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МАЗМҰНЫ

**Секция
ҚҰҚЫҚ**

КОНСТИТУЦИЯЛЫҚ ҚҰҚЫҚ

Тхабисимова Л.А., Арзуманова С.М.

ЦИФРЛАНДЫРУ ЖАҒДАЙЫНДА ТІКЕЛЕЙ ДЕМОКРАТИЯНЫҢ КЕЙБІР
МӘСЕЛЕЛЕРІ10

Алип Кенжетай, Хайрмуханмедов Н.И.

ҚАЗАҚСТАНДА СОТТАРДЫҢ ҚЫЗМЕТКЕ ҚАБЫЛДАНУЫ ЖӘНЕ
ТАҒАЙЫНДАЛУ ЖҮЙЕСІ.....18

Тхабисимов Х.А.

ИНТЕРНЕТТЕГІ ТОПТЫҚ ІС-ШАРАЛАРДЫ КОНСТИТУЦИЯЛЫҚ
ҚҰҚЫҚТЫҚ РЕТТЕУ.....29

МЕЖДУНАРОДНОЕ ПРАВО

Есиркепова М.М.

ЖАСТАРДЫҢ ЕҢБЕКТІ ҚОРҒАУ САЛАСЫНДАҒЫ ХАЛЫҚАРАЛЫҚ
ЕҢБЕК СТАНДАРТТАРЫ: ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ҰЛТТЫҚ
ЗАҢНАМАСЫНА ЕНГІЗУ ЖӘНЕ ҚОРҒАУ.....35

АҚПАРАТТЫҚ ҚҰҚЫҚ

Джакенов Х.Ж.

АҚПАРАТТЫҚ ТЕХНОЛОГИЯЛАРДЫ ҚҰҚЫҚТЫҚ ҚЫЗМЕТТЕ
ПАЙДАЛАНУ.....40

БІЛІМ БЕРУ

Жанабаев И.Н., Ибатаев Ж.А.,

СТУДЕНТТЕРДІҢ ОҚУ ПРОЦЕСІНДЕ ЫНТАЛАНДЫРУҒА АР-НАЛҒАН
ЖОБАЛЫҚ-НЕГІЗДЕЛГЕН ОҚЫТУ ӘДІСТЕМЕСІ.....47

Зампай Қ.

ХИМИЯ ПӘНІН ОҚЫТУДА ОҚУШЫЛАРДЫҢ ФУНКЦИОНАЛДЫҚ
САУАТТЫЛЫҒЫН ДАМУ.....55

Г.Тынай, Р.Қ. Нұрбекова, К.С. Калиева

ШЫҒЫС ТҮРКІСТАН РЕСПУБЛИКАСЫ УАҚЫТША ҮКІМЕТІНІҢ ҚҰРЫЛУ
МӘСЕЛЕСІ ЖӘНЕ АЛТАЙДАҒЫ ӘСКЕРИ ІС-ҚИМЫЛДАР.....62

ОТАНДЫҚ ӘРІПТЕСТЕРМЕН ЫНТЫМАҚТАСТЫҚ**Ермекбай Е.Н.**

ЫНТЫМАҚТАСТЫҚТЫҢ АЙҚЫН БАҒЫТЫ – ӘЛ-ФАРАБИ АТЫНДАҒЫ ҚАЗАҚ
ҰЛТТЫҚ УНИВЕРСИТЕТІ.....71

Түргинбаева А.Н., Кабенова Г.Г.

КАЗНУ – УВЕРЕННОСТЬ В БУДУЩЕМ!.....73

«INTERNATIONAL SCIENCE REVIEWS»**Social Sciences Series No 1****СОДЕРЖАНИЕ****Секция****ПРАВО****КОНСТИТУЦИОННОЕ ПРАВО****Тхабисимова Л.А., Арзуманова С.М.**

НЕКОТОРЫЕ ВОПРОСЫ ПРЯМОЙ ДЕМОКРАТИИ В УСЛОВИЯХ
ЦИФРОВИЗАЦИИ.....10

Алип Кенжетай, Хайрмуханмедов Н.И.

