

Actual problems of criminal law, criminal procedure and criminalistics

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The Court as a judicial power in the Republic of Kazakhstan

Abstract. This article deals with the concept of the judiciary and its indications. The judiciary is the main instrument for the protection of constitutional rights of citizens. The judiciary is one of the main components of the foundations of the state, one of the levels of democratic development

Keywords: court, constitutional rights, judiciary.

Article 76 of the Constitution of the Republic of Kazakhstan stipulates that the judicial power shall be exercised on behalf of the Republic of Kazakhstan in order to protect the rights, freedoms and legitimate interests of citizens and organizations [1].

The judiciary is an independent branch of the government. Judicial power belongs only to the courts, the authority to resolve their competence, problems arising from the application of the law, and the implementation of these powers through the constitutional, civil, criminal and administrative proceedings in compliance with the procedural forms and guarantee the rule of law and justice; judges' decisions are legally represented by the permanent judges. Justice in a legal state is only the judiciary. No one can convert the responsibilities of the court. In law enforcement the court is guided only by the law and does not depend on the subjective effects of the legislative or executive power. The independence and legality of justice is an important guarantee of the rights and freedoms of citizens, legal state as a whole [2, p. 99-108].

Indications of the judiciary are:

Firstly, the judicial power is exercised by the state bodies and expresses political will.

Secondly, the judicial power belongs only to the courts - the state bodies formed in accordance with the law, formed from people who are capable on the basis of appropriate training and their personal qualities to carry out justice and implement judicial power in other forms. Judicial power in the Republic of Kazakhstan belongs only to the courts presided

by the judges. In accordance with the Universal Declaration of human rights of 1948 every person must be guaranteed the right (on the basis of complete equality), to ensure that his case will be heard publicly and with the requirements of justice by an independent and impartial judges [3, p. 12].

Thirdly, the exclusivity of the Judiciary - it's following indication. The judicial power is exercised only by the courts. most important function of the judiciary - the administration of justice belongs only to the court according to the Constitution of the Republic of Kazakhstan; only the court may declare the person guilty and penalize him...

Fourth, independence, self-sufficiency are the main characteristics of the judiciary. The independence of the judiciary means that the Court does not share the judicial function with any other bodies, and the court's decision does not require anyone's sanction or approval. The courts, exercising judicial power, form an independent branch of government. The separation of the judiciary means that the courts form a system of state bodies which are separate from other state structure, system, and are not subordinate to anyone in the performance of their functions. Judicial independence is primarily expressed in the independence of judges. According to Article 77 of the Constitution, judges are independent and they are subject only to the Constitution and the law. This means that judges are not subject to any outside influence. In their decisions they have to follow only the Constitution and the law. So, as the laws and other legal acts must not contradict the Constitution (article 4 paragraph 2), the judges have the right and are responsible to follow the

law if only it complies with the Constitution (Art. 78) [1]. This expresses the independence of the judiciary from the legislatures and the courts' authority to implement judicial control over the content of the laws. Before applying the law to resolve the particular case, the judge must make sure it does not contradict to the constitutional regulation.

At the same time the subordination to the Constitution and the law guarantees the independence of judges from unlawful influence, as well as a guarantee for the citizens from arbitrariness on the part of the judge in doing justice.

The Constitution establishes and other guarantees of the independence of judges, which are specified in the Constitutional Law of the Republic of Kazakhstan "On the Judicial System and Status of Judges". Among the guarantees of judicial independence can be distinguished: a) status, which determine the constitutional and legal status of the judges; b) organizational, concerning the organization of the judicial system and the creation of courts; c) financial; g) procedural, i.e., defining the rules of justice.

Fifthly, the procedural order of activity is an important feature of the judiciary. The procedural order specifies only the law. The law regulates in detail the rules of court actions and decision-making of specific cases. The single system of administration of justice designed to ensure the legality of all the activities of bodies, to implement the judicial power, the legality, validity and fairness of judicial decisions, the protection of the rights of persons whose interests are affected in varying degree.

Sixth, the objectivity and impartiality are the important social characteristics of the Court activity. Partial court is not able to carry out justice. It perverts the idea of justice and can abuse of power. The partiality under the influence of any forces trying to influence judges is especially dangerous.

The impartiality of the judiciary, which is manifested in the lack of commitment to any of the parties, the ability to relate well to their claims, and the personality and to act only in the interests of truth and justice based on the law and conscience are fundamental requirement of the moral and legal

characteristics. The judiciary which is unable, or not trying to act impartially, doesn't deserve society's confidence. Those who embodies in these conditions are deprived of authority and the moral right to judge others.

In the legal democratic state there is a rule according to which the state itself, as well as citizens' associations, and individual personality should be free to relate their actions lawful. But the collision of their interests, different understandings of rights is inevitable that creates legal conflicts. Adoption of the representative bodies of law, the performance of the executive authority of the laws alone cannot prevent such conflicts and to ensure strict observance of the rights of all its stakeholders, i.e., ensure the rule of law. This task is performed by the courts - an independent member of the government, which with their specific means and a special device protect the rights and freedoms of people, confirm the law and justice. The most important task of the judiciary, to protect human rights, requires democratization of the judicial process and citizens' right to judicial review of the actions of officials.

The judiciary acquires truly universal character, or becoming a member in implementing of all functions of the state, and at the same time gains independence from the other branches of government. The rule of law with a cutting edge is directed toward the executive, from which comes the main threat to human rights and freedoms. This threat is balanced by the legislature, the host democratic laws and courts that apply the rule, essentially controlled by the executive branch. An independent judiciary, thus becoming the core of the rule of law and constitutionalism, the main guarantee of freedom of the people.

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