

## STUDY COMMISSION 2

### PROPOSED QUESTIONS FOR 2013 MEETING

#### **TOPIC:**

Aspects of civil procedure:

- (a) access to justice for self represented litigants;
- (b) civil process reforms.

#### **Access to justice for self represented litigants**

1. What initiatives and reforms have been implemented in your Court to improve support services for self-represented litigants (“SRLs”) and/or to make the Court more accessible and user friendly?

One promising direction in achieving the transparency of the courts is to use the judicial system information kiosks in order to promptly provide members with information on the movement of proceedings of the case, read the adoption of judicial acts.

This information can be obtained with the help of the developed "Guide to Judicial Affairs ," which is part of the Unified Automated Information Management System of the judiciary of the Republic of Kazakhstan ( RK EAIAS CO ) . The Handbook clarified procedures for use of electronic information resource that provides an interface to query the state and Russian languages. Electronic directory of Judicial Affairs provides information on cases that do not contain state , commercial and other secrets protected by law . Open access is available judicial acts (decisions, verdicts ) considered in open court proceedings , as well as court records .

One of the important developments of the Department to ensure that the courts of the Supreme Court of the Republic of Kazakhstan ( the Department) is the introduction of receiving electronic claims, applications for the trial record in electronic form of comments on the report , sent through the portal of "electronic government" (e - court) .

For the purpose of expediting proceedings, exclusion of red tape and reduce paper work, the Department worked through the issue of introducing alternative (electronic) formats notices participants in the proceedings .

Order of the President of the Supreme Court of Justice of 27 July 2012 number 243 in the courts of the Republic implemented the system alerts the trial participants

about the time and place of the hearing or the commission of certain proceedings through messages sent via mobile subscriber number.

After working for the issue of implementing a notification of participants of proceedings by e-mail.

Single automated information- analytical system of the judiciary of the Republic of Kazakhstan, on the basis of which the notification system introduced participants in the proceedings via SMS-messages and / or e -mail address used to record the fact of delivery of the message to a specific mobile phone number or email address.

In order to create more accessible and supportive environment for people with a November 1, 2012, in accordance with the decree of the President of the Supreme Court enacted Contact Center of the judiciary.

Call center established to ensure:

- 1) Transparency and openness of the judicial system of the Republic of Kazakhstan;
- 2) The establishment of an effective system of interaction between the public and the judicial authorities of the Republic of Kazakhstan;
- 3) Obtaining parties in the proceedings and stakeholders and reliable information about the outcome of cases, the results and the timing resolution of complaints ( petitions) and applications brought before the courts .

The system offers a choice of a citizen:

- 1) To obtain background information on the appeals court decisions;
- 2) Leave the reference / complaint against the judges and court staff in the service of "Hotline";
- 3) make a personal appointment leadership of the Supreme Court of the Republic of Kazakhstan and the Department;
- 4) Ask questions about participation in public procurement;
- 5) Call on the issues that are the responsibility of the regional courts, followed by a switch statement in the respective regions .

2. What kind of training or guidance are the judges in your Court given on:

- Challenges and issues for judges in ensuring a fair trial for SRLs?

One of the necessary conditions for quality of justice is the development and efficient operation of the system of continuous updating of knowledge and competence of judges.

In order to improve mechanisms for training of judges by the Supreme Court in February 2012, the court approved the Strategy for Education of the Republic of Kazakhstan for 2012-2016 , which aims at improving the system of training for the judiciary and the training of judges .

One of the areas of judicial training is a refresher course for existing judges , organized by the Institute of Justice of the Academy of Public Administration under the President of the Republic of Kazakhstan . A number of studies aimed at improving the theoretical and professional level of judges through a thorough study of the current legislation , their acquisition of practical skills . The two-

week training courses are organized in accordance with the specialization of judges (civil, criminal, administrative).

In regional and equivalent courts established and successfully operate such institutions as centers of regional courts, where educational activities, in particular, training seminars, workshops, round tables are held to the subject matter specialization of judges with the corresponding analysis of judicial practice in the region and its relevance. The main field of study - the elimination of gaps in training and prevention of miscarriages of justice.

