



Problematic Aspects of the Selection and Appointment of Judges in the Republic of Kazakhstan

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Abstract

This paper analyzes the development of legislation and identifies specific gaps and shortcomings in the selection and appointment of judges in the Republic of Kazakhstan, proposing improvements crucial for an independent judiciary and the implementation of the rule of law. It highlights that while Kazakhstan has attempted to borrow judicial selection mechanisms from other countries, these have not always proven effective due to unique national challenges. Specific issues identified include systemic errors in legislative reforms, lack of transparency, and susceptibility to political and internal judicial pressure. For instance, the composition and functioning of the Supreme Judicial Council (SJC) have not effectively ensured impartial and competent judicial appointments, leading to low public trust. In 2020, Kazakhstan ranked 63rd out of 128 countries on the Rule of Law Index, and the judicial system is perceived as highly corrupt. Kazakhstan's transition from a Soviet-influenced system to a more democratic model faces unique challenges, including deeply ingrained cultural practices such as nepotism. By addressing these legislative and systemic issues, the proposed reforms aim to enhance judicial independence, improve the quality of the judiciary, and ultimately restore public confidence in the legal system. The expected impact includes more transparent and accountable judicial appointments, leading to a more robust and fair judicial system that upholds the rule of law and human rights.

Keywords Rule of law · Independence of the judiciary · Supreme judicial council · Qualification board of justice · Trust in the judiciary

Introduction

The judiciary occupies a vital place in the system of state power, whose functioning largely determines the level and pace of all positive transformations in countries with economies in transition, an immature system of democratic institutions, including the Republic of Kazakhstan (RK). For the activities of the judicial system to bring maximum benefit to society, protecting the idea of the rule of law, the judiciary itself must be independent, since its independence occupies a central place in the democratic system of government (OSCE, 2010). Such independence implies compliance with two conditions: on the one hand, the independence of the judiciary from other branches of government, state, and public institutions, and on

the other hand, the independence of judges from pressure from the judiciary itself, its leaders (Amelin, 2022). The ability of individual judges to effectively resist the pressure of both external and internal forces emanating from the judicial community itself constitutes a good indicator of the independence of the judicial system in general. Admittedly, independence here does not imply the permissiveness of judges, but following the principles of the rule of law to ensure respect for human rights and general principles of law (Ryzhyi, 2022; Synenkyi, 2022).

The implementation of the principle of independence of the judiciary in this sense can be ensured only by judges who are deeply versed in the mysteries of human nature, and have the art of discovering the truth in the contradictory testimonies of people prone to mistakes. Judges who are not beholden to anyone are extremely honest, intellectuals in legal matters who can bring even an inadequate legal system to justice, rather than judges with low qualifications who are capable of perverting even the best system of substantive and procedural law to the extent imaginable (Dunn, 1976; Mukomela, 2020).

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In this regard, the analysis of the selection and appointment of judges in Kazakhstan is as invaluable as in other countries. Previous researchers on this matter correctly noted that the selection and appointment of judges require close attention and study to the same extent as the issues of their removal from office, since judges play a central role in Kazakh democracy, and therefore, should be properly and transparently appointed by impartial experts (Moran, 2007).

In this regard, the following question arises: does the selection and appointment of judges in the RK, carried out over the 30 years of its functioning as an independent state, bring it closer to the above-described ideal of an independent judge? Conclusions can be drawn based on how much the citizens of the Republic trust the judicial system and how satisfied the population of the country with the work of the judiciary. The answers to these questions can mainly be found in the results of the work of the entire judicial system, the national policy in this direction, where the primary role, along with other factors, is determined by the mechanism of selection for judicial positions. In this paper, the authors wanted to highlight the reasons why, despite the measures taken by Kazakhstan to strengthen the independence of the judicial system, constant changes in legislation concerning the system of screening, appointment, and selection of judges, the results of such activities do not justify the hopes of the population for lawful and fair justice. Admittedly, it is difficult to cover all the problems in this area in one paper; and therefore, more attention will be paid to the development of legislation governing the selection and appointment of judges to the courts of first instance, which form the main backbone of the judicial system and provide most of the activities of judicial bodies in the administration of justice. The issues of the promotion of judges and their appointment or election to higher judicial instances are evidently of great importance to the same extent, but the authors of this study believe that this is the subject of a separate study. Therefore, some individual issues in this area will also be considered.

