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Features of the legal status of judges: Kazakhstan experience and foreign realities

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Abstract

The special value in the constitutional state carries out functioning of the judicial authority which is the guarantor of justice implementation, supremacy of law and rule of law. The main role in the judicial authority mechanism is assigned to the judge as the maker of justice. In this regard, legal status of the judge demonstrates the level of development of judicial authority, quality of justice and its independence. The main requirements, imposed to the candidates for judges in Kazakhstan, are highlighted in article. An author is revealed the current problems. The comparative research of foreign experience is conducted.

Keywords: judicial authority; candidate requirements to judges; legal status of judges; judicial reform; judicial education; judicial career.

Rasgos del estado jurídico de los jueces: Experiencia de Kazajstán y realidades extranjeras

Resumen

El valor especial en el estado constitucional lleva a cabo el funcionamiento de la autoridad judicial que es el garante de la implementación de la justicia, la supremacía de la ley y el estado de derecho. El papel principal en el mecanismo de la autoridad judicial se le asigna al juez como el hacedor de justicia. En este sentido, la condición jurídica del juez demuestra el nivel de desarrollo de la autoridad judicial, la calidad de la justicia y su independencia. Los principales requisitos, impuestos a los candidatos a jueces en Kazajstán, se destacan en el artículo. Un autor revela los problemas actuales. Se lleva a cabo la investigación comparativa de la experiencia extranjera.

Palabras clave: autoridad judicial, requisitos de los candidatos para los jueces, estado legal de los jueces, reforma judicial, educación judicial, carrera judicial.

1. INTRODUCTION

Since independence of Kazakhstan, during twenty six years the legal reforms, including judicial, are constantly being implemented. Judicial authority in the Republic of Kazakhstan is constantly improved, as evidenced by a number of ongoing reforms in the country, aimed at protecting of human rights, availability and quality of justice, its efficiency, speed and transparency. All legal system of the country was reconstructed on the new course with transition to a market economy. All main legal institutes were reformed. Special attention was paid to

improvement of judicial authority, in particular, to the legal status of judges. In 2011 the Head of State adopted the Plan of the nation - 100 steps on realization of the five institutional reforms (BIKO, 2013), in Kazakhstan it was undertaken the legal reform, within which there is provided the obligatory 5-year experience of participation in trials for candidates for judges, it was introduced the system of situational tests for check of professional skills and abilities and also passing of the one year traineeship in the courts with payment of a scholarship, it was provided passing of the year test period after completion of the one year traineeship.

Essential changes concerning requirements to judges were made to the Constitutional Law “On the judicial system and the status of judges” (hereinafter - the Constitutional Law) in 2017 (LIDIA, 2008). Kazakhstan is planning to enter by 2050 in thirty developed countries of the world. Implementation of this plan provides reforming of economy, the social sphere, state apparatus, personnel policy, etc. One of the strategy purposes “Kazakhstan – 2050” is high-quality improvement of the personnel structure of public service through introduction of improved methods of selection and vocational training (KALDIYAROV, et al., 2014). The fulfillment of this goal directly affects the improvement of the judiciary that in general promotes to observance of the supremacy of law, rule of law in all spheres of society life. The court as “a litmus paper” reflects the level of society development, its value, authority of society. Formation of the personnel policy concerning judges has to be based on the principles of a meritocracy. It is necessary to provide courts with the most qualified personnel which will manage independent and qualitative justice. It should be improved the process of selection of judges, having made it the most effective and transparent. Modernization has to concern judicial

career, all stages and the bases of growth of which are subject to the maximum legislative regulation. The career of the judge has to depend only on his professionalism, honesty, incorruptibility, impeccable reputation and trust of society (KULZHANOVA, 2012). Legal development of this sphere of the legal relations is inseparably linked with the world principles of functioning of judicial authority. Kazakhstan actively cooperates with the world community, studies the international experience and foreign practice, using the progressive legal ideas and implementing in the national legislation positive examples in these or those branches of law, including increase in age qualification, introduction of special experience and the traineeship for candidates. At the same time, legal status of the Kazakhstan's judge requires further improvement for strengthening of the authority of judicial authority, increase in level of justice and trust of society to the institutional structure of the judiciary. The main indicators of work of the court are the supremacy of law, independence of judges and the impeccable authority at the people, which have to form the basis of improvement of judicial policy.