Professional development of judges on a permanent basis is provided and branches of the Union of Judges of the Republic of Kazakhstan by means of conferences, round tables, the organization of the judicial mentoring.

Supreme Court in the first half of 2013 approved the Rules of distance education of judges and judicial officers. In accordance with the Rules, distance education technology judges through internal portal EAIAS CO RK, through the study of educational materials, the use of video conferencing with regional and equivalent courts. The primary use of distance learning technologies is to provide students the possibility of development of educational programs directly to the place of residence of students, not their departure from their living areas.

Subject of the lectures is based on analysis and study of the needs of judges in training, statistics, judicial practice. The lecturers are mostly practicing judges, teachers of the Institute of Justice.

The legal basis of judicial education in addition to these are the provisions of the Rules of mentoring, passing on probation in the higher courts, on the training centers, the coordinator of the training programs of the regional courts, which are designed to meet the needs of the judges.

- Best practices in handling cases involving SRLs?

3. Do judges in your Court have powers to deter and prevent vexatious litigation? If so, how effective are those powers?

In accordance with Article 14 of the Constitution of the Republic of Kazakhstan are all equal before the law and the courts. This fundamental principle settled by Article 47 of the Civil Procedure Code of the Republic of Kazakhstan (RK Code of Civil Procedure), ie persons involved in the case have equal rights and duties, which leads to the prevention of vexatious litigation.

In addition, one of the measures to prevent vexatious litigation is to conduct audio-video recording of the trial, which disciplines the persons involved in the proceedings.

However, in case of violation of the order of actors in the proceedings, the judge is entitled to take the measures provided for in Article 179 of the CPC RK.

According to this article, a person who contravenes an order during the proceedings, the presiding officer on behalf of the court warns. For repeated violation of the order of a person involved in the case, may be removed from the courtroom by court

for the duration of the trial or a portion of it. In the latter case, the presiding familiar face once again allowed in the courtroom , with the procedural acts performed in his absence. Citizens who are not involved in the case and present in a proceeding for repeated violation of the order are removed from the courtroom on the orders of the presiding officer. In the mass violation of the order present in the proceedings the court may remove citizens from the courtroom all citizens not involved in the case , and consider the case in closed session or adjourn the hearing of the case.

Also, if a finding of contempt of court , in order to implement the constitutional principle of equality of all before the court and objectives of justice, the judge has the right to take the measures required standards of Article 121 of the CPC RK, ie raise the question of bringing to administrative responsibility.

If the actions of the offender order in the court there is evidence of a crime, the court shall send the materials to the prosecutor for a decision on the initiation of criminal proceedings against the offender.

4. Do you have any special instance or procedure, in which litigants are not allowed to be represented? Under what circumstances?

Judicial authority is exercised on behalf of the Republic of Kazakhstan and shall be intended to protect the rights, freedoms and legitimate interests of citizens and organizations.

Special instance or a procedure in which the plaintiffs can not be provided, the Act does not provide.

In accordance with paragraphs 4 and 5 of Article 187 of the CPC RK court may hear the case in the event of non-appearance of any of the persons involved in the case have been duly notified of the time and place of the hearing, if it finds the reasons for their failure to appear disrespectful. Also, the parties may in writing request the court to hear the case in their absence, and the time it makes a copy of the decision. A court may declare mandatory participation of the parties in the hearing, if necessary by the circumstances of the case.

In accordance with Articles 393, 398 Code of Civil Procedure of Kazakhstan, at the preliminary examination and consideration of substantive petition for review in the absence of a supervisory person who filed the petition (including the plaintiff), duly notified of the time and place of the application or the case is not eliminates the possibility of continuing the hearing.

## **Civil process reforms**

1. What civil reforms have been introduced:
  - to promote and improve access to justice
  - to promote and improve efficiencies in litigation
  - to reduce delays in hearing and determining cases
  - to reduce the costs of litigation

- to adjust procedure to the modern world of electronic media and the Internet?