The research findings are closely linked to human rights protection and social work. In order to achieve social justice, uphold human rights, and enable social workers to effectively serve their clients, a strong and autonomous judiciary system is essential. Upon close examination, both fields are fundamentally grounded in justice, fairness, and the well-being of individuals in society. Both human rights protection and social work are centred on the concept that each individual, irrespective of their socio-economic status, ethnicity, gender, or beliefs, is entitled to respect, safety, and fair treatment. The judiciary serves as a guardian who upholds the ideals and values that form the foundation of human rights and social welfare. Its significance extends beyond merely settling disputes; it serves as a mechanism for the redress of grievances, ensuring that justice is both served and seen to be served. Thus, the effectiveness and integrity

of the judiciary are paramount to ensuring that individuals are treated with fairness and that their rights are protected. The concerns raised in this research regarding the selection and appointment of judges in Kazakhstan carry significant weight. Lack of transparency, impartiality, or sufficient qualifications in the appointment of individuals responsible for rendering justice can jeopardize the entire judicial system's integrity. Consequently, this can erode public trust in the institution and lead to miscarriages of justice. Such mistakes can cause significant harm to individuals who are already vulnerable or marginalized, a group that social workers often work with. When judges are not fully independent, beholden to certain powers, or influenced by external or internal pressures, the rule of law faces a threat. In such circumstances, human rights may be easily infringed upon and the vulnerable can suffer without any redress. This poses an even greater challenge for social workers advocating for their clients' rights, as they may encounter systemic barriers. Addressing the diverse challenges facing the judiciary requires a comprehensive approach that extends beyond the institutional framework of the court system. In this context, social work professionals play a pivotal role. By fostering collaborative partnerships with legal practitioners, civic leaders, non-governmental organizations, and policymakers, an inclusive plan for judicial reform can be developed. Engaging in discursive dialogues with communities in the judiciary can yield invaluable insights. Moreover, collaborating with legal scholars from different disciplines can help facilitate workshops and training initiatives that increase public awareness of the challenges and prospective solutions in the judicial sphere. Grounded in empirical evidence, social work professionals possess a strategic position to collaborate with policymakers and legal experts, developing policy recommendations aimed at addressing current challenges.

Literature Review

Worldwide, the processes of screening, appointing, or selecting judges receive significant attention. In Kazakhstan, authors often study the judiciary practices of developed countries. They focus on incorporating specific institutions without examining their effectiveness in improving judge selection and appointment processes. There is a lack of analysis on the functionality of countries without institutions like judicial councils or specialized training for judges (Belispaev, 2011). Research often suggests amendments in legislation to enhance judicial candidate qualifications. Suggestions include increasing the age limit and legal work experience (Zhukokova, 2014). Some researchers advocate for stricter requirements for the Chairman of the Supreme Court of the Republic of Kazakhstan

(Konusova & Kanieva, 2019). Others emphasize defining the roles of the Supreme Judicial Council and the Qualification Commission in examining judge candidates (Ablaeva, 2017). The importance of training future judges, especially in developing their anti-corruption legal awareness, is highlighted in some studies (Abdrasulov et al., 2019). The training in specialized institutions is also discussed (Kaudyrov & Nazarkulova, 2017).

Internationally, researchers examine various aspects of judge selection and appointment systems. They tackle more conceptual issues compared to Kazakh studies. Questions include the effectiveness of judicial councils in ensuring quality selection, judicial independence, and the rule of law's success. N. Garoupa and T. Ginsburg question the correlation between these councils and judiciary quality (Garoupa & Ginsburg, 2009). Another concern is balancing judiciary independence with the risk of closed corporate governance, according to A.J. Scirica. He believes judicial self-governance should offer both accountability and independence (Scirica, 2015). Research also contrasts threats to judicial independence in established versus young democracies. In older democracies, issues like case distribution and working condition changes due to salary adjustments pose threats. In newer democracies, the main concern is the improper selection and appointment of judges, undue pressure, and media influence (Dijka et al., 2016), mirroring the issues identified in Kazakhstan in this study. Although this review cannot cover all aspects found in foreign research, subsequent sections will address more topics.

