

There are answers of the Kazakhstan association of judges to the questionnaire of 1st research commission about the status of judicial authority and judicial administration

THEME: How and what degree, specialization of courts and judges influences independence of judicial system.

1. A question: Is there in your country,

a) the specialized courts, considering cases with certain categories of affairs

There is an answer. The following specialized courts have been established and are working in Kazakhstan:

Specialized military courts (judges - civilians);

Specialized interdistrict economic courts;

Specialized administrative courts;

Specialized financial court;

Specialized interdistrict courts on criminal cases;

Specialized interdistrict courts on affairs of minors and others.

Nowadays the expediency of creation of specialized tax courts is being studied.

There is an explanatory. According to the Constitution of Kazakhstan (article 75) justice in Kazakhstan is carried out only by court. The judicial system of the Republic is established by the Constitution and the Constitutional law «About judicial system and status of judges of the Republic of Kazakhstan».

The judicial system of Kazakhstan is made by the Supreme Court, the local and other courts established according to the Constitution and the named Constitutional Law according to article 3 of the Constitutional Law «About judicial system and status of judges of the Republic of Kazakhstan». The establishment of special and extreme courts under any name is not supposed. Local courts concern: 1) the courts regional and equal to them (city court of capital of the Republic, city courts of cities of republican value); 2) the courts regional and equal to them (city court, interdistrict court). Other courts, including specialized courts (military men, financial, economic, and administrative, on affairs of minors) and others can be established in Kazakhstan.

In distinction from the special courts specified in point 4 of article 75 of the Constitution, the specialized courts provided by point 3 of article 3 of the Constitutional Law «About judicial system and status of judges of the Republic of Kazakhstan», are a component of uniform judicial system of Kazakhstan.

Specialized courts in Kazakhstan have some characteristics following from the requirement of the Constitution: specialized courts enter in uniform of judicial system of Kazakhstan as local courts; their place in judicial system (equality to regional or other local courts) is defined by constitutional law; justice in specialized courts is carried out by means of civil, criminal and others established law of forms of legal proceedings: jurisdiction of specialized courts is established by law; possibility is provided of revision judicial decisions with reference to specialized courts.

As courts of appeal and supervising instances are acting both corresponding specialized courts, and other courts, including the Supreme Court of Kazakhstan; Organizational-legal construction and departure of judgment in specialized courts are based on legal norms, excluding possibility of infringement of constitutional human rights and the citizen on judicial protection of the rights and freedom, and also equality of all before the law and court.

b) Whether judges for consideration of certain categories of the affairs working in courts of law (specialization of judges) are defined

Please, describe various types of specialized courts and judges.

There is an answer. Types of specialized courts and feature of their specialized work correspond to their names: specialized military courts; specialized interdistrict economic courts; specialized administrative courts; specialized financial court; specialized interdistrict courts on criminal cases; specialized interdistrict courts on affairs of minors.

There is an explanatory. Specialized military courts are less numbered and small. In warships judges are not military men and civilians. In the country debate about their liquidation is regularly conducted, others consider that features of a military contingent, circuitor character on administration of justice on bodies demand some specialization.

There are types of subject specialization of judges. Under the order of the corresponding chairman of the court among judges in courts of law on the first instance, and also among judges appeal, cassation and supervising (the Supreme Court) instances is applied the following subject specialization:

Family law; questions of juvenile justice;

Administrative law, liability of infringement of the customs, financial legislation;

The obligations following from harm, including life and to health of the citizen;

The national and international legislation in sphere of preservation of the environment; questions of withdrawal of the ground areas for the state needs; the disputes following from activity of mass media;

The land right; the disputes connected with an establishment of the facts, having legal value;

The legislation on insurance; the legislation on elections; administrative responsibility for fulfillment of the offences encroaching on the person, on public safety and population health, on a public order and morals, offences on transport and communication;

The legislation on bankruptcy, administrative liability of infringement of tax laws; disputes on application of the legislation on transfer pricing; the questions connected with occurrence, execution, maintenance of execution of the obligation, liability of infringement of the obligation and its termination;

The labour legislation; questions of serving law-enforcement and public service;

Tax laws; application of the legislation on licensing;

The general questions of application of the constitutional and international norms in civil-law relations; contest of legality of standard legal certificates, actions (inactivity) of public authorities, officials and civil servants;

Procedural right (questions of appeal, cassation and supervising manufactures, questions of revision of judicial certificates on again opened circumstances); corporate disputes; the Alternative resolution of disputes (arbitration, the arbitration courts, mediation, reconciliation); the international process;

