

# **REALITIES, TRENDS AND PROSPECTS OF AN IMPROVING JUSTICE SYSTEM: A KAZAKHSTAN CASE STUDY<sup>1</sup>**

**(Including a review of the implications for China's Belt and  
Road Initiative and the impact of Covid-19 on the reform  
program)**

**By Mark Beer OBE<sup>2</sup>**

## **Executive Summary**

The Kazakhstan justice system has managed to overcome a chequered history by instituting sweeping reforms beginning in 2015 and culminating in the launch of the 'Seven Pillars of Justice' strategy in 2018. Objectively, no other judiciary has endeavoured to achieve so much reform at such an accelerated pace and, based on data recently published, this report looks at whether the reforms have delivered empirical improvements and been able to withstand the impact of Covid-19. Our findings are that reforms have been impressive across several measurable factors and that the momentum is robust and positive.

## **Introduction**

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<sup>1</sup> This research is based on the data issued by the Supreme Court of Kazakhstan in January 2020 and available on its website, as well as a UNDP report referenced below and the Council of Europe analysis of the impact of Covid-19, referenced below.

<sup>2</sup> The author would like to acknowledge and thank Nehemiah Isamotu for his support in writing this paper.

The Justice system in Kazakhstan has continued to evolve rapidly ever since the nation became the last Soviet republic to declare independence on 16 December 1991. Starting with a moratorium on the death penalty in 2007, there have been remarkable changes, especially in the past several years. 2015 marked the start of an accelerated reform programme, with essential reforms addressing issues such as the decision quality, efficiency (including moving from a five-tiered to a three-tiered system), recruitment of the highest calibre judges and development of a state-of-the-art information technology system. In 2018, the judicial strategy entitled 'Seven Pillars of Justice' was announced.

It can be said that the judicial system used to be the least developed of Kazakhstan's three branches of government, but that can now be factually debated: The figures speak for themselves.

From 2018-2019, at the initiation of the Supreme Court, 17 draft laws were developed, with topics ranging from improving judicial staff, enhancing the quality of court rulings and ensuring uniform judicial practice. Some of the newly adopted laws dealt with the stricter selection of judges and enhancing ongoing judicial assessments, reorganisation of judicial governance bodies, limiting tenures for Court Presidents, implementing digital judicial procedures and the streamlining

of bankruptcy procedures. The draft laws also reduced the costs incurred by those seeking justice by eliminating unnecessary bureaucracy, ensuring enhanced and efficient Court procedures and establishing dedicated Courts, including new initiatives on family courts.

In addition, measures put in place by the Supreme Court of Kazakhstan, under the leadership of Chief Justice Zhakip Asanov, have given rise to some interesting data: 2019 saw an unprecedented increase in the number of judges dismissed with cause to 29. To put that in perspective, 2015-2018 had a combined total of 29 such cases. Disciplinary cases also skyrocketed by 41%. Criminal cases in connection with judges also grew exponentially from just 1 in 2015 to 13 in 2019.

All of this data, challenging as it may be for the incumbent judiciary and Courts' staff, demonstrates the painful process of reform which Kazakhstan has gone through recently in order to fight corruption and other problems that have bedevilled the reputation of the Kazakhstan judiciary in recent years. Other measures have addressed a perceived lack of access to court proceedings, perceived frequent procedural violations, and a perceived lack of due process, .

The challenges inherent in the previous system led to a low level of public trust and confidence in the judiciary, as well as negative perceptions of judicial integrity and independence

internationally. It, therefore, became imperative to birth new trends and introduce much-needed improvements in several areas including changes in the judiciary and judicial staff, improvements in judicial procedure, more focused Supreme Court projects, and better judicial administration; but how beneficial have these changes been?