Materials and Methods

The main materials for this study included regulations of the RK, which have directly or indirectly influenced the system of selection and appointment to judicial positions: the Constitution of the RK, constitutional laws, ordinary laws, regulations, and other acts as they are adopted, acted upon, cancelled, or amended. Furthermore, as materials, the authors used international documents ratified by the RK, data from various international rating agencies, legislation of other countries concerning the selection and appointment of judges, and previous research in this area.

The main methods in conducting the research were analysis and synthesis as universal ways of cognising the surrounding reality, which only in their unity give a complete and comprehensive knowledge of the subject of this study, the legislative regulation of the system of formation of the judiciary in Kazakhstan. The comparative legal method, which allowed for comparisons between the selection of judges in advanced European nations and post-communist countries, played a significant role in the study. The study was based on the results of the judicial system and the

implementation of legislation, since practice acts as a criterion for the truth of scientific conclusions.

Considering the fact that Kazakh science did not discuss the issues of the evolution of the legislation of the RK in the field of screening, appointment, and selection of judges, the authors tried to trace in chronological sequence the issues of adoption, and changes in regulations concerning this important area of the national legal policy. This study attempted to establish what single or systemic errors were made during such legislative transformations, and what results they led to. To see the consequences of reforms in this area, as well as to justify the relevance of this study, the authors turned to the conclusions made by independent rating agencies on the issues of public confidence in the judicial system. At the end of the study, proposals were made to improve the system of selection and appointment to judicial positions.

Results

The Level of Trust in the Judicial System

The quality and efficiency of selecting and appointing judges are revealed by the extent to which the population of the country trusts the judicial system, as well as the extent to which judges ensure the operation of the rule of law principle in Kazakhstan, the desire for which is recorded in many programme documents of the RK. Following the opinion of the official representatives of the judicial system, the majority of indicators point to the fact that the judicial system of Kazakhstan occupies a worthy place. However, among the listed advantages that deserve attention, the authors of this study can merely point to a reduction in the terms of consideration of cases, as well as the use of information and communication technology in Kazakh courts (Asanov, 2020), which, however, does not constitute an efficient indicator of public confidence in the judiciary.

The data of independent agencies assessing the activities of the judicial system in RK is not as rosy and optimistic as the official authorities position it. Thus, according to the Ranking of the countries in the world on the rule of law index for 2020, which is provided primarily by the judiciary, Kazakhstan ranks 63rd out of 128 countries. Behind Kazakhstan are only such countries as Belarus, Benin, Burkina Faso, Gambia, Suriname, etc. (Humanitarian Portal, 2020). The Report on the human rights situation in Kazakhstan for 2020 emphasises that the executive power severely restricts the independence of the judiciary, judges are subject to political influence, and corruption permeates the judicial system (US Embassy and Consulate in Kazakhstan, 2020). According to Transparency International research, the level of corruption in Kazakhstan is also relatively high, since the Republic ranks 94th in terms of reducing corruption after

Ethiopia, Ecuador, and Brazil, and the top 20 countries with low corruption include Denmark, Finland, New Zealand, Singapore, Sweden, Switzerland, Germany, Great Britain, Austria, etc. (Transparency International, 2020).

The authors of this study believe that such unflattering indicators of Kazakhstan's confidence in the judicial system, along with other reasons, are primarily related to issues of selection and appointment to judicial positions. Next, the study traces the development of legislation and its implementation in this area of public relations.

Decommunisation of the selection of judges in the first years of independence. Since independence, Kazakhstan has taken many measures to improve the selection and appointment system for judicial positions pursuant to its international obligations (Resolution 2200 A (XXI) of the General Assembly, 1966; United Nations, 1985) and the Constitution of the RK in 1995, in the provisions of which Kazakhstan claims itself to be a democratic, secular, and legal state, the highest values of which are the person, their rights, and their freedoms (Ministry of Justice of the Republic of Kazakhstan, 1995). Admittedly, there are successes in this area, although there are several reasons why the form of selection of judges has changed in the process of transformation, and the content has not undergone positive changes. Firstly, this is conditioned upon systemic errors in legislative reforms. Secondly, this is an incorrect implementation of the available positive provisions of the legislation. Thirdly, a good deal lies in the specifics of the judicial system and courts, which, unlike governments and parliaments, take decades to change their behaviour (Spac, 2017).

