Improvement of Specialized Institutions for Protecting the Rights and Freedoms of the Citizens of the Republic of Kazakhstan

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Abstract: International human rights law aims primarily to protect individuals and groups from abusive action by states and state agents [1]. This paper deals with the improvement of specialized institutions for protecting the rights and freedoms of an individual and citizens of the Republic of Kazakhstan, which are delineated in the country’s constitution. It is necessary to improve the system that guarantees the rights and freedoms of citizens. For this purpose, it is important to study and take into account international experience.

Key words: Constitution of the Republic of Kazakhstan · Rights and liberties · Rights and liberties protection · Constitutional rights · Improvement of judicial system

INTRODUCTION

Can the primacy of human rights be justified in international law? An argument can be posited on the basis of treaty law. The U.N. Charter refers to human rights in its second preamble paragraph and lists human rights as the third of its purposes in Article 1, after maintenance of peace and security and the development of friendly relations among nations based on equal rights and self-determination of peoples [2].

The Charter not only makes human rights an aim of the organization, it obligates all member states to take joint and separate action with the U.N. to achieve universal respect for and observance of human rights and fundamental freedoms, as in Articles 55 and 56 [3].

Article 103 of the Charter provides that, «in the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail» [4].

This “supremacy clause” has been invoked to suggest that the aims and purposes of the U.N., maintenance of peace and security and the promotion and protection of human rights, constitute an international public order to which other treaty regimes must conform [5].

It may be argued, however, that there is no conflict between human rights and the international trade and financial regime because they regulate separate areas of human activity. In addition, some may point to the «later in time» rule of the Vienna Convention on the Law of Treaties. However, the Vienna Convention is not retroactive and, in any case, the provisions of Article 30 expressly provide that the later in time rule is “without prejudiced to 103 of the United Nations Charters” [6].

As with domestic bills of rights, international human rights law may limit the implementation of other social goals to means and methods compatible with its contents. In practice, states and international organizations are taking action to increase the responsibility of state and non-state actors when their economic activities impact on human rights.

The building of a constitutional state in the Republic of Kazakhstan requires the further development of specialized institutions that can protect citizens’ rights and freedoms. Policies are required in order to improve the legal environment in terms of strengthening national human rights mechanisms. The inclusion of universally recognized norms of international law in the constitution of the Republic of Kazakhstan led to their being incorporated into the country’s system of rules governing administrative and delictual relationships. It is impossible
to implement rights and liberties for an individual and citizens without statutory regulatory mechanisms for protecting these rights and freedoms. Therefore, the Institute of the Commissioner on Human Rights has become an important agency for safeguarding the rights and liberties of an individual and citizens. The establishment of this institution represented a major step in the enhancement of democracy in Kazakhstan.

The Institute of the Commissioner on Human Rights in the Republic of Kazakhstan came about as a result of the development of the society and the state, the republic’s democratization and the establishment of a system for protecting human rights in the country. Prior to the establishment of this new public body, the state did extensive work to promote the Institute and undertook impact analysis and project management of the Institute to improve its governance. This process involved representatives of government agencies, international organizations, non-governmental organizations, the media and the scientific community.

The process of setting up the Institute of the Commissioner on Human Rights in Kazakhstan can be divided into the following four stages:

1. (1995–1996) Advancement of ideas about how to form the Institute of the Commissioner on Human Rights in Kazakhstan and the start of systematic preparatory work
2. (1997–2000) The first special events to promote the Institute of the Commissioner on Human Rights in Kazakhstan; development and implementation of a project sponsored by the Commission on Human Rights and the United Nations Development Programme (UNDP) to assist in the establishment of the Institute of the Commissioner for Human Rights in Kazakhstan; and international conferences on the formation of the Institute of the Commissioner on Human Rights in Kazakhstan
4. (September 2002) Publication of the President’s decree “On the establishment of the Commissioner on Human Rights in the Republic of Kazakhstan.”

The course of democratic development in Kazakhstan has been consistent and the movement toward positive change is progressive and irreversible. The strategic goals and objectives of this development are reflected in the National Plan of Action on Human Rights for 2009–2012 and the Concept of Legal Policy of the Republic of Kazakhstan for 2010–2020. Both documents were approved by the president of the Republic of Kazakhstan, Nursultan Nazarbayev. The promotion and protection of human rights cannot be achieved without the country drawing upon the experience of international arena. Thus, Kazakhstan has made the decision to accede to the fundamental United Nations (UN) conventions and treaties on human rights. Kazakhstan supports continued cooperation with international human rights monitoring mechanisms.

