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**PRINCIPLES OF DEMOCRACY AND INDEPENDENCE OF THE
JUDICIARY AT THE PRESENT STAGE OF DEVELOPMENT OF
KAZAKHSTAN**

According to Section 4 of Article 3 of the Constitution of the Republic of Kazakhstan state power in the Republic is one, according to the Constitution and laws in accordance with the principle of the separation of legislative , executive and judicial branches and their interaction with each other using a system of checks and balances . [1] For a number of provisions of the Constitution , namely, Part 2, Article 75, Parts 1 and 2 of Article 76, paragraph 2 of Article 77, judicial power is exercised through civil, criminal and other statutory forms of legal proceedings. The current constitution of the Republic of Kazakhstan clearly separated the power into legislative, executive and judicial.

The Constitution of the Republic of Kazakhstan guarantees the organizational, legal and economic autonomy and independence of the judiciary from the other branches of government. If the legislature makes the laws, the work of the judiciary is aimed at implementing the law.

The Supreme Court of the Republic of Kazakhstan supervises the work of subordinate courts receives regulatory decisions and explanations on judicial practice, that is, one of its functions is the law implementation.

Law enforcement practice represents the entire enforcement activity and enforcement experience formed on its basis. A variety of law enforcement is the judicial practice.

Judicial authority is exercised on behalf of the Republic of Kazakhstan and shall be intended to protect the rights, freedoms and legitimate interests of citizens and organizations, ensuring observance of the Constitution, laws and other normative legal acts, international treaties of the Republic. Any interference in the activities of the courts of justice is prohibited and punishable by law.

The judicial Power shall extend to all cases and controversies arising under the Constitution, laws and other legal acts, international treaties of the Republic. According to Article 1 of the Constitutional Law "On the Judicial System and Status of Judges of the Republic of Kazakhstan" the judicial power in the Republic of Kazakhstan belongs only to the courts in the face of the permanent judges and jurors involved in criminal proceedings in the cases and manner provided by law.

The cardinal changes taking place in our society, require a corresponding rapid and substantial renovation of legislation.

In addition, to provide all the relationships that require legislative regulation is impossible. Therefore, at present the role of the judicial practice has increased significantly both in terms of application and interpretation of law, and in terms of legislation, because the court, applying the analogy of the law or right fills gaps in the

law, that is, the court actually creates a new rule of law, on the basis of which the case is solved.

The right, secured only in general terms may be difficult to implement, if there are no rules that would specified it in relation to the different relationship. That is, we need laws and regulations to ensure that the right protected by the Constitution, was further elaborated in special laws, legislative and statutory acts. One of the priority directions of development the state power system in Kazakhstan, as in many post-Soviet countries is the reform of the judicial system, which is expressed in an effort to build an effective, independent judicial power that is capable efficiently solve issues of justice, grant relief rights and interests of the parties arising from the legal relationship [2].

The Supreme Court of the Republic of Kazakhstan as the country's highest judicial body entrusted with the tasks not only to review the legal cases, but the task of implementing the procedural supervision of the lower courts, making regulatory decisions and explanations concerning judicial practice of analysis and generalization of judicial practice, as well as other functions .

One of the most important activities of the Supreme Court is the performance of judicial law-making, under which, on the basis of the provisions of the Law "On the Judicial System" we need to understand

- The adoption of regulatory decisions;
- And, to a certain extent, an explanation on judicial practice.

It should be noted that the recognition of the Law "On normative legal acts" of regulatory decisions of the Supreme Court of the acts of legislation is certainly necessary and important achievement in the ordering of regulations in the national legal system. The recognition of regulatory decisions of the Supreme Court of the legal act provides a tool for flexible, timely procedural regulation of activities of the courts and all other participants in the substantive and procedural relations. This is particularly evident when comparing the approaches to the status of Resolution of the Plenum of the Supreme Courts in a number of neighboring countries, where the issue of regulatory and legal nature of such acts is, in captivity, subject to the doctrine of substantiation. It just so happened that the court, as a law enforcement agency, with a special status and tasks is an arbiter in almost unlimited range of legal disputes and issues. The courts are entrusted with the function of making decisions on these cases, placing the last point in the debate.