In the development of the principles of the Constitutional Law of the RK on State Independence of 1991, the Constitution of the RK of 1993, and the current Constitution of the RK of 1995 on the functioning of state power based on separation of powers and a system of checks and balances, the gradual breakdown of the old Soviet system of selection of judges began. It was known to be based on the selection of candidates for judges by the justice authorities, oral directives of the party leadership and elections by councils of people's deputies, Supreme Councils of the corresponding level of district (people's) judges, judges of regional courts, and judges of the Supreme Court of the Union Republics and the Supreme Court of the USSR (Supreme Soviet of the USSR, 1989).

The first vector in the reform was associated with decommunisation in the early 1990s, when the state completely departed from the tradition of following the guidelines of the Communist Party of Kazakhstan in all spheres of public life, including the selection and appointment of judges, which, admittedly, is a positive factor (Badó, 2014).

The second vector in the reform is the replacement of the system of election of judges with the system of their appointment, except for judges of the Supreme Court of the RK.

Discussions concerning these approaches are still ongoing in the foreign legal literature, specifically in terms of the development of the judicial corps. With the election of judges, the argument in favour of the legitimacy of the status of judges is strengthened; however, there may be considerable omissions in terms of the professional competence of the composition of the elected judges, since there may be substantial differences in value judgements between the electors and candidates for judges. In the USA, state judges not only frequently received a rather unpleasant opinion from their colleagues in terms of professionalism, but also received the required majority of votes during subsequent elections (Saktaganova & Zhumanova, 2019). Under these conditions, some researchers have proposed to use the method of combining elections with the preliminary selection of candidates by professional experts, from whom the presidents of courts or state governors appoint judges (Pound, 1937). However, there is also criticism of this approach, indicating that selection based on the criterion of professional merit may simply bring the judge selection policy into closer compliance with the ideological preferences of experts, for example, bar associations in the states that conduct preliminary selection (Brian, 2009).

Despite the shortcomings, such a method of forming the judiciary is, according to the authors of this paper, quite acceptable. It is also used in some federal states of Germany, where the Committees for the Election of Judges (Richterwahlausschuss) interact with the corresponding federal minister, where the Committee can only elect a candidate whom the competent minister can approve without violating their duties to appoint based on professional competencies (President of the Republic of Kazakhstan, 1995). In the early 1990s, Kazakhstan began to eliminate the Communist Party's direct influence on judge selection. During this time, the authorities could have kept the previous election system, albeit with some changes. Experts would provide heads of justice with several judge candidates, chosen for their professional and personal skills. Then, local and top-level authorities would select judges from these candidates, legitimating the selection process.

The emergence of the second body in Kazakhstan was the result of the influence of the practice when Justice Councils started operating in many countries of the European Union, intended to guarantee the independence of the judiciary, and reduce the pressure and influence of the executive on judicial systems. The creation of such bodies is welcomed by the EU leadership, since it is based on the European Charter on the Status of Judges and other documents indicating the expediency of participation in decision-making on the selection and appointment to judicial positions of an instance independent of the executive and legislative authorities, in which at least half would be judges (Council of Europe, 1998). Recognising the overall positivity of such recommendations, it

should be mentioned that such a measure cannot solve all the problems of the selection and appointment of judges. Thus, S. Spac (2017) notes that the creation of such a Council in Slovakia meets present-day expectations neither regarding the alleged independence nor regarding the efficiency of its work. And of all post-communist countries where there is any Judicial Council, for example, in 2015, out of almost 150 countries, in terms of “independence of the judiciary,” only Estonia entered the top 50 in the Global Competitiveness Report (Schwab & Sala-i-Martin, 2016). The second most successful country in this regard was the Czech Republic, in which no authority similar to the Judicial System Management Council functioned.

Kazakhstan found itself in a similar situation, where the emergence of the Supreme Judicial Council did not at all affect the quality of the selection of judicial personnel, although outwardly everything looked like following democratic trends taking place in the world. The composition of the Supreme Judicial Council of the Republic of Kazakhstan (SJC) included the Chairman of the Constitutional Council, the Chairman of the Supreme Court, the Prosecutor General, the Minister of Justice; two deputies delegated by the Senate of the Parliament, six judges, two members appointed by the President of the Republic. The President of the Republic served as the SJC’s head. In total, 40% of the composition of the SJC were judges. Evidently, the SJC was considerably influenced by state and ideological elements, since representatives of other higher state bodies in RK prevailed in it.