ПРИЕМ СУДЕЙ К ПРОФЕССИИ И ИХ СИСТЕМА НАЗНАЧЕНИЯ В
КАЗАХСТАНЕ: ПРАВОВЫЕ АСПЕКТЫ.....18

Тхабисимов Х.А.

КОНСТИТУЦИОННО-ПРАВОВОЕ РЕГУЛИРОВАНИЕ МАССОВЫХ
АКЦИЙ В ИНТЕРНЕТЕ.....29

МЕЖДУНАРОДНОЕ ПРАВО**Есиркепова М.М.**

МЕЖДУНАРОДНЫЕ СТАНДАРТЫ ТРУДА В ОБЛАСТИ ОХРАНЫ ТРУДА
МОЛОДЕЖИ: ИМПЛЕМЕНТАЦИЯ В НАЦИОНАЛЬНОЕ
ЗАКОНОДАТЕЛЬСТВО РЕСПУБЛИКИ КАЗАХСТАН И ЗАЩИТА.....35

ИНФОРМАЦИОННОЕ ПРАВО**Джакенов Х.Ж.**

ИСПОЛЬЗОВАНИЕ ИНФОРМАЦИОННЫХ ТЕХНОЛОГИЙ В
ЮРИДИЧЕСКОЙ ДЕЯТЕЛЬНОСТИ.....40

ОБРАЗОВАНИЕ**Жанабаев И.Н., Ибатаев Ж.А.,**

ПРОЕКТНЫЙ МЕТОД ОБУЧЕНИЯ В ФОРМИРОВАНИИ МОТИВАЦИИ
ОБРАЗОВАТЕЛЬНОГО ПРОЦЕССА УЧЕНИКОВ.....47

Зампай Қ.

РАЗВИТИЕ ФУНКЦИОНАЛЬНОЙ ГРАМОТНОСТИ УЧАЩИХСЯ ПРИ ИЗУЧЕНИИ ХИМИИ.....55

Г.Тынай, Р.К. Нурбекова, К.С. Калиева

ВОПРОСЫ ФОРМИРОВАНИЯ ВРЕМЕННОГО ПРАВИТЕЛЬСТВА РЕСПУБЛИКИ ВОСТОЧНЫЙ ТУРКЕСТАН И БОЕВЫЕ ДЕЙСТВИЯ НА АЛТАЕ.....62

СОТРУДНИЧЕСТВО С ОТЕЧЕСТВЕННЫМИ ПАРТНЕРАМИ

Ермекбай Е.Н.

ПЕРСПЕКТИВНОЕ НАПРАВЛЕНИЕ СОТРУДНИЧЕСТВА - КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ УНИВЕРСИТЕТ ИМЕНИ АЛЬ-ФАРАБИ.....71

**«INTERNATIONAL SCIENCE REVIEWS»
Social Sciences Series No 1**

CONTENT

**Section
LAW**

CONSTITUTIONAL LAW

Tkhabisimova L.A., Arzumanova S.M.

SOME ISSUES OF DIRECT DEMOCRACY IN THE CONTEXT OF
DIGITALIZATION.....10

Alip Kyenjetay, Khairmukhanmedov Nurbek

JUDGES ACCEPTANCE INTO PROFESSIONS AND THEIR APPOINTMENT
SYSTEM IN KAZAKHSTAN.....18

Tkhabisimov H.A.

CONSTITUTIONAL AND LEGAL REGULATION OF PUBLIC EVENTS ON
THE INTERNET.....29

INTERNATIONAL LAW

Yessirkepova Madina

INTERNATIONAL STANDARDS IN THE FIELD OF YOUTH EMPLOYMENT
PROTECTION AND THEIR IMPLEMENTATION IN KAZAKHSTAN'S
LABOR LEGISLATION.....35

INFORMATION LAW

Jakenov Khassen

THE USE OF INFORMATION TECHNOLOGIES IN LEGAL ACTIVITY.....40

EDUCATION

Zhanabayev I.N., Ibatayev Zh.A.