In July 2011, the UN Committee on Human Rights presented the first national report on the implementation of the International Covenant on Civil and Political Rights in Kazakhstan. During the presentation, UN experts gave a positive assessment of the Kazakhstan government’s policy to ensure the inter-ethnic and inter-electoral rights of citizens, citizens’ rights to education and equal rights and opportunities for women and men, as well as the provisions of the National Action Plan for Human Rights.

The guarantee of citizens’ constitutional right to qualified legal assistance is a prerequisite and a promise of citizens’ access to justice. Yet the mechanisms of this law need to be improved. Provisions of the constitution of the Republic of Kazakhstan provide for freedom of religion (Article 19), freedom of assembly (Article 32) and freedom of association (Article 23). The securing of human and civil rights for citizens does not justify a state “presenting rights” to its citizens because everyone should be able to expect the state to fulfill its obligations, which are intrinsic to the protection of individual rights. Such rights and freedoms belong to everyone from birth by virtue of human nature itself and cannot be regarded as a gift from the state to a person [7].

Analysis of the constitution of the Republic of Kazakhstan’s norms indicates that since 1995, there has been a division between the rights and freedoms of an individual and those of the citizens of Kazakhstan and support for the system of universal values, which was enshrined in legislation and documents of the world’s major democracies for the first time in human history—the Declaration of Independence (1776, the United States); the Bill of Rights (1789, the United States); the Declaration of Rights of Man and Citizen (1789, France). Traditionally, the system that protects the rights and freedoms of individuals includes political, social, economic, civil, cultural and personal rights. Fundamental rights and freedoms are directly applicable, are protected by the state and are in line with international standards. The body of
The Republic of Kazakhstan embodies international standards of rights and freedoms enshrined in the constitution of the system of executive power. It promotes interaction among the various branches of government and their coordinated operation. All branches are interested in maintaining and strengthening the rule of law, which prosecutors are responsible for enforcing. Without the rule of law, the power of the state cannot be strong and successful in fulfilling its function [8].

In accordance with the law, changes were made in the Code of Administrative Offences of the Republic of Kazakhstan to protect the rights, freedoms and lawful interests of citizens. The Code of Administrative Offences fixed the powers of the prosecutor as those of a party to the administrative process. The prosecutor’s office functions as one of the elements of the system that provides the citizens a guarantee of their rights when administrative penalties are assigned to them by an internal affairs agency. The Code of Administrative Offences considers this entity to be of utmost importance.

Regarding this issue, N. V. Melnikov emphasizes that “the prosecutor as a rule does not directly interfere with executive and administrative activity in order to prevent violations of the law and this fact does not prohibit him from assuming authority that is of an imperious character. The possibility of the public prosecutor assuming imperious authority is often a prerequisite for effective prosecutions. However, the attorney must be provided with power solely for the purpose of supervising the legality of a case and for nothing else” [9].

However, there are other viewpoints on this issue. For example, some observers believe that the prosecutor should be deprived of his supervisory function, retaining only the role of criminal prosecution [10].

Those who hold this view are of the opinion that “the function of criminal prosecution will best work only when it stems from more global functions: the supervision of legality. Otherwise it becomes a fiction” [11].

The public prosecutor’s supervision at the stage of initiation of a case related to an administrative offense is an effective means for maintaining the rule of law and protecting the rights and freedoms of citizens [12].

The public prosecutor’s role here depends upon the prosecutor’s determination of how well the report made by an official organ of Internal Affairs complies with the requirements of the law. The entire outcome of the case may depend on this [13].

If a violation of the human rights and freedoms of an individual and citizens has the characteristic of an administrative offense, the prosecutor shall initiate proceedings in the case, or immediately send a description of the offense and inspection reports to the bodies or
officials authorized to consider such cases. The public prosecutor involved in the proceedings before courts that deal with administrative offenses in order to protect the rights and lawful interests of citizens within its powers, in accordance with Art. 27 of the Administrative Code of the Republic of Kazakhstan, shall have the right to initiate the proceedings on administrative offenses; apply to the court to request that it perform its duties; and to protect the rights of individuals, organizations and public and government interests. No jurisdiction can be changed without the prosecutor’s consent, as stipulated by law [14].