The legislation on intellectual property (the copyright, the adjacent rights, trade marks, patents); administrative responsibility for infringements in the field of author's and (or) the adjacent rights; the legislation on protection of honour, advantage and business reputation of citizens and legal bodies; moral harm;

The bank legislation; the legislation on the state purchases; administrative responsibility for offences in the field of enterprise activity, trade and the finance, in the field of the industry, architecturally-building activity, preservation of the environment, use of natural resources;

The legislation on power savings, associations with the limited and additional responsibility; the antimonopoly law; administrative justice, questions of administrative responsibility for offences in the field of the press and the information encroaching on the established order of management, stay on the territories of Kazakhstan encroaching on institutes of the government, administrative corruption offences;

The housing legislation; the disputes connected with recognition of transactions void concerning habitation;

The law of succession; the legislation on a notariate; about executive manufacture, about provision of pensions;

Economic disputes; the tax laws, the taxation of subsoil user; the legislation on joint-stock companies;

The civil-law obligations arising from a various kind of contracts (including contracts of a bank loan, building подряда); the legislation on protection of the rights of consumers; disputes on property right protection etc.

In appeal courts, cassation and supervising (the Supreme Court) instances specialized structures: 1) on financial and economic disputes; 2) on civil-law disputes following: from the property right and obligations legal relations; from labour, marital-family, housing disputes, and also connected with the elective legislation, the legislation on insurance, contest of legality of standard legal certificates, actions (inactivity) of public authorities, officials and civil servants. 3) on administrative affairs etc.

There is an explanatory. Specialization of judges in a category of affairs at distribution is carried out in the automatic computer way taking into account stress of work among judges. Specialization is directed on qualitative and operative disposal of legal proceeding, a resolution of disputes and conflicts. When in courts of law there are a lot of cases, and also is great a category of homogeneous affairs (labour disputes, ground disputes etc.) function on specialization is disconnected, and affairs are directed to those judges, who are not so busy.

2. Whether any actions on increase in specialization of judges / courts in your country have been hold?

If the answer is positive, please, specify these arguments/facts.

The development of judicial-legal system is carried out on the basis of continuity and staged in following directions: «the basic vector of its development is specialization of courts and judges, including development of juvenile courts, creation of specialized courts on consideration of criminal cases, formation of tax and other specialized courts is in the long term possible according to the principles of the Concept of legal policy of the Republic of Kazakhstan for the period with 2010 till 2020, confirmed by Decree of the President of Kazakhstan.

The creation of system of the administrative justice considering publicly-legal disputes with transfer of affairs about administrative offences in jurisdiction of courts of law» is necessary in the future also on the basis of operating administrative courts.

Some specialized military courts have been established (to be exact are kept since the period of occurrence of the country in structure of the USSR) for the first time as specialized courts in some areas. Originally judges in warships the persons consisting on active duty have been appointed. Then the status of the judge of military court has been changed at legislative level then civil persons began to be appointed as judges. Then, **a specialized interdistrict military court** on criminal cases has been formed according to the Decree of the President from December, 29th, 2009 № 910 in the first capital of Kazakhstan.

The specialized interdistrict economic courts had been formed according to the Decree of the President from January, 16th, 2001 № 535 in the former capital of Kazakhstan and in one of the big areas – Almaty city and Karaganda area as experiment, authorized to consider economic disputes according to the current legislation, within the regular number confirmed for courts of the Republic of Kazakhstan. Then **the specialized interdistrict economic courts** have been established according to the Decree of the President from February, 9th, 2002 № 803 in cities of the regional centers, authorized to consider economic disputes according to the current legislation. Total there are 16 **specialized interdistrict economic courts** (150 units of judges) in Republic.

The specialized interdistrict administrative courts had been formed as experiment in former and existing capitals of Kazakhstan according to the decree of the President from February, 9th, 2002 № 803. Then according to the Decree of the President from September, 9th, 2004 № 1437 in the regional centers and big cities, **specialized administrative courts, and also specialized interdistrict administrative court** have been established in Karaganda city and the Karaganda area. They examine cases about administrative offences, about the sanction on arrest, and also about the appeal of actions of the authorized bodies about impleading for administrative offences. In total there are 27 **specialized administrative courts** and 5 **specialized interdistrict administrative courts** (only 125 units of judges) in Republic.