PROJECT – BASED LEARNING METHODOLOGY DESIGNED FOR
MOTIVATION FORMATION IN EDUCATIONAL PROCESS OF
STUDENTS.....47

Zampay Quralay

DEVELOPMENT OF FUNCTIONAL LITERACY OF STUDENTS IN THE
STUDY OF CHEMISTRY.....55

G. Tynay, R.K. Nurbekova, K.S. Kaliyeva

FORMATION OF THE PROVISIONAL GOVERNMENT OF THE REPUBLIC
OF EAST TURKESTAN AND MILITARY OPERATIONS IN ALTAI.....62

COOPERATION WITH DOMESTIC PARTNERS**Esbolat Yermekbay**

THE STRONG DIRECTION OF COOPERATION - AL-FARABI KAZAKH
NATIONAL UNIVERSITY.....71

JUDGES ACCEPTANCE INTO PROFESSIONS AND THEIR APPOINTMENT SYSTEM IN KAZAKHSTAN

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Abstract. In this article, the initial training and appointment system of the judges and public prosecutors of the judicial system in the Republic of Kazakhstan are analyzed. It is evaluated training process of judges and public prosecutors and their starting date of employment by taking into consideration reforms regarding the judicial system in Republic of Kazakhstan. As a result of judicial reforms, the training system of judges and public prosecutors and its conditions have considerably altered. It is examined in detail the procedures, such as matriculation examination of intern judges and prosecutors, (special)examination made by national intelligence service, military-medical inspection and polygraph test.

Key Words: Academy of Justice Under the Supreme Court of the Republic of Kazakhstan, Candidacy Process, proficiency exam for judges, trainings for judges.

INTRODUCTION

First Article of the Kazakhstani Constitution lists four elements as the fundamental qualities of the Republic of Kazakhstan. These define Republic of Kazakhstan as a democratic, secular, legal and social state [1]. Without a doubt, most essential requirement of being a legal state is an independent judicial system. For this reason, Kazakhstan, reinventing itself as a democratic republic after the totalitarian regime of the Soviet era, has been reforming its judicial system in order to ensure its independency based on western democracies of the continental European judicial systems since the first years of the Republic's independency. Judiciary independence in this context concerns itself essentially with one of the most important issues associated with ensuring an "Independent Judiciary" which is educating the judges.

New wave of the judicial reforms has been effected as per the "100 Concrete Steps for a Contemporary State" National Plan [2] proclaimed by the President of the Republic of Kazakhstan in 2015. Parts of the National Plan concerned with the Judicial system mainly comprises issues such as initial training = professional education of the judges and public prosecutors, proficiency examinations and professional competence.

18th step included in the 100 Concrete Steps National Plan is directly concerned with Judiciary Reforms. In connection, Head of State Executive Order number N198 dated 18th February 2016, Academy of Justice Under the Supreme Court of the Kazakhstan = Kazakhstan Supreme Court Academy of Justice was established. Reconstruction of the judicial system in the country is a result of the social and legal demand from the public. The reason for this is that ensuring social stability, effecting the importance of the principle of the rule of law, protecting interests of the state and

the society, improving the mechanisms in place to protect rights and freedoms of the citizens, all require directly effective and independent judicial system. Improving the education received by the judges and public prosecutors and strengthening the judiciary organisation staff has been a part of the bespoke political and legal reforms in the country for Kazakhstan.

DISCUSSION

Since 2004, vocational graduate education received by the judges and public prosecutors in Kazakhstan have been provided by the Academy of Public Administration under the President of the Republic of Kazakhstan, Justice Institute. Justice Institute has issued 585 graduate diplomas to prospective judges. Within the scope of the 100 Concrete Steps National Plan of 2015, Academy of Public Administration under the President of the Republic of Kazakhstan, Justice Institute was converted to Academy of Justice as an independent education institute in 2016. Previously, Academy of Justice only trained personnel for positions requiring expertise in law. Therefore, half of the graduates of the Institute were able to choose other professions than judgeship such as public prosecution or legal consultancy for public organisations. The new Academy of Justice aims to take a different path. For this reason, graduate students at the Academy of Justice have been given graduate programmes specifically geared towards expertise in judgeship and they have been required to work as judges after their graduation [3].