2. DISCUSSION

In a correct and correct job selection, a variety of factors, including personality traits, values, interests, skills, family circumstances, community conditions and... should be considered for each individual. One of the most important of these factors is personality traits. A true understanding of each person's personality is a complex process requiring expertise and time. Of course, each person has its own unique characteristics, even those who somehow have the same personality type,

are still different in some cases. In general, there are always successful people of different types in all occupations, and one cannot exactly say that only certain person types are successful in this job. But in the research that took place, the personality bridges introduced for this job generally tended to be more desirable and had more job satisfaction (AKHMETZAKIROV, et al., 2016). According to the legislation of Kazakhstan, it is necessary to have the thirty-year age in order to become the judge. In the current year the changes are made in the Constitutional Law, which fixed the increased thirty-year age qualification for candidates for judges. These changes reflect the world practice, providing the age restrictions to candidates for judges. Originally in Kazakhstan the person who has reached twenty five years could become the judge. Thus, Kazakhstan adopts world practice when judges are become at more mature age. The age qualification as one of the requirements for judicial appointments is the mandatory qualification requirement abroad. The age, fixed for judges in each country, is determined differently. The minimum age - 25 years is determined in Norway; 26 years - in Poland; in France, England there was a practice when people younger 40 years are not appointed (DAVIS, 2002).

The Kazakhstan's law, besides the minimum age, provides the maximum age limit for judicial appointments - 65 years. This age can be prolonged no more than for 5 years by the chairman of SC RK with the consent of SJC RK. This situation corresponds to foreign practice in general. In the USA the maximum age for judicial appointments is not determined at all, at the same time, there are imposed requirements for existence of obligatory long-term length of service as the professional lawyer that assumes achievement of mature age. The age limit is 72 years

in Great Britain; in Norway – 70; in Japan, Germany-65. Existence of life experience is the important requirement for the person who is carrying out justice over other people. Concerning judges of superior courts, it is fixed higher age qualification. Usually, the text of constitutions specifies age from which the citizen can become judge of the constitutional court, in Armenia – from 35 years; in Belgium, Slovakia, Turkey, South Korea, and Portugal – from 40 years; in Hungary – from 45 years. The age qualification to judges of the regional courts and SC RK is not provided in Kazakhstan, there are requirements concerning length of service: for regional judges – length of service in district court not less than 5 years and 10 years on legal specialty; for judges of SC RK – not less than 20 years of a legal experience, from them 5 – in district court and 5 – in regional. The important requirement to the candidate for judges is existence of the higher legal education. The Latin proverb says: “Ignorantia judicis est calamitas innocentis” – “ignorance of the judge - disaster for the innocent” (LAZAREV and CESNOKOVA, 1966). Proceeding from it, judge must have high educational level.

Today, educational programs of higher education are directed to training of highly qualified personnel according to requirements of economy branches with conferment of degree “bachelor” or awarding qualification “specialist” (article 21 of the Law of the Republic of Kazakhstan “On Education”) (KHAMZIN et al., 2016). The higher legal education in Kazakhstan assumes the existence of the bachelor’s degree of law, demonstrating the graduation of a four-year course in a higher educational institution. At the same time, the Kazakhstan’s education system allows to graduate the second higher education on part-time form of training within two years in the presence of the first education. So, it is

possible to get diploma with the bachelor's degree of law, having had two-year training. This situation of course is the disputable and demand the development, as an opportunity to work as the judge, having graduated from institute on part-time form of training in two years, raises reasonable doubts. It should be noted that the questionnaire for candidates for judges at filing of application for participation in a competition for judicial appointments, provides a point - whether the higher education is second. Thus, the competition commission estimates – whether legal education is basic or the second. World practice in this case is not unambiguous. Examples of France and Italy on theoretical training of candidates for judges deserve attention. So, the requirement that candidates for judges have to graduate the specialized magistracy is provided in a number of foreign countries, that is, they must have the master degree of law, among them France, Italy and other countries.

For example, enrollment in the French National School for the Judiciary, which is annually graduated about two hundred judges and prosecutors, is carried out on a competitive basis. The organic Law “On the Status of a Magistracy” of 1958 provides as requirements for entering in the French National School for the Judiciary: the national diploma of the higher education or other document or the diploma the appropriate level, which is officially recognized by the decree of the State Council; citizenship; capacity and high moral qualities; discharge of military duty in accordance with the law; state of health suitable for performance of official duties (MUNIZ-ARGUELLES and FRATICELLI-TORRES, 1985). The enrolled candidates are appointed as the students by a decree of the Minister of Justice, the contract is concluded with them, on the basis of which they are obliged to work in the sphere of justice not less