Thus, when deciding on incoming cases relating to the protection of the rights and interests of a wide range of participants of legal relations on the basis of the current legislation, international law and legal practices, as well as acting on the basis of general constitutional principles and the principles of fairness, reasonableness, courts develop their conclusions, rules, principles, which are legal in nature, and in some cases may even deserve to be recognized as new legal rules [3].

The non-recognition and rejection of this approach is not in any way able to erase and turn life's circumstances, a de facto status associated with enforcing the law courts. This approach is a combination of judicial functions with law enforcement

and law-making finds its worthy recognition abroad as in the doctrine of the Romano-Germanic system and common law system.

The peculiarity of the judiciary law, in our view, lies in the fact that, as a result of the law enforcement, practical activity courts, this system has significance not only for the interests of the parties to the particular, individual cases, but plays right-regulatory role for all levels of the judicial system and, consequently, does not allow them to ignore all other entities. Consequently, the question of the prospects and conditions of the development of the judicial law is of crucial importance not only for the state of most of the national judicial system, but also will affect the state of justice and the institution of judicial protection of the rights and interests of citizens and of all other entities. In this regard, we need constantly to make efforts to identify the problems and promising directions of implementing practical measures to create favorable conditions for the development of the judicial law.

The Court, representing the one of the branches of government and implementing the administration of justice, that is, the protection of the legitimate rights and interests of legal entities, in fact, is the sole authority vested with the final restoration of violated rights and the rule of law.

In this regard, the courts, putting into practice the existing law and actually checking on the effectiveness of existing legislative acts, being called upon, to give a final answer on the broad spectrum of legal issues have the ability to apply the tools identify the weaknesses, identify possible ways to compensate and correct legislation. In this regard, the provision of the judiciary, represented by the Supreme Court of the legislative initiative on issues related to the administration of justice, will create the conditions for effective development of the law. The development of the provisions of the legislative initiative of the Supreme Court and exercising of this right at a higher level may be another promising area of legal reform. [4]

The basis of activities of courts is the legitimacy that under current conditions can be described as a constantly functioning in society state legal regime under which the facilities needed for the functioning of all government agencies, officials, and especially for the administration of justice can be created. Huge social significance of law lies in the fact that only with constantly functioning state legal regime can be ensured stability of implementation of legislative, executive and judicial powers of the state. On the other hand, the judiciary, protecting public order, must be free within its competence, otherwise it is not power. The boundaries of the judicial authorities clearly indicate the law. Within its framework, on the one hand, is allowed the judicial discretion, interpretation, judicial "lawmaking", protection of the right, on the other, the application of the law to the facts of the case.

The judicial power extends to all cases and controversies arising under the Constitution, laws and other legal acts, international treaties of the Republic. Solutions, sentences and other court rulings are binding on the entire territory of the Republic. A proper understanding and application of the laws of the Republic by the citizens, by every single member of society is a necessary part of building a legal state of education in our fellow citizens a legal culture. Legal practice carried out by the courts of the Republic has a huge impact on the legal education of citizens of the Republic, check them confidence in their legal protection.

Summing up the results and the main directions of further improving the judicial system in Kazakhstan, it should be noted opinion of KA Mami, he noted that today we already have the main thing - the courts have become a key tool for resolving social conflicts in society, to ensure effective protection of human rights and freedoms. And this has been a discernible strengthening the role of the judiciary in the state-legal mechanism of the country. A strong judiciary is key to realization of interests of all the idea of building a strong state. No wonder the Roman jurists formulated extant position that justice is the foundation of the state.

None of the branches of government is not able to exert such a powerful influence on the formation the legal, humanitarian values in the society, as the power of the judiciary.

Namely the judiciary is obliged to make a fair and impartial justice, to ensure that the rights and freedoms of man and citizen, to provide human presence within certain boundaries of behavior that contribute to social and political stability in the society.

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