Another change in the Academy's status was that the Academy of Justice was no longer under the Public Administration Academy but was directly operating under the Supreme Court of the Republic of Kazakhstan. This Academy was built around the French model both in terms of its operation and in terms of the education activities. Students of the Academy of Justice are not only given vocational training but also, in addition to theoretical courses, are given the opportunity to practice at courts [4].

Academy of Justice has a very special status due to the fact that it was established via Presidential Executive Order. Academy is envisioned to create and implement its own curriculum with complete independence from the Ministry of Education and Science of the Republic of Kazakhstan of the prospective judges. That is to say, from here on out, the Academy will be empowered to autonomously implement its own education activities.

Essential areas of activity of the Academy are as follows:

- Implementing education programmes;
- Organising professional development programmes for the judges and public prosecutors;
- Developing academic activities in the area of justice.

These activities will be carried out by the institutes established under the Academy. The fact that the Academy is established under the Supreme Court provides the prospective judges the opportunity to access practical knowledge along with theoretical which attempts to train qualifies judges. Another aspect of the education provided at the Academy is that some of the courses are given directly by expert judges

and public prosecutors within the programme. Graduate students are required to practice at a local court in the second year of their studies. During their practical studies, they are given the opportunity to improve such experiences as presiding over the session and document preparation. It is expected that by providing the students a short practical study abroad during their education at the Academy, expertise and knowledge of the prospective judges would be more extensive [5].

Today, Department of Court Administration under the Supreme Court Republic of Kazakhstan, carry out the project concerned with the operation, activities and functions of the Academy of Justice in collaboration with the newly established Academy of Justice itself. Within the scope of the project, these organisations are working on laying out the details of issues such as student admission, examination organisations and appointment of the prospective judges to judgeship positions after their graduation from the Academy of Justice [6].

Academy of Justice Under the Supreme Court of the Kazakhstan envisioned to carry out activities in three main areas. First of these is the provision of special professional graduate education for the Republic of Kazakhstan Judicial System. Graduate programme is two years. Judges who are interested in receiving this education are given the opportunity to take two years of leave from their jobs and participate.

Second area comprises vocational retraining or vocational qualification improvement programmes for the judges and court staff who are actively working. In such programmes, judges are to receive a training programme lasting a fortnight. Other staff working out of courts, on the other hand, are to be provided a one-week course. Eighty percent of the courses provided in vocational competency programmes are given by Supreme Court judges.

Third area is academic research activities. That is to say, a scientific research department has been establish under the Academy. Function of this centre is mainly analysing legal precedents from various cases and court statistics to further compile such information into scientific publications. Furthermore, reports concerning implementation of legal projects and Supreme Court projects are prepared as well. One of the most important aspects of the research activities is improving international relations and ensuring collaboration in the judiciary area. To this end, collaborating in projects and organising conferences and panels in cooperation with organisations in the world equivalent in function to the Justice Academy are among its tasks.

Required Qualifications for Judgeship. In accordance with the law, there are two ways to become a judge. First is being directly appointed as a judge upon successfully completing expert professional graduate education and the second is working in law in positions such as clerk or deputy judge at courts for a minimum of five years after graduating from a law school and successfully passing the judgeship examination for appointment. Candidates who successfully pass the judgeship examination upon completion of their vocational graduate programme, there is no mandatory internship period.

In accordance with the state document “Vocational Training Strategy for the Judges and Public Prosecutors of the Republic of Kazakhstan between the years 2017-2020” required qualifications, especially for judgeship, have become stricter. In accordance with the Kazakhstan Constitution, citizens who are interested in becoming judges are required to be past the age of 25 whereas there is no upper limit stated. Age of retirement for judges and public prosecutors is 65 for males and 58 for females. In order for a citizen to be accepted for judgeship, they are required to have at least five years of experience as a court clerk, deputy judge, public prosecutor or counsellor whereas at least 10 years of experience in other positions, again, in legal is required. This document is considered to be the over-arching strategic vision laying out the vision for the improvements in the judiciary system training and state policies in Kazakhstan. In this strategic document, mechanisms and principles associated with preparing staff for the legal system at the Academy of Justice as well as academic training programmes, vocational retraining of judges and public prosecutors and vocational improvement education essentials are depicted in a framework of academic activities [7].