than 10 years. Students of the French National School for the Judiciary are the judiciary, they have the right to take part in judicial activity, however without right to sign, and the state maintenance is paid to them. Students are obliged to keep an official secrecy. They take the oath before the Court of Appeal before participation in judicial activity. The general course in the National magistracy goes for 31 months. An important stage of training is the “external traineeship”, which is realized outside of legal agencies of France, at the enterprises, in local governments, the prefecture, foreign legal agencies, and other organizations. Direct training is carried out at School during 8 months. Feature of training is studying of expert work of psychiatrists, forensic medicals, psychologists, financial experts. Students of School obtain information on questions of the organization, functioning and financing of legal agencies, bar associations, court registrars, and other services. Legal disciplines are not taught practically, except for criminal and civil procedure, judicial ethics and also related subjects, which knowledge is necessary for performance of professional duties. The next stage of training is traineeship in judicial institutions, for 14 months (familiarization with court activity of all instances, investigative bodies and prosecutor’s office, police and gendarme services, institutions of legal protection for minor, correctional facilities, bailiffs). The traineeship at lawyers within two months gives the chance to the students to get a practical study of their power and duty. Before the final training stage the students take the tests and a qualification examination. The list of the offered positions is provided to the students, on the basis of the received estimates and results on traineeship. As soon as they make the choice, they are distributed on groups, proceeding from the chosen specialization. The five-month program provides profound studying of the theory, new acts,

communication with the practicing magistrates. And the final stage - traineeship in legal agencies at that position which the student will be appointed further. After graduation all students, irrespective in what order they were entered to magistracy schools, compete on equal conditions in the procedure of referring to the list of persons for the purpose of promotion in the judiciary. The qualification jury provides to the students the certain qualification if they have passed a competition and are considered as prepared for performance of judicial functions. The duplicate of the list with surnames of such graduates is given to the Minister of Justice who makes the decision about its publications in the Official bulletin. Jury discharges the student for judicial appointments and can oblige him to complete a training course again, if they consider that the personality is capable to master it in case of inadequate drawing up competitive examination.

It should be noted that special attention is paid to assessment of the general culture of entrants. The French consider that only legal knowledge of the judge is not enough, they would like to see in future bearer of judicial authority not only the great expert, but also educated, cultural person. At the same time, it should be noted that in some countries, for example in Great Britain, existence of legal education is not obligatory for magistrates. In Germany, existence of legal education is not the mandatory requirement for nonprofessional judges-lay judges (Schoffe). I believe, that justice implementation at least by the master of law causes credible. Experience of France and Italy undoubtedly is subject to use in improvement of the national legislation. Since 2016 in Kazakhstan there is functioned the Academy of Justice at SC RK, which is the public institution, realizing the educational programs of postgraduate education,

carrying out retraining, professional development of personnel of judicial system and scientific activity (CHESTERMAN, 2002).

Earlier, training of the specialized personnel was carried out by Institute of Justice at Academy of Public Administration at the President of the Republic of Kazakhstan. Passing the qualification examination in a specialized magistracy is a priority at competitive selection to the judge's position. However, the requirement to candidates for judges concerning the obligatory graduation of the specialized magistracy in Academies of Justice is not provided by the legislation of Kazakhstan. The general tendency comes down to the fact that in the future, it is possible that the graduation of the Academy magistracy will be the mandatory requirement for candidates for judges. The major requirement for candidates for judges is possession of high moral qualities and impeccable reputation. These requirements are natural to maker of justice. Only the person with "pure thoughts and hands" and "fair heart" can judge other people. In Kazakhstan access for the judge position is closed to the persons dismissed from the judge's position, from law enforcement agencies or from other public service for the discrediting offenses and violation of the law of the Republic of Kazakhstan on duty. Without a doubt, that the requirement about high morality to all candidates is shown not only in Kazakhstan, but also abroad. So, in the Basic principles of the United Nations concerning independence of judicial authorities it is proclaimed that "the persons, selected to judicial positions, must have the high moral qualities and abilities, and also the corresponding training and qualification in the field of law". The Bangalore principles of judge behavior regulate that the principle of competence for judges is one of the standards of ethical behavior for judges. For example, in England,

existence of disciplinary punishment for violation of professional ethics at the lawyer deprives of him the right for judicial appointments. In the USA the Commissions for judicial appointments consider not only professional skills of the applicant, but also such qualities as diligence, dedication, communicability, restraint, understanding of social needs, etc. Judges of superior courts must have oratorical, organizing abilities, teamwork. An important role in the checking process is played by public organizations and the press. FBI analyzes the candidate's relations in family, with neighbors, colleagues (there are conducted the discussions with them for this purpose); his political and professional past, nominees officially allow to check their tax and credit history by FBI agents. In parallel the candidate for judges undergoes testing in the Senate Judiciary Committee. The Committee pays special attention to the thoughts which were expressed earlier by the potential member for the Supreme Court. Along with it, the American Judges Association appoints special commission of 15 volunteers, who analyze the verdicts rendered by the candidate for members of the Supreme Court, and thus define degree of his professional competency. We have the phrases about characteristics which the judge has to possess "the judge has to be wise to exclude silly decisions, and to have conscience not to be cruel at decision". This phrase discloses internal essence of the judge.