According to Article 83, paragraphs 1, 2, 3 and 4 of the Administrative Code of the Republic of Kazakhstan, the prosecutor’s office, on behalf of the state, shall exercise the highest supervision over the exact and uniform application of laws; the decrees of the president of the Republic of Kazakhstan and other normative legal acts within the territory of the Republic; the legality of investigative activities, inquiries and investigations; administrative and executive procedures; and measures to identify and remedy any violations of the law. This office may also challenge the laws and other legal acts that contradict the constitution and the laws of the Republic. The prosecutor’s office exercises its powers independently of other state bodies and officials and is accountable only to the president of the Republic. The prosecutor general of the Republic cannot be arrested during his term of office, is subject to measures of administrative punishment imposed by a court of law and may be arraigned on a criminal charge without the consent of the senate, except in cases of flagrante delicto or the committing of grave crimes. The term of office of the prosecutor general is five years.

The competence, organization and procedures of the prosecutor’s office are determined by law. The prosecutor’s office represents the interests of the state in court as well as in cases, procedures and within the limits prescribed by law and conducts criminal prosecution. Thus, the powers of the prosecutor are realized at all stages of the administrative and delictual processes. Moreover, the prosecutor has the right to sue for any offense, including suing subordinate bodies of internal affairs.

Article 1 of the Act provides that the prosecutor’s office is a public body, which reports to the president and exercises the highest supervision over an exact and uniform application of laws, the decrees of the president of the Republic and other normative legal acts within the territory of the Republic, the legality of operational investigations, inquiries and investigations and administrative and executive procedures. Article 2 of the Act provides that the prosecutor’s office should take measures to identify and remedy any violations of the law, appeals the laws and other legal acts that contradict the constitution and the laws of the Republic and represents the interests of the state in court, as well as performs prosecutions in the cases and in the manner and within the limits prescribed by law [15].

Note that all powers of the prosecutor, because of the public nature of prosecutorial supervision, are at the same time, his duties. The administrative jurisdiction authority shall notify the prosecutor of the place and time of proceedings related to administrative offenses and cases of administrative offenses, which have been raised at the initiative of the prosecutor. Under circumstances such as those in which the rule of law is being formed and actively developed, it is important to refer to the viewpoint about the role of prosecutor in the system in carrying out the defense of civil rights, which is outlined in the literature. For example, administrative authorities may offer to raise the status of the prosecutor significantly. An analysis of the prosecutorial activities qualified to perform the oversight of compliance with the law on administrative offenses shows loyalty to self-direction to control the prosecution of law enforcement bodies of administrative jurisdiction, regulated by special order of the prosecutor general. Independent organizations that oversee the prosecutor general’s office are required to provide this guidance.

On October 4–6, 2011, the VI Interregional Conference of the International Association of Prosecutors for Central and Eastern Europe and Central Asia was held. The conference, titled “The Role of Prosecutors in Ensuring the Rule of Law outside the Criminal Law Sphere of the State,” discussed the issues described above. In his speech, President Nazarbayev noted that “today the world is experiencing a period of deep transformation, seeking effective responses to common challenges, is looking for new models of human development. Today it is important to boost cooperation in the field of protection of rights and freedoms of citizens, business support and free competition, constantly exchange experiences and information and work together to develop new forms of advocacy. Events such as this conference are of great importance for consolidating the efforts of modern states and prosecutors to develop internationally recognized standards of prosecutorial activities” [16].
Since 1995, Kazakhstan has been a member of the International Association of Prosecutors, whose members include prosecutors from 140 countries. The organization is composed of the prosecution services and associations of various countries. The president of the International Association of Prosecutors, James Hamilton, said that the members of the International Association of Prosecutors have the task of developing and strengthening the human rights capacity of prosecutors.

A forum on the prosecutor’s community was organized on a large scale in Kazakhstan for the first time. The conference was attended by delegations of the prosecutors general of 45 countries, representatives of the UN, the Organization for Security and Co-operation in Europe (OSCE), Eurojust and other international organizations.

The prosecutor general of Kazakhstan, A. Daulbaev, noted that the prosecutor’s office has evolved with the development of the state and that it is now a leader in protecting the rights and lawful interests of citizens within a system based on law and order. This year alone, the office restored to more than 500,000 citizens their constitutional rights to work and wages, pensions and benefits, housing, health, a clean environment, education and property among others. The principal supervisor pays particular attention to the protection of business entities. The activities of the prosecutor’s office are aimed at reducing the burden on business, suppressing illegal inspections by government agencies that infringe upon the rights of entrepreneurs and curbing abuse by monopolies. As per the inspections results 380 thousands of infringement of the law were liquidated and 44 thousands of illegal acts were cancelled, 27 billions of tenge were returned to the Government budget out of 40 billion of compound damage. Debt of 8,7 billions of tenge was returned to 155 thousands of workers by the efforts of Prosecutor.Growth prosecutorial action. The advocacy role of prosecutors is comprehensive and not limited to the protection of social and economic interests [17].