Written Examination and Interview Board

Supreme Court of the Republic of Kazakhstan acts as the examination board. Examination Board comprise public prosecutors, Ministry of Justice personnel, counsellors and scientists. This board also includes Supreme Court Judges. It is considered to be the most qualified board in the country for the purpose of selecting from among the prospective judge and public prosecutors. Judgeship candidates are subjected to two phases of examination with this board. First phase consists of a computer based test which the candidates are required to pass. Prospective judges are required to reach a score of 80 out of 100 in order to be considered to have succeeded the test and qualified for the second phase. These tests are essentially examinations measuring the basic legal knowledge of the judgeship candidates [8]. This comprises the branches of constitutional law, administrative law, criminal law and civil law. In general, prospective judges struggle with this test. There are rarely candidates who pass the exam on their first attempt. For instance, in the test given in 2016, only 19 were successful out of 79 judgeship candidates. Candidates who are successful in the test are subjected to the second phase of examinations which is an oral examination / interview. These oral examinations aim to assess basic law knowledge of the judgeship candidates regarding court procedures, and a particular case/cases. During oral examination, prospective judges are given complete case examples and asked to pass judgement on these within the framework of the law. Judgeship candidates are expected to pass the most appropriate judgement for the case they are assigned. After these phases, prospective judges are given psychometric tests. Upon successful completion of this, lastly, the candidates are required to complete a probationary trial period at the court for a year. After the end of this trial period, candidacy finally comes to an end and they are appointed as judges [9].

Examination Board Members and Duties. Examination Board carefully scrutinises the level of education, practical knowledge and qualities such as mental soundness and ethical integrity that can be classified under the eligibility of candidates.

Board members are appointed by the Supreme Court of Kazakhstan. These include the board chair, 5 renowned and influential scholars of law, three judges appointed by the court (these can be retired judges) as well as one member each appointed by the General Prosecutor's Office of the Republic of Kazakhstan, Ministry of Justice and Republic of Kazakhstan Bar Association. In accordance with the Law "Regarding Supreme Court of the Republic of Kazakhstan" number N436-V the board may include experts invited from a Supreme Court of the Republic of Kazakhstan broad. Board chair and the board members are appointed for two years. Individuals to be appointed to the board are required to have at least 10 years of experience in law and an impeccable professional reputation. Board members are not allowed to attend meetings involving their spouses or kin. The board decides on the annual meeting and session schedule however number of these cannot exceed four per annum. Sessions and meeting of the board shall be open to public and transparent. Only if two thirds of the board members attend a meeting, resolutions shall be considered legitimate from a legal perspective [10].

At this point, it would be beneficial to touch upon some of the specifics of taking the examination. Except for individuals whose candidacy for judgeship was declined due to adverse conditions as depicted under the Republic of Kazakhstan Constitutional Law "Judicial System and Ranks of the Judges" those who previously served as judges for at least 5 years and reapplied for judgeship within four years after their dismissal shall be exempt from the examination. Additionally, individuals who complete the special vocational graduate programme at the Academy of Justice for judgeship shall be exempt for four years after their graduation.

An important distinction here is that those individuals dismissed from judgeship or other judicial official position for their engagement in unethical behaviour or breach of the law are not entitled to take the judgeship examination.

Judgeship examinations shall be valid for 4 years for the candidates after successfully passing. If the candidates are not appointed as judges within 4 years, they are required to retake the exam. Candidates who fail the judgeship examinations may retake it after 1 year.

For the assessment of the judgeship examination results of the candidates in Kazakhstan, in order to prevent favouritism or other similar behaviours, qualification tests given via computers may be overseen by impartial auditors invited from abroad [11].