Meanwhile, the Kazakhstan's legislation does not determine criteria and an order of assessment of moral qualities and reputation of the candidate that is subject to standard regulation. Besides, the Kazakhstan legislation does not open a concept of impeccable reputation and how check of reputation is carried out. The following mandatory requirement for candidates for judges is existence, as a rule, of five years of work

experience as the secretary of the court session, *amicus curiae* (assistant of court), the prosecutor, the lawyer or not less than ten years of work experience by a legal profession. The specified norm is entered into the Constitutional Law. Introduction of this requirement is result of judicial reform which reflects global trends. Some countries prefer to form the judiciary by the lawyer personnel. Abroad, at selection of candidates it is preferred often employees of the prosecutor's office, the bar and courts. For example, the Legislator of England and Wales provides the need of length of service as the lawyer from 7 to 15 years for candidates for judges. In Great Britain the judges of the supreme courts could be only lawyers of exclusive category - barristers, but now for judicial appointments of higher level at certain conditions is also given to solicitors. Judges of the Supreme Court are appointed from among barristers with not less than 10-year experience, district judges - from among barristers with the same experience or from among the recorders, holding this position not less than 3 years. In turn a recorder, i.e. the judge who is partially worked in this quality, there can be appointed a barrister with not less than 10-year experience or the solicitor with the same experience (ROBINSON, 1968). Judges, along with lawyers, enter into legal elite of society. Throughout centuries (since XIV century) lawyers-practitioners supported Parliament against absolutism (monarch). Independence of judges is among the fundamental principles of the state. All English judges are individuals of the practicing lawyer. Many US states also place emphasis on the experience necessary for judicial appointments. In Ohio, for example, the person has to work as the lawyer of at least 6 years in order to become the judge. Though the professional experience can be very different – one judges worked in public institutions, others – in big or small law firms. Besides, in America judges

can enter judicial system at any level – both judges of the Supreme Court, and subordinate instances. This difference of requirements as notes helps to provide versatility of experience of judges. Only the person, possessing 10-year length of service as the judge, the prosecutor, the lawyer, can be the member of the Supreme Court of Poland. Separate qualification requirements to judges are provided by the Constitution of Malta. In this country, nobody can be recognized by possessing qualities necessary for judicial appointments of the Supreme courts if during the twelve-year period or the periods, in the sum which are twelve years he was not the practicing lawyer in Malta or he was not served as magistrate in Malta, or he was not a lawyer during part of this term and as magistrate - part of period.

In Denmark judges are appointed from among lawyers with length of service of 15-20 years in courts, prosecutor's office, etc. In the Netherlands, it is required to have legal education, graduation of the Academy of magistracy or to work in court registry, legal profession, Service of public charge of 7-8 years in order to become the judge. The position of the federal judge of Brazil is appointed as a public competition in which the organization of lawyers of Brazil participates. Thus, the world practice was developed in such a way that the lawyer having sufficient experience in the sphere of law enforcement, having experience in the sphere of legal proceedings can only become the professional judge. There is no doubt the correctness of the similar requirement.

The mandatory requirement, according to the Kazakhstan's legislation, is passing the qualification examination in order to become the judge. Exam at candidates for judges is held by the Qualification Commission of SJC RK. Members of the commission are appointed by