One of the achievements in the reform of law of enforcement agencies in the Republic of Kazakhstan was the implementation of a mediation body that plays an important role in the pretrial settlement of conflicts, which is an important step in the development of the country’s legal system. As the state has been promoting the development of a civil society, in August 8, 2001, the Law on Mediation was adopted. The law has already been successfully employed in resolving conflicts arising from civil relationships, including in connection with business activities in the area of work and family relationships, as well as in criminal law relationships for minor offenses and crimes of average weight.

According to the Administrative Offences Legislation, record keeping is not required, but the right side of the case in the use of audio and video recordings in the legal process can be implemented with the consent of the presiding officer in a case. In order to avoid possible violations of the rights of participants in the process, the procedural laws should be amended accordingly. This will provide an objective review of cases and improve the quality of legal judgment. It is necessary to develop a draft law “On the provision of free qualified legal assistance” because not all citizens have the financial resources to pay a lawyer.

The judiciary has always been and still remains the subject of government attention. In November 18, 2009, the V Congress of Judges of the Republic of Kazakhstan opened in Astana at the Palace of Independence. President Nazarbayev—as well as 640 delegates from throughout the country and representatives from law enforcement, the legal community and non-governmental (NGO) organizations—attended the congress. Judges from Russia, Kyrgyzstan, Azerbaijan, Georgia, Spain and France were invited to the congress. The participants debated judicial reform in Kazakhstan and shared their vision for the further development of the country’s judicial system. The president has put forward proposals to raise the requirements for existing judges and candidates for judicial office.

In the speech he gave at the V Congress of Judges, President Nazarbayev said that the state provides true independence for the judiciary and strengthens the substantive and procedural safeguards for its activities. The courts, in particular, have become the authority to which citizens as a rule apply for defense when their rights have been violated. Therefore, issues related to the modernization of the judicial and the law enforcement systems continue to be relevant. The government adopted a resolution to re-evaluate all personnel before July 1, 2012. The next step will be consideration of whether to increase the allowances and expand the social benefits package of law enforcement personnel and funding for their technical equipment.

President Nazarbayev noted that “a judge should administer justice only guided by the law and their conscience. It is necessary to radically revise the procedure for the formation of the judiciary. It is necessary to limit the possibility of arbitrary decisions by the appellate courts to return cases to the lower courts for a new trial. The entire judicial system from the Supreme Court is required to increase its responsibilities and qualifications and start by improving their own work. Violation of laws by the judges should be an extraordinary
event, of which everyone needs to be aware. It is necessary to strengthen the system of arbitration and the arbitration courts” [18].

An indicator of democratic development in the area of justice is that the Union of Judges of Kazakhstan is joining the International Association of Judges, which reflects the recognition of Kazakhstan’s judicial system in the international judicial community and the conformity of national legislation to international standards. A fair and incorruptible trial is an essential foundation of the democratic and legal state. Serious guarantees of judicial independence include the constitution, which provides for a complex procedure to bring judges to justice and dismiss them from office. Strengthening judicial independence promotes the separation of the judicial branch from the executive branch in matters related to the courts. The Committee of Judicial Administration, which was established as part of the Supreme Court of the Republic of Kazakhstan, has taken up the issue of the financial security of judicial organs. Now, in their fight for their rights and freedoms, citizens have come to expect judges to have the kind of actions that will always be a reliable bulwark of law and justice in court.