Polygraph Test for Judge Candidates. After the judge candidates pass the intelligence audit successfully they are required to pass an oral examination. This is followed by a psychological evaluation. After the psychological evaluation, judge candidates are subjected to a polygraph test in order to confirm the accuracy of the information they provided and spot potential malicious intents.

The reasons to subject the judge candidates to polygraph (lie detector) include determining whether the candidates have illegal intents; have character flaws; have habitual adverse behaviour; have drug and other substance addictions; have provided accurate information about own properties and civil responsibilities; have secrets such

as forged documents, double citizenship or other information; have committed fraud; have connections with, have assisted or worked for any legally outlawed organisations, terrorist organisations, criminal organisations; have secret commercial organised interest; have the intent to misuse authority.

These are the main issues aimed to be spotted during the polygraph test. Results of the polygraph tests shall be guidelines and recommendations. Terms and conditions of carrying out a polygraph test are to be determined by the government of the Republic of Kazakhstan [10].

Competition for the Judgeship. Final recommendation of the Republic of Kazakhstan Supreme Judiciary Board for the district court chair as well as district, province and Supreme Court judges shall be given as a result of the assessment of the judge candidates.

Job posting for the district court chair position and district, province and Supreme Court judge positions are made in Kazakh and Russian languages one month in advance on media distributed by the publishers to all areas of Kazakhstan by the Supreme Court Board.

Board has the right to request specific and additional information regarding the judge candidates from the authorised government agencies.

According to the Article 79 of the Republic of Kazakhstan Constitution, citizens who are over the age of 30, who has a degree from a law school and at least two years of experience in law and who has passed the proficiency examination may become judges. In accordance with the Constitution, requirement to become a Republic Judge may be extended with additional criteria with laws.

As per the Constitution, Chair and the judges of the Supreme Court of the Republic of Kazakhstan are appointed by the Parliamentary Senate from among the candidates proposed by the President with recommendations from the Supreme Judicial Board. Chairs and judges of local and other courts are appointed by the President with recommendations from the Supreme Judicial Board. Supreme Judicial Board comprises the Chair and other members appointed by the President. Supreme Judicial Board is established in accordance with the Law dated 2016 number N436-V regarding the Republic of Kazakhstan Supreme Court.

In order to become a district judge, candidates must be over the age of 30, must have completed undergraduate studies, must exhibit good humane and personal qualities, must have perfect professional ethic track record, must have at least five years of experience as court clerk, assistant judge, public prosecutor, lawyer, must pass the proficiency exam (individuals who have completed their graduate studies for judgeship and passed their final examinations shall be exempt from judgeship proficiency examinations for up to four years) [12]. In addition, judge candidates must be given a positive result by medical examiners. Additionally, the candidates are required to be the Republic of Kazakhstan citizens, to completely quit their existing jobs and commit to a year of paid trial period in court and earn the positive reference of the judges at the court they are assigned as well as pass the polygraph tests in order to be able to be appointed as judges.

In order to become a judge at a Republic of Kazakhstan provincial court, in addition to the legal requirements of becoming a district judge, a candidate must have at least 15 years of law experience with at least five years of this as a judge, recommendation of the general assembly of judges at the province court of candidacy, written reference from two judges of Supreme Court and one retired judge and must be a citizen of the Republic of Kazakhstan. A reference letter by a judge who has been given a disciplinary penalty within the previous two years of the reference shall not be accepted.

When the judges write references for candidates, they are required to share clear information to which they have access. Priorities of a judge for their reference are as follows:

- Judge shall disclose,
 - The date and circumstances under which they have met the candidate;
 - Common work experience with the judge candidate for whom they are providing reference (if any);
 - Professional and communication skills and other information they are privy to regarding the judge candidate.

Results of the general assembly of judges by the provincial court of candidacy may be objected to at the Supreme Court General Assembly.

Judge candidate shall be proposed to the Supreme Judicial Board after acquiring approval of the general assembly of the province of candidacy and General Assembly of the Supreme Court.

