First Study Commission Questionnaire 2010

The Union of Judges of the Republic of Kazakhstan, Kazakhstan

Judicial Administration and Status of the Judiciary

(1) Does your country's judiciary include prosecutors (or equivalent)? If so, do prosecutors benefit from the same guarantees of judicial independence as other judges?

Prosecutor’s Office of the Republic of Kazakhstan is a single centralized system with lower level public prosecutors subordinate to higher level and Attorney-General of the Republic of Kazakhstan. Prosecutor’s Office exercises its powers independently from other public bodies and reports to the President of the Republic of Kazakhstan.

According to Article 83 of the Constitution of the Republic of Kazakhstan, on behalf of the President prosecutor’s office exercises supreme supervision over exact and uniform application of laws, decrees of the President of the Republic of Kazakhstan and other regulatory legal acts in Kazakhstan, legitimacy of criminal investigation, interrogation, investigation, administrative and enforcement proceeding, identifies and eliminates any disregard for the rule of law. It has a right to appeal against laws and other legal acts in conflict with the Constitution and laws of the Republic of Kazakhstan. Prosecutor’s office represents interests of the State at court and conducts criminal prosecution in the cases, according to the procedure and within the limits set by the law.

In this connection, public prosecutors are not included in the judicial system of Kazakhstan.

(2) How would you define "judicial independence" in the context of the political and social system of your country today?

Since the establishment of the sovereign State of Kazakhstan, independence of justice is considered indisputable democratic achievement.

State power in Kazakhstan is single; it is executed based on the Constitution and laws according to the principle of powers division into legislative, executive and judicial branches and interaction between each other with the use of checks and balances.

Judicial system of the Republic of Kazakhstan is a full-fledged and independent institute of power separated from other powers with its own objectives and tasks.


Judicial power in Kazakhstan belongs only to courts represented by regular judges as well as jury members participating in criminal proceedings in cases and in the order prescribed by the law.

(3) Which objective criteria would you identify as indicating that the judiciary of your country is independent and why?

Independence of judicial system of the Republic of Kazakhstan is secured by the Government and set in the Constitution of Kazakhstan (Article 77 of the Constitution).

In order to escape the pressure on judicial system from the authorities, appointment of judges of local courts by the President of Kazakhstan and election of the Supreme Court judges by the Senate of the Parliament as recommended by the Supreme Judicial Council are legislated. At this, members of the Supreme Judicial Council are: Chairperson of Council,
Attorney General, Chairperson of the Supreme Court, Chairperson of the Committee on Legislation and Judicial and Legal Reform of the Mazhilis of the Parliament, deputy of the Senate, 3 judges of the Supreme Court and the President of the Union of Lawyers of the Republic of Kazakhstan.

In 2000, the Constitutional Law of Kazakhstan on Judicial System and Status of Judges of the Republic of Kazakhstan was adopted. This Law for the first time specified the basic principles of building a judicial system and providing the guarantees of Kazakh judges’ independence. Therefore, a full-fledged regulatory legal basis was established which governs the authorities of judicial bodies and a legal status of judges.

Under the Decree of the President of Kazakhstan dated September 1, 2000 the Committee on Judicial Administration under the Supreme Court of the Republic of Kazakhstan was established. The issues of organizational, material support of judicial bodies and judicial acts execution are in its terms of reference. This made it possible to exclude in the activity of president judges function of facilities administration which is not typical for them and focus on administration of law. Moreover, Chairperson of the Committee is appointed by the President which secures independence of the Committee and court administrator from the Government and local executive authorities. Thus, the Government ensured undoubted independence of judicial power, strengthening of material and procedural guarantees of its activity. During the Fifth Congress of Judges, the Head of the State mentioned the directions of further reforming the Committee.

On the 19th of December, 1996, during the First Congress of Judges of Kazakhstan ‘Union of Judges of the Republic of Kazakhstan’ Public Association was established. This is a non-governmental, self-financed, non-profit organization, which activity is aimed at achieving general objectives of the Judges of Kazakhstan in conformance with the law. The Union of Judges plays an important role in establishment of a civil society, strengthening of supremacy of law, democracy and justice independence.

The courts are systematically divided into areas of practice. Thus, starting from January 1, 2010 specialized interdistrict courts of sessions were introduced with felony cases falling under their jurisdiction. Currently, in the framework of the Constitution, the work on Legal Policy for 2010-2020 has been started on extension of specialized interdistrict juvenile courts.

Enactment of the Law on Jury on January 16, 2006 expanded significantly the possibility for public control and access of citizens to administration of justice.

In 2008, the courts were given a function on sanctioning apprehension which is a guarantee for ensuring the rights of citizens.