The specialized financial court equal to regional court has been formed according to the Decree of the President from August, 17th, 2006 № 158 in capital

of Kazakhstan, authorized to consider civil-law disputes of participants of regional financial centre of Almaty city according to the Republic of Kazakhstan legislation. Then the specialized financial court has been equal to district court (3 units of judges) by the Decree of the President from December, 29th, 2009 № 910.

Some specialized interdistrict courts on criminal cases have been established in cities of the regional centers according to the decree of the President from December, 29th, 2009 № 910. Also **the specialized interdistrict military court on criminal cases** has been formed in the first capital of Kazakhstan. Only there are 16 courts with regular number of judges of 72 units.

Some specialized interdistrict courts on affairs of the minors have been formed according to the Decree of the President from August, 23rd, 2007 in former and existing capitals of Kazakhstan, authorized to consider criminal cases, affairs about administrative offences concerning minors and the civil cases infringing on their interests according to legislation of the Republic of Kazakhstan. Then according to the Decree of the President of the Republic of Kazakhstan from February, 4th, 2012 № 266, 16 specialized interdistrict courts on affairs of minors have been formed in the regional centers of Republic. Total there are 18 specialized interdistrict courts on affairs of the minors which regular number makes 48 units of judges.

There is an explanatory. Apparently Kazakhstan gives more attention to specialization of courts in jurisdiction.

Last years in big cities on the first instance began to divide courts of law on civil and criminal (court № 1 and court № 2 corresponding territorial unit). It is convenient on application of subject specialization of judges, and also for visitors of courts and for a convoy of defendants.

Now the expediency of creation of specialized tax courts is being studied, the American and European experience is being studied.

As practice shows that the specialized courts are convenient in work both for citizens and for judges. Operatively and qualitative also disputes of citizens and legal bodies, and also criminal conflicts are considered, document circulation peculiar to given court. Uniform judiciary practice is fast developed, problems faster come to light and measures over their elimination are taken. Specialization of courts/judges demands from the judge regularly to deepen the knowledge and skills in narrower scope of application of rules of law.

3. Whether offers against increase in specialization of judges / courts in your country arrived?

If the answer is positive, please, specify these arguments/facts.

At discussion of questions on increase in specialization of courts the attention is given to specialization of courts partly increases expenses under the maintenance of additional buildings of the courts and additional administrative staff on management (administration) of courts.

4. How the question on specialization in judicial system (courts/judges) is considered:

a) by participation of specialized persons to become as a judge of specialized court.

During the competition on employment of a vacant post in specialized court the Higher Judicial Council considers features of knowledge of the candidate in the judge taking into account court specialization. For example, at formation by the Higher Judicial Council of personnel structure of the financial court, one of qualifying requirements for the candidate for the judge was the knowledge of English language and knowledge of activity of financial tools and institutes.

b) Specialized preparation

At courses of improvement of qualification not less than 1 time in 5 years, the working judge is trained, including specialization.

For judges of specialized courts the justice Institute prepares and realizes separate training programs taking into account specialization.

c) Employment of specialized persons for training of judges

Such practice is not present.

d) Other way/method.

In the first year of work as a judge, he chooses the mentor who helps him to adapt with work, including specialization.

There is an explanatory. Consideration of a question on specialization of courts, as a rule, is discussed at the international conferences and at Congresses of judges, in recommendations of conferences and the resolution of Congress of judges it is recommended to create corresponding specialized courts. The international experience and the developed judiciary practice of national courts are studied.

At definition of a person who will have a specialization, as a rule, depends on a wish of judges, but definition of specialization in the discretion of the chairman if on this category of affairs there are no wishing judges' practices also to adhere to specialization.

5. Career:

a) Whether is there in your country any judge who is engaged in disposal of legal proceeding of one category during long time (term)?

Specialization of the judge is not limited; there are examples of disposal of legal proceeding of one category within 25 years.

b) Whether the judge in other court considering absolutely other questions (a category of affairs) can pass?

There are separate facts when judges from civil board were directed to criminal board, and also from one specialized court in another specialized or in other court of law. Basically it happens at will of the judge, at his reference in the Higher Judicial Council on employment of a vacant post of the judge whose articles are published in the central mass-media.

6. In your opinion, whether specialization of courts/judges can affect independence of the judge or judicial authority? If it is positive then how?

As a whole the aspiration to maintenance of Leadership of the right is inherent in all courts and judges, irrespective of specialization. High specialization and high level of preparation of the judge, confidence of decision-making - we consider as additional making independence of judge/judicial authority at judgment decision.