In order to become a judge at a Republic of Kazakhstan supreme court, in addition to the legal requirements of becoming a district and a provincial judge, a candidate must have at least twenty years of law experience with at least ten years as a judge and at least five years as province judge, must have recommendation of the general assembly of judges of the Supreme Court, must have written reference from two judges of Supreme Court and one retired judge and must be a citizen of the Republic of Kazakhstan.

For the Supreme Court of the Republic of Kazakhstan chair position, neither the recommendation of the general assembly of judges of the Supreme Court nor the written references are required.

As per the N199-III Republic of Kazakhstan Constitutional Law Amendment dated 11 December 2006, judge candidates are required to leave their current work and work at the court full time and paid as intern judges for a trial period of one year. Arrangements for the internship and trial period for the judges at the courts are regulated by the oversight of the Republic of Kazakhstan President.

Appointing Candidates for a Vacancy. Appointment of the candidates via competition for a vacancy shall be carried out by the Supreme Judicial Board in an open and transparent manner. During the competition, Board shall evaluate candidates based on the work experience, proficiency score, academic title and rank, whether the candidate applied for judgeship for more than three times, personal and ethical outlook and the GPA on the graduate and undergraduate diplomas. Assessment shall prioritise

those working in the judicial system and with work experience. As work experience in the judicial system, court assembly clerk, assistant judge, public prosecutors and lawyers attending court shall be accepted.

For the provincial court and supreme court judgeship vacancies, during the competition, Board shall evaluate candidates based on the work experience as judges, flawless ethical track record, general score for the cases the candidate presided, academic title and rank, and whether the candidate applied for judgeship for more than three times. For provincial court assessments, organisational skills of the candidates are also taken into account.

Supreme Judiciary Board first assesses and then puts to vote the candidates considered appropriate as per the provisions above. If required, a closed vote may be used in appointing judge candidates. Candidates who get the votes of at least two thirds of the present board members may be appointed as a judge to fill the vacancy [10].

Candidates who do not work as judges but appointed as a result of the competition are required to be subjected to a special audit. This audit is carried out by the administrative organisation of the Supreme Judiciary Board. Candidates who work full time in public service and was audited by the government before may provide their previous audit results. Certificate issued upon completion of a special audit shall be valid for one year.

In the case that the appointed candidate is found to have a criminal investigation in their past which was abated due to lack of evidence candidate's case file shall be reviewed by the public prosecution again. Results of the review shall be presented to the Supreme Judicial Board.

In the case that conditions that may adversely affect the ability of the judge candidates appointed for district, province or Supreme Court judgeship positions to carry out their duty the board shall be entitled to disqualify the candidate and appoint another candidate.

In the case that there is only one candidate for a vacancy in judge positions, the competition is considered to be dropped and another posting is made to repeat the process [10].

Appointment of Candidates for Public Prosecution. In accordance with the Republic of Kazakhstan Law regarding Public Prosecutors dated 21 December 1995 number N 2709, citizens who has the professional education, health report stating that the candidate is sound of health with respect to carrying out public prosecution duties, sound personal and ethical track record, and was subjected to special audit upon previous request sent to the Republic Information Centre for employment of public servants may work as public prosecutors. Citizens with past convictions from the courts of law of either of administrative or criminal nature, who were not acquitted by the courts of law, who were dismissed from public organisations and judicial organisations due to adverse behaviour shall not be considered as public prosecutors. Public prosecution office may assign trial periods for those who start working in public prosecution [13].

Citizens who apply for the position of a public prosecutor before the public prosecution offices shall go through the processes detailed below.

With the decree of the Prosecutor of General Republic of Kazakhstan dated 30 June 2004 number N479 "The Republic of Kazakhstan Regulations for Appointment of Candidates for Inclusion in the Public Prosecution Reserve and Employment" was accepted. In accordance with these regulations, candidates have to be successful in the following to be able to become a public prosecutor:

1. Written Test;
2. Interview;
3. Approval report for the special audit to be carried out by the National Intelligence Agency.
4. Approval report of the military-medical board; [14]

Public prosecutor candidates must first apply with a written letter human resources departments of the provincial and province equivalent local public prosecution offices. After the required documents are presented by the candidate to the human resources, the vacant public prosecutor position shall be reserved. Candidates who fail the test and interview or fail to acquire approval from the military-medical board shall be returned their documents with a letter explaining the reasons for the cancellation of the reservation. Public prosecutor candidates whose applications were declined due to failure to acquire approval from the military-medical board may reapply with a letter after the health conditions are eliminated.