SJC RK which includes: five experts from among lecturers in law, scientists-lawyers; three judges, including retired judges, delegated by judicial jury from their structure on a rotational basis; on one representative of the Prosecutor General's Office, the Ministries of Justice, legal professions; other representatives of the public. The commission is headed by the chairman. The structure of the Commission can include the foreign experts. The structure of the commission is updated each two years. The persons recommended in the structure of the Commission must have professional knowledge in the field of law, experience on legal specialty not less than ten years and to have impeccable reputation. Formation of the qualification commission deserves great attention as it estimates the level of theoretical and vocational training of the candidates. In this connection, it is necessary to improve the procedure of formation of the commission, applying foreign experience. For example, in some countries the members of the commission are chosen. So, members of the Kazakhstan's commission can be chosen at a congress of judges. The chairman of the commission should be determined as a neutral person-moderator, having no right to vote. Members of the commission have to elect the chairman of the commission. Members of the commission from among lecturers in law should form of number of the best teachers of higher education institution. It is necessary to select similarly in the commission of the prosecutor who is the best in a profession, or the lawyer, etc. Approximately the same requirements are fixed by the European charter about the status of judges of 1998 according to which, for adoption of any decision on the issue of selection, employment, appointment, service or the termination of functions for any judge, where the status provides participation independent from executive and the legislative authority of the instance,

which not less than a half of members are made by the judges, elected the colleagues according to the rules, guaranteeing the widest representation. The decision on appointment of the selected candidate for a position of the judge and the decision on a job placement for court are accepted by independent instance or according to its offer, the recommendation, from its consent or.

The constitutional Law determines categories of the persons, exempted from passing a qualification examination. The persons which were earlier working as permanent judges not less than five years and within four years from the date of dismissal, shown willingness again to hold the judge's position, except for the persons, dismissed judges for negative motives concern them; the persons who graduated education in a specialized magistracy are exempted from passing a qualification examination within four years from the graduation date in a specialized magistracy. According to the Constitutional Law, there are not allowed to passing qualification examinations of the person who were dismissed from the judge's position, from law enforcement agencies or from other public service for the discrediting offenses and violation of the law of the Republic of Kazakhstan on duty. The result of passing a qualification examination is valid within four years from the date of passing an examination. That is, during the specified term, persons have the right to participate in a competition. Persons who failed passing qualification examinations are admitted to their repeated passing not earlier than in a year. The procedure of passing a qualification examination includes three stages: 1) computer testing for knowledge of the legislation of the Republic of Kazakhstan and ability of its practical application; 2) an examination of the applicant and ability of their practical application with

the examination cards, modeling concrete situations from judicial practice;
3) psychological testing.

Testing in Kazakhstan is held in SJC RK. This condition can be improved, holding testing in the National Testing Center and at the commission. Besides, in Kazakhstan there are no Regulations of admission of a qualification examination to the judge. The examination of the applicant and ability of their practical application according to examination cards has to be thoroughly regulated. In this connection, it is necessary to develop the corresponding rules, regulating specifically each stage of examination. Examination cards have to be sealed. They have to be unpacked directly at examination at members of the commission. Other option, after opening of the envelope at the commission the cards are located in a special box, all cards mix up by the secretary of the commission, and the candidate pulls out the casual card from the box. Such procedures will allow excluding any intervention of the interested persons. The necessary requirement for the applicant in the judge is the medical examination, confirming absence of the diseases, interfering execution of the professional duties of judge. According to the regulations, it is determined the list of the diseases, interfering execution of professional duties of the judge. This list provides 33 diseases, such as the diseases of heart, hemoblastosis, cirrhosis, chronic diseases of kidneys with the phenomena of a chronic renal failure 2-3 stages, severe forms of psoriasis, disease of endocrine system and others. Meanwhile, the doctor's certificate of the 086U form, approved by the order of the Minister of Health of the Republic of Kazakhstan "On the statement of forms for primary medical documentation of the organizations of health care" of November 23, 2010 No. 907, provided for candidates for judges, specifies

the performing of medical examination only by the following experts: therapist, surgeon, neuropathologist, oculist, otolaryngologist and also fluorography study. This fact demonstrates that the existing doctor's certificate, provided for candidates for judges for participation in a competition does not reflect the authentic data concerning the state of health of the candidate (it is not carried out examination by the narrow experts, there are not provided the corresponding blood tests, ultrasonography, etc.), not allowing to fix the diseases, which would interfered execution of the professional duties of the judge. Besides, there are not performed the medical examinations of judges during implementation of judicial powers, allowing to reveal diseases, interfering execution of professional duties of the judge.