Admittedly, even in advanced European countries, for example, in Germany, the executive and legislative authorities interfere in the process of selecting judges. This process is mostly formal, intended to prevent an extreme, unacceptable form of judicial independence, when it develops into negative corporatism, allowing courts to close off from the state and civil society. In general, such interference does not affect the activity of judicial bodies in decision-making on the selection and appointment of judges in many countries with established democracy and the rule of law. Therefore it does not violate the concept of judicial independence protected by law and tradition, since legislative procedure and practice provide a system of selection of judges that does not contradict the rule of law. In the RK, such an active involvement of senior officials in the system of selection of judges could not be formal at that time. Only by legalising the mechanism of appointment of judges and restraining the adverse corporate spirit of the judiciary could that change, since it was a time of weak democratic institutions in Kazakhstan and the survivability of the traditions of the Soviet totalitarian system.

Law of the Republic of Kazakhstan No. 203-II “On the Supreme Judicial Council of the Republic of Kazakhstan” of May 28, 2001 (the 2001 Law on the SJC). On December 25, 2000, the Constitutional Law of the Republic of Kazakhstan,

“On the Judicial System and the Status of Judges of the Republic of Kazakhstan” (Government of the Republic of Kazakhstan, 2000) was adopted, and on May 21, 2001, the Law on the SJC (Government of the Republic of Kazakhstan, 2001), which also left the dichotomy of state structures associated with the selection of judges: the qualification collegium of justice and SJC remained, but their structure changed. The Qualification College of Justice was responsible for the selection of judicial personnel for the courts of first instance and was an autonomous, independent institution formed from deputies of the Majilis of the Parliament, judges, prosecutors, law teachers, and legal scholars, as well as employees of justice bodies. The President of the Republic appointed the Chairman of the Qualification Board of Justice. Prior to the adoption of the new law, the Vice Minister of Justice headed the Qualification Board of Justice based on its position. The SJC underwent changes in the sense that it was now headed not by the President of the Republic, but by a chairman appointed by the President of Kazakhstan. The composition of the Supreme Council has not changed in terms of the participation of senior officials. However, the competence of the President of the RK in the formation of the composition has expanded because the law did not define a particular number of Council members appointed by him. The competence of the SJC has not changed much: the right to recommend candidates to the President of the RK for the appointment of judges of the regional level (appellate and cassation instances), as well as the right to recommend candidates to the President for subsequent submission by the President to the Senate of the Parliament of the RK for the election of candidates for judges of the Supreme Court (at that time, the supervisory authority), was retained.

Law of the Republic of Kazakhstan “On the Supreme Judicial Council of the Republic of Kazakhstan” of November 17, 2008 (the 2008 Law on SJC). In 2008, once again taking steps to improve the system of selection and appointment of judges, resulting in the adoption of the new Law of the RK “On the Supreme Judicial Council” (Government of the Republic of Kazakhstan, 2008), which abolished the Qualification Collegium of Justice and all responsibility for the selection and recommendations for further appointment or election of judges was transferred to the SJC, an authority starting to resemble the General Council of the Judiciary in Spain or the Supreme Council of Magistrates in France. In the systematic process of selection and appointment to judicial positions, the SJC began organising work on the admission of qualification exams from citizens who expressed a desire to work as judges, which was previously within the competence of the Qualification Collegium of Justice.

Systemic errors were laid down in Article 6 of the 2008 Law on the SJC, which establishes the procedure for selecting candidates for vacant positions. It cannot be assumed that the errors were random in nature, allowing the selection

of any applicant who meets at least one of the many conditions prescribed by law. Thus, on the one hand, Section 2, Article 6 of the Law as the correct statement that the main criteria for selecting candidates for vacant positions of judges of a district or equivalent court are a high level of knowledge, moral qualities, and an impeccable reputation. On the other hand, upon determining the persons who are given priority in the selection, Section 2, Article 6 indicates several criteria of equal level, without establishing which criteria will be considered first and which last:

1. Passing the qualification exam in a specialised magistracy;
2. At least 5 years of work experience in the legal profession in state bodies that ensure the activities of the judicial system, law enforcement agencies, and the legal profession;
3. Results of the qualification exam;
4. The presence of an academic degree or academic title;
5. Availability of state or departmental awards;
6. Involvement in the competition for the position of judge more than three times; the results of the average assessment of the diploma of higher education.