## **The Reforms:**

### **Judges and Courts' Staff**

To ensure and enhance the quality of the judiciary, there have been improvements in the assessment procedure for the appointment and ongoing monitoring of Judges. A new judicial evaluation mechanism was implemented by the Justice Quality Commission based on internationally accepted parameters. Information technology also plays a part in monitoring and ensuring the integrity and efficiency of Judges and Court staff, as well as the integrity of Court files and evidence. As part of the reforms, the objectives of the Justice Quality Commission have also been expanded: The Commission evaluates judges across 16 parameters including professional knowledge and skills, judicial performance, competencies and, importantly, ethics. Based on its reviews, the Commission's recommendations can include: acknowledgement of professional competence or ineptitude; promotion or non-promotion; and transfer to another court or division. Except for

Judges with over 20 years record, all Judges are subject to assessment once every 5 years starting after the first year of service, and before any promotion. This new methodology ensures judges pass through more regular and thorough evaluation.

In February 2020, Council of Europe expert Dr. Pim Albers, who is also Regional Vice President for the European region of the International Association for Court Administration, with the support of a joint project of the UNDP-Kazakhstan and the World Bank, assessed the new methodology and found it to be “in line with international standards and best-practices and includes even innovative approaches in the evaluation of the work of judges such as the use of audio and video recordings of hearings to analyze the behavior and communication skills of judges and the application of 360 degrees feedback surveys to appraise the interpersonal qualities, leadership skills and managerial qualities of judges functioning in managerial positions or as a chairmen of the court.”<sup>3</sup>

Early projections reveal that 84% of judges will be assessed over the next 3 years (starting in 2019). A comparison between the years before and after the implementation of the Justice Quality Commission’s more rigorous criteria in May 2019 reveal

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<sup>3</sup> GENERAL FINDINGS CONCERNING THE ASSESSMENT OF THE METHODOLOGICAL GUIDELINES FOR ASSESSING THE PROFESSIONAL ACTIVITIES OF A JUDGE, Dr. Pim Albers, International consultant UNDP, February 2020 (<http://sud.gov.kz/eng/content/supreme-court-justice-quality-commission>)

an upsurge in the number of judicial transfers and findings of ineptitude despite fewer Judges being assessed under the new methodology. Curiously, since the judicial training academy (known as the Academy of Justice) has been placed under the Supreme Court, there has been a stark decrease in the number of judges undergoing advanced training programs, which is something worthy of reflection and understanding.

## **Judicial Procedure**

The data reveals significant growth in the number of cases and materials filed with the Kazakh Courts from 2010-2018<sup>4</sup>, with a slight decrease in 2019. A number of situations account for the growing number of cases and materials up to 2019: Public bodies forced individuals and businesses to go to Court to resolve problems, and many of the dispute resolution powers of State enterprises and institutions were transferred to the Courts without proper rationale. The low costs and fees of litigating in the Courts may have encouraged an inflow of vexatious lawsuits. Finally, the inefficiency of dispute resolution mechanisms of State enterprises and State settlement institutions, including mediation centres, resulted in the increase of cases and materials that went to trial. 2019, however, witnessed a decrease in incoming civil and criminal cases, while the number of settled disputes increased from

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<sup>4</sup> Growing from 1 million in 2010 to 4.7 million in 2018 with no commensurate increase in Court resources.

2018. These seismic changes were a direct result of formulating a clear strategy, new laws, rules and processes and a greater focus on the quality of the judges and their decisions. Other areas where remarkable improvements were observed include: the number of acquittal judgments, and satisfied complaints against investigation authorities<sup>5</sup>. Administrative fines with respects to individuals also reduced in 2019.

### **Supreme Court Projects**

Projects have been guided by the strategy initiated by Chief Justice Zhakip Asanov, entitled "7 Pillars of Justice". It was launched in January 2018 and was an ambitious, complex and far reaching reform program.

In order to ensure the success of the reform programme, a team was established and led by Mr. Erbol Umralliev, a visionary, highly regarded and experienced leader with a track-record for successful Governmental reform programs. Significant contributions were also made by Ms. Nazgul Yergaliyeva, herself a respected expert in strategic transformation, who continues to participate in the work of the Supreme Court and to promote innovation in the judicial system.

