Alimbekov discusses this in his scientific work. He believes that it is necessary to establish an institute of judicial assistants in Kazakhstan. The institution of judicial assistants is very developed in many countries. "Their responsibilities would include studying cases and other materials received for consideration, preparing analytical, information and reference materials that are necessary for judges to make decisions, monitoring the work of the secretary of the court session" [13].

Scientists note that the workload on judges has doubled over the past five years. For example, in Astana and Almaty judges make decisions on 16 cases every day [14].

An analysis of foreign sources shows a positive attitude of judges towards the institution of assistants. In Russia there is an institute of assistant judges, established by the law "On the State Civil Service of the Russian Federation". A judicial assistant is a federal government employee. He holds a leading position in the apparatus of the arbitration court. He must have a higher legal education and at least two years of experience in public service in senior positions or at least four years of experience in his specialty. From a procedural point of view, an assistant judge is a person who facilitates the administration of justice [15].

Russian judges believe that 90% of their success depends on the work of their assistants. At the same time, the key skill for an assistant judge is the ability to correctly apply the rules of law and quickly find the rules governing these particular legal relations. Let us note that a good lawyer is not one who knows all the rules, but one who knows where to find the relevant rules. An important skill for an assistant judge is the ability to monitor all changes in the field of law enforcement. Also, the assistant must be aware of changes in legislation and the development of judicial practice [15].

There is no institute of assistant judges in the Kazakh judicial system. However, world practice shows that assistant judges directly contribute to improving the quality of the administration of justice

We believe that today in Kazakhstan there is a real need to introduce the institution of judicial assistants. The introduction of this institute into Kazakhstan's legal proceedings will improve the professional level of court personnel. We emphasize that the legal status of an assistant judge must be regulated on a legislative basis [16].

In Kazakhstan, the judiciary must be strong, independent, authoritative, competent and professional. This is the main task now that state faces.

In general, the process of improving the activities of the judicial system continues in Kazakhstan. Among the innovations in the activities of courts is the expansion of specialization of courts. One of the objectives of this expansion of the specialization of judges is to improve the investment attractiveness of Kazakhstan for foreign investors.

To ensure the protection of investments, a specialized panel was created at the Supreme Court to consider disputes involving large investors. Since January 1, 2016, legal proceedings on investment disputes have been in effect. An International Council has also been created, which includes authoritative experts and scientists who are competent to give opinions when considering investment disputes.

Currently, judges are given more powers to reconcile the parties and find consensus in the current dispute. It is the judge who is entrusted with the responsibility for searching for the

truth, he must be active in resolving the case, he must ask more clarifying questions, show common sense and logic. In connection with the innovations, judges in civil proceedings, on their own initiative, can take measures to collect case materials and verify the validity of the parties' arguments. All these measures are aimed at a complete and objective resolution of the court case. Let us note that after the decision is announced, the judge is obliged to explain the legal basis of the decision made and the purpose of this decision. This judicial interpretation is necessary for a common understanding of the essence of the court decision.

Currently, further digitalization of the judicial process is taking place; video conferencing, digital means for transmitting and receiving information from participants in the process - Skype, WhatsApp, Zoom - are widely used. To ensure that all participants in the process can actively participate, trials are conducted online. All these innovations are aimed at improving the functioning of the judicial system.

A three-tier model of justice with a clear division of powers is being introduced in Kazakhstan. In this model, three links are responsible for the criminal process: the police, the prosecutor and the court. Each of the powers of these three bodies is clearly delineated. A kind of legal filter is created through which each case must pass before it goes to the next body for consideration.

The Republic of Kazakhstan adopted the Administrative Procedural Code of the Republic of Kazakhstan. The purpose of the new Code is to regulate the procedure for carrying out administrative procedures, internal administrative procedures of state bodies, as well as the procedure for resolving disputes in the field of public legal relations. Previously, there was no such code in Kazakhstan. The Code was adopted by the Parliament of the Republic of Kazakhstan on June 29, 2020 and came into force on July 1, 2021 [17].

Also new from the point of view of law enforcement in the administrative process is the expansion of the use of the institution of mediation and settlement agreement. This institute has not been used before.

The Code establishes a separate administrative form of legal proceedings. Let us note that the special claim proceedings reflected in the Civil Procedure Code do not reflect the public legal nature of such cases. That is why cases of public rights should not be considered in 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 regulates the relationships of citizens with non-governmental organizations and individuals. For example, national companies, private bailiffs, frequent notaries. That is, with those entities to which part of the state powers is delegated and who have some power and administrative functions [18].

The active role of the court is manifested in the administrative process. Let's pay attention to this principle. Here the court, not limiting itself to explanations, statements, petitions of participants in the administrative process, the arguments, evidence and other materials of the administrative case presented by them, comprehensively, fully and objectively examines all the factual circumstances that are important for the correct resolution of the administrative case. The court may also, on its own initiative or at a reasoned request from participants in the administrative process, collect additional materials and evidence. The court has the right to express its preliminary legal opinion on legal justifications related to the factual and (or) legal aspects of the administrative case. We qualify this principle as an innovation, according to which the role of the court changes.