In this connection, the medical examination of candidates for judges requires improvement for obtaining authentic data about the health state. It is necessary to determine the medical institutions, which have to carry out systematic medical examination of judges and also an order of medical examination, to carry out periodic assessment of the health state of judges. The candidate has to pass the traineeship in Kazakhstan for judicial appointments. The main objectives for passing the traineeship by the candidate for judges are studying of the work specifics in local courts, acquisition of necessary practical and organizing skills for the judge position. Passing the traineeship is carried out in order to study the business, professional and moral qualities of the trainee-candidate and determination of the prospects for implementation of judicial powers by him. The trainee-candidate is given the leave without pay during passing the traineeship. The salary of trainees makes 70% of an official salary of the regional judge with work experience up to 1 year. Total period of

passing the traineeship makes one year, so eleven months in the district or equated to it court (for five months in civil and criminal court, 1 month in administrative) and one month in regional court. The candidate has to receive the conclusion of a plenary session of regional court upon completion of the traineeship. The requirement about passing the traineeship is not extend to the persons, who graduated and passed a qualification examination in the specialized magistracy Academy of Justice at SC RK, who are exempted from passing the traineeship within four years from the graduated date, and also the candidates who are serving judges. The norm on passing the traineeship is differed in novelty and it works since 2017. It was not provided by the Kazakhstan's legislation before. Kazakhstan follows experience of number of the developed Europe countries in its realization. For example, in Germany candidates pass a two-year traineeship, in Poland not less than one year. Candidates for the judge's position also pass the traineeship in Greece.

In Italy, the person has to pass the traineeship as the court auditor in order to become the judge or the prosecutor, and for it there is held a competition by results of three written examinations (on the civil and Roman law, on criminal law and on administrative law) and 8 oral (on the Roman law, civil law, civil procedure, criminal law, criminal procedure, administrative and constitutional law, labor and social legislation, ecclesiastical law, international law and fundamentals of statistics). It is necessary to receive not less than 12 balls from 20, and on oral – not less than 6 of 10, and totally not less than 91 points on each of written examinations. Persons who are not younger than 21 and not more 30 years are allowed to the competition, having the diploma of law department of the university. If the Supreme Council of the Magistracy considers that the

person does not meet the requirements of high morality and impeccable behavior, he is not allowed to the competition and cannot challenge this opinion. A competition is held in Rome, as a rule, once a year. The magistrate did voluntary termination from the magistracy system, will not able to be admitted again. This provision underlines corporate character of the magistracy. The German judicial system has the features. The professional and nonprofessional judges carry out activity. Professional judges are specially prepared persons having legal education and who passed the examinations fixed by the law (referenda and assessor) and it means: the person has gained "ability to hold the judge's position". Legal training begins with studying of law at the university and lasts not less than 3, 5 years. The first examination (referendary) - oral and written is organized at the end of training. This exam is taken by members of the commission in one of the examination departments of court administration of the Ministry of Justice of province, but not at the university where was training. If the examinations are passed successfully, it is fixed the practical traineeship - preparatory service (referendary term) lasting two years, that is also regulated by provisions of the law. The obligatory two-year traineeship is provided in such institutions as: 1) court in civil proceedings; 2) courts of criminal jurisdiction; 3) institutions of administrative activity; 4) the practicing lawyers. Besides, the trainee is given the chance of the alternative choice to choose one more institution for additional traineeship from the following list: 1) one of institutions of an obligatory traineeship; 2) one of authorities of Federation or province; 3) notarial office; 4) one of the courts of specialized jurisdiction specified in the Constitution; 5) labor union, business associations, self-governing body in the field of economy or social or professional sphere; 6) industrial enterprise; 7) international, interstate or foreign organization, foreign

lawyer; 8) other institution where can be provided rather high level of practical training of the trainee in the sphere of law enforcement. It should be noted that the trainee must have practice not less three months, and in institution for choice - not less four - six months in each of institutions, obligatory for the traineeship. Referenda gets a salary.

The referenda passes the second state examination (assessor) in examination department of the province at the end of the preparatory service. The main attention during this examination is paid to knowledge gained by the student during the traineeship. Examination in the majority consists of an oral part, but the legislation of the corresponding federal province can be also provided a written part of examination. Types of examination are equivalent. The referendary has an opportunity to get the judge's position after successful passing the second state legal exam (assessor examination) in examination department. He can be appointed as judge at once. However for "lifetime appointment" as judge he has to serve a trial period lasting not less than three years during which he holds a position of the independent judge with all rights and duties. But there can be cases when he is appointed to the judge's position, having worked in other legal bodies. Not only judges, but also all German lawyers have such training. It is integrated legal training as a result of which along with an opportunity to hold the judge's position – there is gained the qualification, allowing to work as the prosecutor, the lawyer or the notary. The novelty of the Kazakh legislation is the introduction of the polygraph logical examination which is representing the procedure of poll consisting in registration by means of special medical sensors of the separate physiological reactions of the person which are arising at psychophysiological survey), having advisory nature.