Today justice in Kazakhstan has become more affordable , simplified , open and transparent. In recent years, there have been changes in the judicial system . In February 2012 , the Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of the Republic of Kazakhstan on improvement of appeal , cassation and supervisory order of cases , improve confidence and provide access to justice ." A number of changes and additions are conceptual in nature, are fundamentally changing some procedural institutions and streamline proceedings . Currently, the system of judiciary - is four-tier court system : the court of first instance , appeal and cassation board of the regional courts and supervisory board of the Supreme Court. The powers of the appellate court. In order to avoid red tape abolished institution sending the case for a new trial in the courts of first instance courts of appeal . With a partial court trial of first instance court of appellate jurisdiction to cancel the decision to take the case to the manufacture and complete its resolution on the merits within a month.

For prompt correction of judicial error in the field, more fully exploit the potential of the regional courts , the Act defined the appeal proceedings prerequisite to further appeal to the Supreme Court .

Review of cases in the order of supervision is exceptional. Challenging judicial decisions of local courts is permitted within one year from the date of their entry into force.

These changes in the judicial system contributed to the increased responsibility of the regional courts for the quality of a decision . The Law also provides for rules that eliminate redundant rules of procedure in the proceedings , which will reduce costs for citizens participating in the process and create additional conditions to ensure access to justice .

At the same time the Supreme Court in order to improve the efficiency of the judicial process is a lot of work on the application of advanced technology in the courts , in particular , equipping courtrooms systems technical fixing trial. To equip vessels of such equipment is to improve the quality of justice , due process rights of the participants of the process , an effective public control of civil society over the legality of the administration of justice , the achievement of a high degree of public confidence in the judicial system, as well as reducing time-consuming procedure.

In the High Court of the widely used video conferencing capabilities . Videoconferencing is used in legal proceedings with the hearing of a large number of witnesses living in other regions of Kazakhstan. In the future, deals with the use videoconferencing as part of cross-border cooperation.

One of the promising areas of optimization of the administration of justice , to achieve maximum transparency of proceedings is the application of information technology.

In 2004, we developed a concept of creating a single system for all vessels automation proceedings. Prior to 2007, has been developed , tested and

implemented in all the courts of the Republic of unified automated information - analytical system of the judiciary ( EAIAS CO RK).

Since 2010, work began on integration projects with the information systems of state bodies of the Republic of Kazakhstan and " e-government" .

As a result , to date, the courts of Kazakhstan have been receiving petitions , applications for a transcript of the hearing , the comments on court records filed in electronic format through the portal of "electronic government".

In order to ensure openness and transparency of the judicial process is taking steps to courtrooms hardware systems for audio and video recording of the trial , on the Internet site of the Supreme Court shall be published court decisions of the Supreme and local courts , operates the heading " Questions & Answers " , where visitors can be set their questions and receive answers from the staff of the Supreme Court.

One of the important future directions in achieving transparency of the courts is the use of the judicial system, information kiosks in order to promptly provide members with information on the movement of proceedings of the case, read the adoption of judicial acts.

For the purpose of expediting proceedings, exclusion of red tape and reduce paper work elaborated the question of introducing alternative ( electronic ) formats notices participants in the proceedings : Alert System participants in the proceedings of the time and place of the hearing or the commission of certain proceedings through messages sent via mobile subscriber number communication and / or email address.

On November 1, 2012 , in accordance with the instructions of the Chairman of the Supreme Court enacted Contact Center of the judiciary to resolve citizens' complaints received by telephone on the work of courts and judges.

Future directions for the expansion of the scope of application of electronic technology in the courts to define the concept of information to further the judicial system of the Republic of Kazakhstan , approved by decree of the President of the Supreme Court of the number 194 of 4 June 2011 .

2. To what extent are alternative dispute resolution (“ADR”) processes used within your court system to assist parties to resolve their disputes? Eg mediation, early neutral evaluation, settlement conferencing?

In order to reduce the number of disputes subject to judicial review , introducing alternative ways of resolving them.

Pursuant to the instructions of the Head of State Supreme Court draft law " On Mediation" and " On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of mediation " , which are signed by the Head of State January 28, 2011 .

Work to inform people about the possibilities of a new legal institution. On the Internet resources of regional and similar vessels for the citizens created columns devoted to the Law "On Mediation" . Organized by the extensive coverage of the

provisions of these laws in the national and regional media , to lecture classes at universities.