The integral element of the judicial system is proper financing. Under Article 47 of the Constitution law on Judicial System and Status of Judges, financial security of judges shall correspond to their status and make possible a complete and independent administration of law and shall not be decreased.

All the courts are financed from the Republican budget which ensures their independence from local executive bodies.

A number of measures on establishment of judicial manpower out of irreproachable persons is taken. The issue of recruiting worthy personnel is a subject of discussion at the Congresses of the Union of Judges of Kazakhstan, sessions of the Supreme Court Council. Currently, judges are appointed for a permanent term, which is one of the efficient levers to ensure their independence.

The requirements to professional capabilities of a judge became stricter, his/her responsibility for observance of legality during administration of law has increased. It is envisaged that when judges are released from their position by some negative reasons, they are deprived of all their benefits.

To assess the quality of the judges’ work and identify the judges with low indicators of law administration, the Supreme Court of the Republic of Kazakhstan has launched on a
regular basis an anticorruption mechanism system in a form of monitoring; oblast courts and Court jury plenary sessions working methods were revisited.

The important efforts significantly impacting the level of effectuation of justice are occupational retraining and advance training of judges. For further improvement of judges’ education the Supreme Court has developed and approved the Strategy of Judicial Education in the Republic of Kazakhstan for 2009-2011. Implementation of the Strategy should contribute to establishment of efficient continuous judicial education system meeting the requirements of judicial system development and improvement.

(4) Which subjective criteria would you identify as indicating that the judiciary of your country is independent and why?

In order to improve confidence of citizens in judicial system the Supreme Court performs a systematic work. An increasing number of citizens apply to courts to protect their rights. According to statistics, the number of litigated cases has grown.

Improvement of the law administration quality both with respect to criminal and civil cases is observed, the number of cases considered with delays in procedure duration has decreased as well as the number of complaints about the judges’ actions.

In the framework of monitoring from January to April, 2010 the poll was conducted under the support of local law schools students among the participants of court procedures and other persons in courts of all oblasts and major cities in a form of anonymous questioning.

UNDP independent experts were involved in this survey. They had their own public poll in 8 regions of the country. 35144 respondents were questioned, 776 questionaries were received from UNDP independent experts.

As a result of questioning, more than 80% of respondents declared that there were no obstacles in submission of an application to court, and according to UNDP – no more than 50%.

The questions were set on timeliness of initiating legal proceedings. According to the data collected by the students, in 85% of cases legal proceedings were initiated in due time, according to UNDP data – no more that 55%.

One of the determining criteria when considering a legal case is standards of carrying out legal proceedings. As a result of poll by students, 90% of respondents said that the judge’s behaviour corresponded to ethical and moral principles, according to UNDP – no more than 70%.

Special emphasis was put on judicial ethics and anticorruption measures. According to data collected by the students, 91% of respondents have not perceived any corruption in courts, as for UNDP data – no more than 55%.

In this connection, the Union of Judges of the Republic of Kazakhstan works on identification of reliable data and develops proposals for UNDP to improve poll quality.

Judicial system independence was highly estimated at the Fifth Congress of Judges by the President of Kazakhstan N.Nazarbayev, who mentioned that one of the main achievements of sovereign Kazakhstan is gaining of not only formal legal but actual independence by courts and independence.

It became a tradition to conduct Forums on Judicial Power and Mass Media; the issue of establishing a Guild of Court Reporters will be soon resolved. These Forums contribute to better mutual understanding between mass media and courts in the issue of covering legal proceedings.

Legal conferences, round tables are held with involvement of the deputies of the Parliament, judges participate in the meetings of sectoral committees of the Mazhilis and Senate of the Parliament. Supreme Court is an executing agency on development of draft laws
and improvement of judicial system.

Council of Europe, USAID, UNDP, GTZ and other international organizations implement projects on further development of judicial system.

(5) If you have to identify the three most important criteria for indicating judicial independence in your country, what would they be and why?

1. Ensuring efficient selection of personnel in judicial bodies (extension of opportunities for the Institute of Justice in training of skilled personnel), liberalization of the Supreme Judicial Council, increasing the number of public representatives among its members.
   Determination of judicial protection of rights and lawful interests of judges released from their position, including the right to debate a decision of Disciplinary and Qualifying Chamber of Judges.
   Social security of effective judges, retired judges, including lifelong support of retired judges according to the international practice.

2. Further ensuring financial independence of judicial system through submission of the budget application proposal by the Supreme Court directly to the President for further submission to the Parliament without being considered by the Budget Committee of the Government.

3. Unconditional observation of justice effectuation procedures provided for by the law based on the principles of non-intervention in the judge’s activity both from outside and from within the judicial system itself.

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