The persons who successfully passed a qualification examination pass a polygraph logical examination for the purpose of obtaining additional information and check of reliability of the reported data. Among research problems is detection of: 1) illegal intentions; 2) the hidden disorders of behavior, negative dependences, the use of the narcotic, psychotropic and other psychoactive substances, causing mental and physical dependence; 3) concealments or distortions of personal data, data on income, property and obligations of property character, existence of dual citizenship, use of false documents; 4) earlier being available facts of commission on corruption offenses, transfer of classified or official information to unauthorized persons; 5) contacts with the forbidden public associations, the criminal and terrorist organizations or participation in commercial structures if this was not part of their official duties previously; 6) abuse of official authority. Polygraph is the technical device intended for registration in the poll process for the person of dynamics on physiological reactions (breath, cardiovascular activity, skin and galvanic reaction, physical activity, a facial expression and another) in response to the shown verbal and visual incentives, displayed in an analog and (or) digital form). The examined persons pass the examination in Committee of National Security of the Republic of Kazakhstan on the SJC RK direction. It should be noted that the conclusion of the polygraph has advisory character. As for judicial career, this sphere of the legislation demands additional settlement. The law provides requirements to judges of regional court - length of service in the sphere of law not less than 15 years, including not less than five years of work as the judge. It is necessary to receive the positive conclusion of the plenary session of relevant regional court in order to become the judge of regional level. Besides, it is necessary to receive the guarantee of two judges of superior

court and one retired judge. Concerning SC RK judges, there is provided the requirement in the form of the legal experience not less than 20 years, including length of service by the judge – 10 years, from them the judge of regional court – 5 years; existence of the positive conclusion of the plenary session of SC RK; the guarantee of 2 judges of superior court and one retired judge. SJC RK makes selection of candidates for vacancies of the chairman and the judge of district court, the judge of regional court and the judge of SC RK on the competitive basis from among the persons, who submitted the application for participation in a competition. As priority category to positions of the chairman of district court, the chairman and chairmen of judicial boards of regional court, the judges and chairmen of judicial boards of SC RK, the Law provides for the presence of a judge in the personnel reserve.

The above demonstrates that the Kazakhstan's legislation does not regulate the unconditional priority bases for advance of career. It is possible to carry to their number: excellent performance in work (absence of cancellations or changes in judicial acts, absence of complaints); encouragement, awards, diplomas, etc. for excellent job; knowledge of foreign languages; existence of additional education or academic degree; absence of disciplinary punishments, etc.). The foreign judicial policy in Recommendation No. R (94) 12 of the Cabinet of Ministers of the Council of Europe provides that: "All decisions, concerning the professional growth of judges, have to be based on objective criteria and the principle of competitive selection, and the office growth of judges has to depend on their personal merits with due consideration of qualification, moral qualities and working capacity". The European Charter provides about the judge status that in case criterion of promotion is not the length of service,

the system of official increase is based only on the indicators of quality of work and merits, noted at execution of the powers assigned to the judge and determinate by the objective estimation, which is shown by one or several judges, and subject to discussion with the discussed judge. Conclusions on promotion are given by independent instance, according to its offer or from its consent. The judge, whose candidate is not made on promotion according to the solution, must have an opportunity to address with the complaint to the specified instance (p. 4.1 of the Charter). Thus, the right of the judge for career has to be exercised in the order, established by the law, regulating all bases and the procedure of promotion of judge for a ladder of advancement.

3. CONCLUSION

The creation of a state governed by the rule of law in Kazakhstan has been carried out for more than twenty years. Much attention is paid to reforming of judicial authority. The Legislator always adheres to increase in requirements, imposed to judges, regarding increase in age qualification, introduction of five-year experience in the spheres, which are directly connected with legal proceedings, training and a polygraphological examination of the candidates. Meanwhile, legal status of the judge is subject to further development and improvement in order to ensure the qualitative, professional, independent and effective justice promoting to increase in the credibility of the judge in society. The author considers that there is necessary to improve the system of formation of the Supreme Judicial Council of the Republic of Kazakhstan (hereinafter – SJC RK) and the qualification commission at SJC RK by their election;

determination of the requirements to SJC RK members; development of regulations for admission of the qualification examination and improvement of the procedure for taking exams regarding the transparency of the procedure; the introduction of the requirement for the compulsory graduation of a specialized magistracy of the Academy of Justice at the Supreme Court of the Republic of Kazakhstan (hereinafter – SC RK) for candidates for judges; establishment as the requirement to judges of compulsory basic four-year legal education; reforming the system of admission and training in the Academy of Justice at SC RK and increase in requirements for entering to Academy; creation of the doctoral studies for judges in Academy of Justice at SC RK; regulation of the priority bases for career development of the judge; determination of the order of medical examination for judges.