In 2012, the number of civil cases settled by alternative means (due to settlement agreement ) amounted to 9,730 cases , due to enter into the settlement agreement in the order of mediation - 122 cases . Considered 150 criminal cases involving a mediator.

For the first six months of 2013 with the participation of a mediator examined 475 civil cases and 955 criminal cases.

3. Do the judges receive any training in the skills of effective ADR processes?

In pursuance of paragraph 4 of Article 9 of the Law of the Republic of Kazakhstan "On Mediation " has been developed by the Supreme Court and the Government of the Republic of Kazakhstan approved a decree " On approval of rules -training program for training of mediators " from July 3, 2011 number 770. Rules of procedure for the preparation of a common set of professional mediators in the settlement of disputes ( conflicts) arising from civil , labor , family and other relationships, as well as in criminal cases small and moderate and issuance of certificates.

March 26, 2012 the Supreme Court of the Republic of Kazakhstan signed an agreement in the framework of the project "Implementation of mediation in the Republic of Kazakhstan " Development Program of the United Nations, 2012-2014 (UNDP ) "(hereinafter - the Project) . This project is funded by the budget together with the United Nations Development Programme in Kazakhstan.

The project is aimed at improving access to justice , particularly for vulnerable groups, through wider implementation of mediation in the Republic of Kazakhstan . In the course of training activities , including the development of standard training courses for mediators , regional trainings and seminars will be trained a group of professional and non-professional mediators and trainers. In particular, before the end of 2013 is planned for 50 and 10 trainers of mediators on mediation . Increased awareness and knowledge of the population about the possibilities of an out of court settlement of disputes will be achieved within the framework of the information campaign and the distribution of various information materials.

The project took two round tables in g.g.Astana and Almaty, as well as 4 regional information seminars for judges, law enforcement, local government offices , mediators in Astana, Shymkent , Atyrau and Almaty. In June 2012, organized a study trip to Singapore for the representatives of the Supreme Court , the Ministry of Justice and Mediation Center of Kazakhstan , at the end of November will be held in Astana international conference on mediation. At present, works on the competitive selection of the best training module for training of mediators and trainers and mediators.

In addition, to promote the development of mediation in the Republic of Kazakhstan , the Department for support of courts under the Supreme Court of the Republic of Kazakhstan implemented :

- Holding 30 November 2012 International Conference on the use of mediation with the participation of foreign experts in the field of mediation (Germany, Slovenia , Switzerland , Belarus and the EU) to discuss the problems and obstacles to the development of mediation in the Republic of Kazakhstan and the ways to address them , using survey the best international practices in the development of mediation ;
- Development and support of the interagency working group to conduct four regional workshops in g.g.Astana , Shymkent , Atyrau and Almaty with the participation of regional judges, representatives of local authorities , law enforcement agencies and NGOs;
- The development of a modular training course and a methodological guide for mediators in Russian and Kazakh;
- A review of international best practices in the training and certification of mediators. Making recommendations on the training of mediators and trainers in Kazakhstan , the preparation of criteria for certification of mediators in accordance with the best international standards. Development and coordination of the project modular training courses and manuals for mediators and trainers;
- Conducting three training seminars in the regions for both professional and non-professional mediators , as well as two training sessions for trainers in mediation ;
- To develop criteria for the selection of candidates for training in the mediators and trainers , the widespread public awareness about the trainings , as well as direct training of mediators and trainers in mediation ;
- Implementation of pilot initiatives to introduce mediation at the district level (using a small grants program ), including a competition for the selection of grant applications of interested entities , including non-governmental organizations ( NGOs) ;
- Information company , the publication of materials on mediation in the media. Conducting the radio on mediation with mediators in the media plan of the Supreme Court. Preparing a video about the possibilities of mediation , as well as a documentary about the mediation.

These measures contribute to the maximum realization of the rights of participants in the proceedings , timely protection and restoration of violated rights and freedoms of the individual and the interests of society and the state , as well as the consolidation of different ways of achieving a compromise between the parties private legal conflicts , as in the court and out of court.