The norms of the 2008 Law on the SJC, and how they were applied, led to issues. The main guideline was that candidates for judges should have high knowledge, moral qualities, and an impeccable reputation. However, in practice, this guideline did not effectively function. This was because the reference to one or another priority in the Law, not even concerning the level of professional and intellectual abilities available to the applicant, has always remained a good argument for the Council when recommending for the position of judge. For example, the applicant displayed mediocre knowledge in the professional field on the exam, but overcame the threshold level. If one wanted to recommend them for the position of judge, the members of the Council could easily refer to the priority in the law that the candidate take part in the competition more than three times, which was the legal basis for recommending them to the President of the Republic for appointment. Or another example, when, with all mediocre indicators compared to other applicants, the candidate had good grades in the school graduation certificate, which were not further confirmed upon studying at the university, passing the qualification exam. This fact alone could be a legitimate basis for recommending them for appointment, although other candidates could have all other advantages, including this one. But since the SJC did not report to the candidates and did not provide the reasons for the refusal, and all the candidates did not know the scores of their competitors, the applicants learned about the result of the competition only from the list of appointed judges, who were all selected according to the law, although

they were not the best among the candidates. Consequently, the SJC could recommend to the President of the Republic, theoretically, any applicant more or less suitable for formal characteristics, but not the best applicants, as was intended during the competitive selection.

Furthermore, an examination admission system based on professionalism, legality, and transparency is one of the main conditions for identifying the merits or professional competence necessary for a judge. The 2008 Law on the SJC should have had provisions establishing a mechanism for the transparency of examinations, the publication within a reasonable time of all their results, including test, oral and written exams, with the deduction of total scores for each applicant and the compilation of a list of all candidates who passed the exam in descending order of their total scores. In this case, the activities of the SJC could concentrate on verifying the legality and transparency of the examinations, the correctness of drawing up lists based on the results of examination tests, and other questions. But such actions were practically not carried out as a result of the absence of particular examination procedures in the law, and due to its ambiguous statement of the procedure for selecting candidates for vacant positions which contributed to corruption in this area. As a result, numerous people who are completely far from the high status of state officials who ensure the rule of law in the country have infiltrated the judicial system (Supreme Court of the Republic of Kazakhstan, 2018).

Many judges cannot competently and logically express their thoughts neither in writing nor orally, judicial acts are sinful of errors, unsubstantiated theses put forward that are incomprehensible and illogical. The main thing is that, according to the judicial leadership, law schools were to blame for such a situation, which, it turns out, do not pay enough or any attention to these aspects of training legal personnel. However, no one asked a question at these events: how such persons, capable of neither writing competently nor arguing their arguments, incapable of correctly expressing their thoughts and drawing up judicial acts, have penetrated the judicial system. It would be possible to blame law schools if such claims were made after the stages of examination tests for judicial candidates organised by the Supreme Court. The authors of this study believe that it was unwise to raise the issue of the incompetence of judges after they had been working in the judicial system for several years. It is the judicial bodies, including the SJC, which currently has more than half of its members as judges, that should set requirements for judicial candidates, based on which universities will bring their curricula in line with the needs of practice. And, if, in reality, weak candidates with only a diploma of legal education, who meet the required 5-year legal work experience of and are at minimum 30-years of age, are able to join the judicial corps of the country, then this fact will orient students to other “values” such as the

search in the future for illegal ways to get into the judicial corps. The goal will shift from gaining knowledge to obtaining a diploma of higher legal education. Since students are not interested in acquiring knowledge, this state of affairs will naturally discourage the teaching staff, who will be forced to reduce the requirements for students and formally perform their duties.