The reforms undertaken in the country in the sphere of judicial authority are aimed first of all at providing effective, professional, competent, available, fast and fair justice. In Kazakhstan justice is more and more improved with each reform. Summarizing the last reforms, it is possible to claim that the Legislator: increased age qualification to candidates for judges, determined obligatory existence of five-year length of service in the spheres which are directly connected with legal proceedings (prosecutor's office, legal profession, clerks of courts), fixed the passing of the year paid traineeship, introduced the polygraphological examination for candidates. Reforming is carried out in Kazakhstan gradually. Foreign experience is investigated. Positive examples are implemented in the national legislation. Of course, judicial authority in Kazakhstan needs to be improved and further.

The carried-out comparative analysis of the Kazakhstan and foreign legislation allows making the following suggestions for improvement of the Kazakhstan legislation. It is necessary to regulate criteria for evaluation of SJC RK of respect by candidates of moral standards and morality. It is the major criterion, determining essence of the judge. However, the current legislation does not regulate how council estimates and checks reputation of the candidate (for example, the characteristic from the working place, study, neighbors, the district police officer, family, verification of compliance with legislation (penalties, offenses), the analysis of performances and statements in media, etc.). It is necessary to determine in the Law the concept of impeccable reputation; to establish data which are subject to the investigation as a result of special check of candidates, having defined consequences. Besides, it is possible to introduce the selectivity of SJC RK members and the qualification commission at SJC RK. Election of member-judges of council and commission has to be carried out annually at the congress of judges by judges of all levels. The structure of council and commission has to be quantitatively determined (representatives of judges of all levels have to be presented as members of the council and commission: the district, region, SC RK), including concerning the public representatives (legal profession; representatives of parliament, science, media, non-governmental organizations, etc.). The membership of the members should change annually. The law does not determine the requirement to member-judges of SJC RK. These requirements need to be determined (length of service, experience, reputation, an academic degree, etc.) in a legislative order. Similarly it is necessary to establish requirements for members of the qualification commission.

It is necessary to establish that chairmen of the Council and commissions carry out functions of the moderator and have no right to vote. Chairmen of the Council and commissions have to be elected directly only by members of council and the commissions. The order of passing the examinations on the judge has to be regulated by the corresponding rules, determining accurately the procedure of taking the examinations for an exception of the facts of any interested intervention. Computer testing for knowledge of the legislation should be held outside of walls of Council in the National Testing Center. The procedure of oral examination should be regulated in details. Candidates for judges of all levels have to be present at SJC RK meetings. It is necessary to improve the procedure for selecting candidates by developing a rating on points that reflect all the advantages of the candidate in order to ensure transparency (for example, length of service over 10 years – 5 points; an academic degree – 5 points; additional education – 3 points, etc.). Selection needs to be made on points among the candidates who gained the bigger number of points. For this purpose, the rules of assessment of advantages of the candidate for judges are subjected to development. The idea of introduction of the requirement about the obligatory graduation of the specialized magistracy of Academy of Justice at SC RK is relevant for candidates for judges. It is necessary to reform the training system in Academy. It is necessary to carry out the theoretical training during the first year, and at the second year - to establish the traineeship in court. Admission to the Academy is possible only for candidates whose average assessment according to the diploma not less than 75 points. It is necessary to open in Academy doctoral studies for judges as professional development for judges is the important purpose of judicial reforming.

Examination in Academy should be carried out in two steps. At the first stage there is necessary to hold complex testing for knowledge of the legislation in the National Testing Center, irrespective of Academy. Following the results of testing if the candidate gained more than 75 points - he is passed to the next tour but if less – is not admitted. Oral examination is held on the second round. Examination needs to be broadcast online for ensuring transparency of the procedure. Passing a qualification examination on the judge needs also to be broadcast online. It is necessary to develop in Kazakhstan the Regulations of Admission of a qualification examination. There must be established an existence of basic four-year legal education as the requirement to judges. It should be determined the order of medical examination of judges. It is necessary to regulate legislatively the priority bases for career promotion of the judge (excellent performance in work, an academic degree, awards and encouragement, etc.). Thus, the modern judicial policy is directed to improvement of legal status of judges. Requirements to judges steadily rise. At the same time, for ensuring balance and justice, it is necessary to pay attention to compliance of qualifying standards to judges and responsibility conferred on them, material and social guarantees of judges.

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