Administrative cases are considered by specialized district and equivalent administrative courts. A new legal category “administrative body” appears in administrative law. An administrative body is any organization vested with authority by law.

Thus, based on this analysis, we believe it is possible to draw the following conclusions.

1. From the point of view of legal theory, the main thing in the judicial process is the search for truth, the definition of justice. The concept of justice is a philosophical and ethical category. Law in determining justice is based on assessing the actions of an individual from the point of view of moral and moral categories. In our opinion, justice in law means achieving a compromise between the interests of individuals, social groups and their values. Justice is the main idea of law.

2. Further development of electronic legal proceedings is necessary, as well as the introduction of artificial intelligence to search for judicial acts and predict the outcome of court cases.

3. It is necessary to continue work on the specialization of courts. This is due to the expansion of social relations requiring legal regulation. In the future, it is possible to create family courts. Currently, issues of family relations are considered within the framework of juvenile courts.

4. We believe it is necessary to comprehensively study the issue of electing judges. The scientific literature proposes to introduce elections of judges by the people. Such a democratic system will significantly improve the objectivity of judges and eliminate their dependence on the executive branch. The judiciary must be separated from the executive.

## Conclusion

The analysis of a number of foreign and domestic sources allows us to conclude that the judicial system of the Republic of Kazakhstan operates on a professional basis. A legislative framework has been created, the main ideas of the judicial system are enshrined in the Constitution and constitutional laws. The independence of the judicial branch of government is legally established. In the future, it is necessary to continue work to establish the rule of law and the administration of justice at a high professional level by highly qualified judges.

The judicial system must be stable and conservative, and a unified judicial practice must be formed.

## The contribution of the authors

Shukenova Zh. carried out the collection and analysis of scientific articles on this topic, carried out the systematization of normative material, prepared a translation, a list of references.

Kassymzhanova A. prepared the main content of the article, summarized previous research, determined the methodology and scientific novelty of the article.

Bekturganova A. prepared materials of legal practice, recommendations on the research topic, prepared an introduction and conclusion.

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### Қазақстан Республикасының сот жүйесін жетілдірудің кейбір мәселелері

**Аңдатпа.** Мақалада Қазақстан Республикасындағы сот жүйесін жетілдіруге қатысты кейбір мәселелер қарастырылады. Адам құқықтарын қорғау тетігінде сот билігі ерекше орын алатыны аталады. Сот жүйесі үшін әділеттілік санатының мәні қарастырылған және қолданыстағы заңнаманың нормалары талданып, «судьялардың бейтараптығы» деген термин әділдікті білдіреді деген қорытынды жасалды.

Егер сот біржақты болса, сот төрелігі мүмкін емес, сәйкесінше сот төрелігінің біржақты болуы әділетсіз шешімдерді тудырады және азаматтардың жалпы мемлекетке деген сенімінің төмендеуіне әкеледі.

Сондай-ақ, мақалада судьялардың жүктемесінің жоғарылығы мәселесі қарастырылып, судьялардың көмекшілері институтын енгізу ұсынылады. Судьялардың көмекшілері институты жұмыс істейтін шет елдердің құқықтық тәжірибесі талданады. Әлемдік тәжірибе көрсеткендей, судьялардың көмекшілері сот төрелігін жүзеге асыру сапасын арттыруға тікелей ықпал етеді.

Сот ісін жүргізудің әкімшілік нысанына, сондай-ақ жаңа Әкімшілік рәсімдік-процестік кодекстің ережелеріне талдау жүргізілді.

Мақаланың қорытындысында сот жүйесі тұрақты және консервативті болу қажеттігі, сонымен қатар бірыңғай сот практикасының құрылуына қатысты қорытынды жасалды.

**Түйін сөздер:** сот жүйесі, адам құқықтары, әділеттілік, сот төрелігі, судьялардың көмекшілері институты, судьялардың мамандануы, татуластыру рәсімдері, әкімшілік процесс.

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### Некоторые вопросы совершенствования судебной системы Республики Казахстан

**Аннотация.** В данной статье рассматриваются некоторые вопросы, касающиеся совершенствования судебной системы Республики Казахстан. Подчеркивается, что в механизме защиты прав человека особое место занимает судебная власть. Рассматривается значение категории «справедливость» для судебной системы, анализируются нормы действующего законодательства, сделан вывод о том, что термин «беспристрастность судей» означает справедливость.

Правосудие невозможно, если суд является необъективным, и соответственно, необъективность правосудия порождает несправедливые решения и приводит к низкому уровню доверия граждан к государству в целом.

Также в статье рассматривается такая проблема, как высокая загруженность судей, предлагается ввести институт помощников судей. Анализируется правовой опыт зарубежных стран, в которых действует институт помощников судей. Мировая практика показывает, что помощники судей непосредственно способствуют повышению качества отправления правосудия.

Особое внимание уделяется процессу расширения специализации судов. Проводится анализ административной формы судопроизводства, а также положений нового Административного процедурно-процессуального кодекса.

В заключении данной статьи сделан вывод о том, что судебная система должна быть стабильной и консервативной, должна быть сформирована единая судебная практика.

**Ключевые слова:** судебная система, права человека, справедливость, правосудие, институт помощников судей, специализация судей, примирительные процедуры, административный процесс.

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