The Law of the Republic of Kazakhstan “On the Supreme Judicial Council of the Republic of Kazakhstan” of December 4, 2015 (the 2015 Law on the SJC) as amended for 2021. Further reform of the system of selection and appointment of judges associated with the adoption on December 4, 2015, the new law of the Republic of Kazakhstan “On the Supreme Judicial Council of the RK” (Government of the Republic of Kazakhstan, 2015), which was largely focused on institutional strengthening of the body in terms of material support, providing it with its own apparatus, the temporary release of all SJC members, except those appointed *ex officio* (President of the Supreme Court, the Prosecutor General, the Minister of Justice, head of the authorised body for Civil Service Affairs, the chairmen of the relevant committees of the Senate and the Majilis of the Parliament), the former main job (judges, lawyers, researchers) for the period of membership in SJC with appropriate funding of their activities. The President of the Republic appoints all SJC members for terms of 3 years, at least half of whom are judges. Therewith, the 3-year term does not apply to the Council members appointed by office. Evidently, the new provisions in the organisation of the activities of the SJC were aimed at ensuring that the majority of its members performed their duties on a permanent basis, without combining other professional activities for the period of membership in the SJC. The low level of public confidence in the judicial system serves as a proxy for how much these expensive measures have contributed to the qualitative selection of judges. What is the reason for this state of affairs?

To sum it up, the examination of the judicial system in Kazakhstan, particularly in the context of selecting and appointing judges, reveals critical insights into public trust and the operational effectiveness of the judiciary. Despite efforts to improve the system over three decades, the level of public trust remains low, as indicated by Kazakhstan's ranking in global indices related to the rule of law and corruption. Legislative reforms aimed at decommunising and modernising the judge selection process have not sufficiently addressed the core issues of transparency, impartiality, and professionalism. The evolution from a Soviet-influenced system to one seeking alignment with European models, including the establishment of the Supreme Judicial Council, has not substantially enhanced the quality of judicial appointments. The procedural flaws, lack of clear criteria in the selection process, and the dominance of state and ideological influences underscore the challenges in achieving an

independent judiciary. The persistent issues of corruption, political interference, and insufficient qualifications among judges further erode public confidence in the judicial system.

Discussion

The analysis of the legislative reforms concerning the selection of judges in Kazakhstan, through the laws enacted in 2001, 2008, and 2015, highlights that significant changes have not effectively addressed the underlying issues. The establishment of judicial community bodies at the state level, tasked with the selection and appointment of judges, has not guaranteed the creation of an independent judiciary. Examples from various countries show that the presence of such institutions does not necessarily correlate with a judiciary's effectiveness or independence. This observation underscores the importance of the functional and meaningful role of such bodies rather than their mere existence.

The 2015 law introduced a system of rotating Supreme Judicial Council (SJC) members every 1.5 years and a secret ballot for decision-making. These practices dilute personal responsibility for the selection and appointment decisions. Drawing a parallel, in Germany, a minister formally appoints judges and bears political responsibility for these appointments, emphasizing the need for accountability in the process (Sanders & Danwitz, 2018). In Kazakhstan, however, the President and the Senate, who finalize these appointments, cannot be held accountable for the decisions primarily made by the SJC. This calls for a revision of the law to extend the SJC members' term and establish explicit accountability for their decisions (Saktaganova et al., 2019). Further, the preservation of problematic provisions from the 2008 law in the 2015 law, allowing for the selection of mediocre candidates based on a range of “priorities,” has kept the selection process ambiguous and non-transparent. This approach contradicts international standards that advocate for selection based on professional qualifications only (Supreme Judicial Council of the Republic of Kazakhstan, 2016). Moreover, the lack of transparency in the examination process and the use of subjective evaluation criteria by the SJC's Competition Commission potentially exclude qualified but “inconvenient” candidates from the judiciary. This echoes concerns raised in the context of some post-communist European countries, where judicial appointments are seen as extensions of the ruling majority's political agenda (Zoll, 2019).

Another critical issue is the absence of a legal framework for appealing decisions on judicial appointments and promotions, a practice that is available in countries like Germany, where formal judicial review mechanisms exist (Riedel, 2020). This absence undermines the principle of transparency and accountability in the selection process. The

legislative disconnect between legal education and the judicial selection system is also problematic. The reliance on the Academy of Justice for judicial training does not meet the broader need for competent judicial candidates, underscoring the necessity to link legal education more closely with the judiciary's requirements.