The question of the retention period for citizens held on a suspicion of committing criminal acts was an essential issue for a long time. “The Constitutional Council passed a resolution on the calculation of the constitutional terms. This decree meets basic international standards of legal regulation of detainment and custody rights, that is, the norms and provisions of international human rights treaties ratified by Republic of Kazakhstan. Law enforcement practices must conform to the decisions of the UN Committee on Human Rights, the European Court of Human Rights and other organizations. The precise starting and ending dates of a person’s detention were not determined in existing laws and other legal acts or departmental orders and rules up to 2012. These include actions that substantially restrict the personal freedom of a human being: the detention of mentally ill persons, persons suffering from alcoholism or drug abuse, unaccompanied minors and so on. Citizens have a right to know that in the event of their detention, restrictions on their freedom of movement are calculated up to the minute. Any citizen who is stopped by the police or a military patrol should demand that the exact time be recorded, from the moment of detention, not from the date of the citizen’s delivery to the Department of the Internal Affairs, or from the moment of drawing up of a protocol. Also, a person has the right to know who is responsible for the detention or arrest and to obtain information about the reasons for the detention or arrest. A citizen has the right to an attorney and to one phone call to inform relatives and friends of his whereabouts. According to paragraph 2, Article 16 of the constitution of the Republic of Kazakhstan, a person may be detained for not more than 72 h from the time of actual restraint without a court order” [19].

This is a form of judicial protection that ensures effective compliance with human rights and freedoms. Judicial protection guarantees citizens the legal competence to resolve legal conflicts (judges are professional lawyers), to be treated with objectivity (departmental disinterest and also the availability of procedural safeguards that allow citizens to present evidence) and to avail themselves of the law (in the judicial system, the rule of law is the main criterion for the quality of decisions). In addition, a citizen has the right to appeal to a court any decision or action of the prosecuting authorities or other national security agencies.

The constitution, laying out the basic principle of equality before the law as well as in court, thereby increased the court’s role to one of the highest values of civil society, which is the law. Moreover, the growing number of citizens who are petitioning the court for the protection of their rights and legitimate interests indicates an increasing sense of justice for the people in Kazakhstan. President Nazarbayev has identified the following priorities to improve the judicial system:

- Taking actions to increase public confidence in the judicial system. Raise the professional standards for judges; increase the demands on existing judges; and develop and implement criteria and high standards, qualifications and moral and ethical standards.
- Improving proceedings, to avoid red tape, judicial mistakes and violations of the law by judges. Adopt a common use of innovative technologies for accessibility and transparency of the judicial system. Achieve compliance and quality in the execution of court decisions, which will facilitate the introduction of the institute of private bailiffs.
- Facilitating the further specialization of courts and judges to ensure the quality of justice and the reliable protection of the rights of citizens. Introduce a system of administrative justice, courts in criminal matters, taxation and other specialized courts.
- Not assigning to courts and judges functions that are improper for them. The main and only task of the court is the administration of justice.
- Coupling the process of improving the judicial system with the appropriate updating of laws.
On one hand, the outcome of judicial practice should be a source of legislative initiatives. On the other hand, statutory rights and procedures should ensure the prompt and fair resolution of legal disputes and cases.

A judge is the conscience of the people and must be absolutely honorable and virtuous. The important question is the quality of the process of the renewal of personnel related to law enforcement and special organs. The age of judges is of particular interest. A minimum age requirement of 25 for judges at the lower level is not sufficient. It is necessary to choose more experienced professionals. No one should doubt the impartiality of the court and this is primarily dependent on the judges themselves. Only in this way will the Court of Kazakhstan become a major source of justice in society.

**RESULTS**

- It is shown that in order to improve the professional level of members of the justice system, so as to ensure law and order, it is necessary to carry out a certification of the system of law enforcement prosecution.
- The urgency of the priority tasks for improving and modernizing the legal system in Kazakhstan, which have been designated by President Nazarbayev of the Republic of Kazakhstan, is indicated.
- The necessity to provide the full protection of citizens’ rights and freedoms, while emphasizing the importance of preventing the violation of the law by law enforcement agencies, is identified.
- The role of social organizations and associations in increasing lawyers’ self-awareness and self-identity is discussed.
- In respect to both inquiries, the fundamental question is whether a human rights system premised on state responsibility to respect and ensure human rights can be effective in a globalized world.

**CONCLUSION**

Globalization has led to an increased concern about the responsibility of all international actors to ensure the promotion and protection of human rights. International institutions and scholars have responded with various proposals for strengthening the international regime. First, human rights activists and institutions have begun to posit the primacy of human rights law, and that international organizations with specific responsibilities in those areas should play a positive and constructive role in relation to human rights.” [20]. Specialized institutes cooperate in the protection of the rights and freedoms of an individual and citizens, coordinating their actions and prescribing or recommending necessary human rights activities. The improvement of specialized institutions in the field of judicial disputes, that is, “a man against the government,” is a fundamental part of protecting human beings from an arbitrary state because it is the specialized institutions that are designed to implement the mandate to protect the rights and freedoms of citizens.

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