Test and interviews for the public prosecution positions shall be in accordance with the Republic of Kazakhstan Law regarding "Public Servants" and the "Competition for the Vacant Public Administrative Positions" number N202 issued by the President of the Public Servants Agency dated 24 November 1999. [13]

CONCLUSIONS

As part of the judicial reform effected as per the "100 Concrete Steps for 5 Institutional Reforms" of the President of the Republic of Kazakhstan, modern and professional education and appointment systems for the prosecutors and judges in Kazakhstan have started to change and transform significantly.

Two of the institutional reforms under the 100 Concrete Steps for 5 Institutional Reforms National Plan are directly related to the education of the judges. Fundamental goal of the judicial reform is to ensure a real constitutional state based on supremacy of law. One of the most important elements of a constitutional state is the independence of judiciary organisations. Judicial reforms in Kazakhstan are a result of the public demand. Recently, the public's trust of the judicial bodies in Kazakhstan have been falling significantly. Main reasons of this are such factors as misconduct of the judges and prosecutors and the fact that their educational profiles were low. Therefore, one of the most important issues of the judicial reform that started in 2016 is the renewal and modernisation of the education system of the judges and public prosecutors. Within this context, reforms have made liberal use of experiences of many foreign countries and especially France.

In Kazakhstan, top point of controversy regarding the inadequacy of the judges is related to the age limit of becoming a judge. In the constitution, age limit for becoming a judge is 25 years of age. However, the public and academics prominent in law are gradually embracing the change of this age limit to 30. It is important to note that this issue might be a part of a constitutional amendment within the scope of the new judicial reforms.

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ҚАЗАҚСТАНДА СОТТАРДЫҢ ҚЫЗМЕТКЕ ҚАБЫЛДАНУЫ ЖӘНЕ ТАҒАЙЫНДАЛУ ЖҮЙЕСІ

Түйін. Бұл мақалада Қазақстан Республикасындағы сот жүйесінде судьялар мен прокурорларын қызметке қабылдану және тағайындау жүйесінің ерекшеліктері талдау жасалады. Қазақстан Республикасындағы сот жүйесіне қатысты реформаларды ескере отырып, судьялар мен прокурорларды кәсіби оқыту және қызметке қабылдануының даму кезеңдері қарастырылған. Сот реформаларының нәтижесінде судьялар мен прокурорларды оқыту жүйесі және оның шарттары айтарлықтай өзгерді. Ол судьялар мен прокурорлардың біліктілігін арттыру, емтихан тапсыруын қамтамасыз ету, арнайы сараптама, медициналық сараптама және полиграф сынағы секілді мәселелер егжей-тегжейлі қаралады.

Кілт сөздер: Қазақстан Республикасы Жоғарғы Соты жанындағы Сот төрелігі академиясы, кандидаттарды іріктеу, судьялардың біліктілік емтиханы, судьяларға арналған тренингтер.

ПРИЕМ СУДЕЙ К ПРОФЕССИИ И ИХ СИСТЕМА НАЗНАЧЕНИЯ В КАЗАХСТАНЕ

Аннотация. В статье анализируется система подготовки и назначения судей и прокуроров в Республике Казахстан. Оценивается процесс обучения судей и прокуроров и правила приема на работу с учетом реформ судебной системы в Республике Казахстан. В результате судебной реформы система подготовки судей и прокуроров и ее условия значительно изменились. В статье анализируется законодательство Республики Казахстан, регламентирующее процедуры, такие как аттестация судей-стажеров и прокуроров, (специальный) экзамен, а также спецпроверку, военно-медицинский осмотр и проверку на полиграфе.

Ключевые слова: Академия правосудия при Верховном Суде РК, судьи, прокуроры, квалификационный экзамен для судей, тренинги для судей.