Lastly, the traditional Kazakh public consciousness, characterized by a tendency to unlawfully support relatives, including for judicial positions, highlights a cultural challenge to establishing a merit-based judicial system. This societal aspect emphasizes the need for reforms that address not only legal but also cultural and ethical standards within the judicial selection process (Abdrasulov & Gubaidullin, 2019). To improve the situation, it is imperative to enhance transparency, accountability, and meritocracy in the judicial selection process. This includes revising the laws to ensure clear and objective criteria for selection, establishing mechanisms for public and candidate scrutiny of the selection process, and fostering a culture of integrity within the judiciary and the broader society.

To address the identified issues in the selection and appointment of judges in the Republic of Kazakhstan, it is recommended to undertake comprehensive reforms focusing on transparency, accountability, and meritocracy. Legislative reforms should ensure that the criteria for selecting judges are clear, objective, and strictly based on professional qualifications. Establishing transparent examination processes with public disclosure of results and a clear ranking of candidates based on their performance can mitigate ambiguities and reduce corruption. The Supreme Judicial Council's decision-making process should be restructured to ensure personal accountability and longer terms for its members to enhance stability and responsibility. Introducing a formal mechanism for appealing decisions on judicial appointments and promotions, similar to the judicial review systems in countries like Germany, can further enhance transparency and fairness. Additionally, linking legal education more closely with the judiciary's requirements by involving judicial bodies in setting educational standards and curricula will ensure that graduates are better prepared for judicial roles.

Addressing cultural challenges, such as nepotism and the tendency to unlawfully support relatives, requires fostering a culture of integrity and meritocracy within the judiciary and broader society. This can be achieved through public awareness campaigns, ethical training for judges, and strict enforcement of anti-corruption measures. Engaging civil society organizations and international bodies in monitoring and supporting the reform process can provide external validation and pressure for sustained improvements.

The practical relevance of this analysis lies in its potential to guide policy makers, legal professionals, and international organizations in implementing effective judicial

reforms in Kazakhstan. By highlighting specific legislative and procedural deficiencies, the analysis provides a roadmap for creating a more independent, transparent, and competent judiciary. This, in turn, can enhance public trust in the judicial system, improve the rule of law, and contribute to the overall socio-economic development of the country. For entrepreneurs and industry leaders, a reliable and fair judicial system can provide a stable and predictable legal environment, encouraging investment and economic growth. For policy makers, the insights from this analysis can inform the design of more effective governance structures and legal frameworks. End-users, including the general public and legal practitioners, will benefit from a more trustworthy and efficient judiciary, ensuring that justice is served and human rights are protected.

Conclusions

This study showed that the creation of a special judicial community body, with judges making up at least half of its members, did not lead to significant improvements. In fact, the quality of the judicial corps may have worsened. Constant reforms of the functions of the SJC and considerable increases in its financial content did not contribute to the goal of ensuring the rule of law. The low public confidence in the judicial system is a confirmation of this conclusion. A strong judicial system that is truly independent of the executive and legislative authorities can cause a lot of inconvenience and trouble to representatives of the national elite who are interested in changing the forms of selection and appointment to judicial positions that correspond to externally democratic trends and international obligations, and in fact, in maintaining the regime of manual management of the judicial system. Behind the exterior facade of numerous changes in the legal regulation of relations concerning the selection and appointment to judicial positions, there is, according to the authors of this paper, a desire to form a judicial corps whose leadership would be obedient to the "telephone law" emanating from the executive branch.

In turn, the execution of the dictates of the judicial leadership, which has visible and invisible threads of influence on the judicial corps, is meekly carried out by judges who are not strong professionally, morally, and ethically, namely weak representatives of the judicial corps, in many of which the judicial leadership is interested. Admittedly, there are other factors affecting the quality of selection and appointment to judicial positions, but the core is precisely such a legal policy, refined in form, following outwardly progressive global trends, but conservative in the internal content of numerous pseudo-transformations in the system of selection of judicial personnel. It is difficult to find another explanation, since it is easy to hear the conclusions and suggestions

available in this study, and to eliminate obvious gaps and shortcomings in the system of legislation that were indicated herein, if that is the state authorities' will. Additionally, further exploration of the societal and political dynamics shaping the judiciary's functioning could enrich future research.

Data Availability The authors confirm that the data supporting the findings of this study are available in the article.

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