Mr Nail Akhmetzakirov took over as head of Judicial Administration for the Kazakhstan courts, bringing the energy

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<sup>5</sup> Rising from 460 in 2015 to 1,707 in 2019

and enthusiasm necessary to inspire judges and Court staff to support the reform process.

In order to manage the implementation of the reforms, a dedicated Project Management Office was established, and for each strategic Pillar a separate cross-functional working group of judges and staff was established.

A key role in the development and advocacy for the critical legislative amendments necessary to implement the “7 Pillars of Justice” strategy was undertaken by a prominent expert in national and international law, Mr. Aslan Tukiev.

The above highlights the structured way in which the reform program was developed and implemented, and is perhaps the reason why the program has been so successful.

It has been interesting to observe how, in the midst of the reform process, the Courts have handled the Covid-19 crisis, and to see whether their systems, processes and crisis management plans have proven to be robust.

### **The “7 Pillars of Justice”**

The 7 Pillars describe 7 large-scale reform programs, namely: Impeccable Judges; Exemplary Court; Fair Trial; Quality Results; Smart Courts; Transparency; and Reconciliation (pre-Court and in-Court).



Since early 2019 there have been significant changes to improve each of these focal points.

**Impeccable Judges:** This deals with guaranteeing judicial independence, high-quality performance and high ethical standards. Judicial candidates from 2019 had to fulfil these criteria along with 14 others, by taking more comprehensive tests in legislation at the ACSA (Agency of the Republic of Kazakhstan for Civil Service Affairs), psychological assessments, assessments on their ability to use Court related technology and ethical assessments

In order to attract highly qualified lawyers to the judiciary, access to the post of judge of appeal and cassation was opened to candidates with 15 years of legal experience (previously only a judge with experience of at least 5 and 10 years, respectively, could be a candidate).

To fulfil the qualification requirements, judicial candidates need to pass a number of challenging exams, an interview with 7 or 8 sitting judges as well as demonstrate a focus on a particular area of law, with the result being that only 6% of judicial applicants are successful, from the previous 25%. Starting in March 2019 other structures were also put in place to guarantee Judges' independence.

**Exemplary Court:** This relates to ensuring efficient and effective court administration. Away from the congested lobbies and

lines of 2018, today front offices are technology powered with many online services for lawyers and the public, digital queues, pay terminals and much more, with a focus to providing Court users with a high level of comfort and service. The procedure for reception of citizens to register complaints, which facilitates citizens' interaction with government agencies, was improved in 2019. A special Citizens' Reception Centre has been opened at the Supreme Court, which has accounted for the increase in citizens served from 490 to 1789. The Courts have also integrated IT system across the country, and produce e-packages of template documents to facilitate a uniform and predictable approach. The Courts have also implemented e-requests, allowing them to create and send digital requests to government agencies. A centralised data management system and the implementation of performance monitoring systems in the Supreme Court also allows for real-time assessment and determination of key KPIs and efficiency metrics of every court and every judge.

**Fair Trial** relates to the implementation of uniform court practices and ensuring strict adherence to justice and rule of law principles. In the years before the strategic reforms of 2018, Kazakhstan courts were criticized because Court Presidents had the power to exert considerable influence over their judges: The judges themselves openly spoke about it.

This, along with other matters that did not accord with international best practices, was abolished through various legislative amendments. The amendments also empowered the Judges to be able to show greater initiative in ascertaining the truth, and requiring evidence unproduced by the parties. This move towards measured and uniform court practice is designed to ensure fair and predictable justice across Kazakhstan, enhancing access to justice and public trust and confidence in the judiciary.

**Quality Results** refers to the steps being taken to ensure clear, coherent and timely written decisions, along with fast execution of court rulings. To achieve this, from September 2018 new formats for Court rulings were introduced to require decisions to be clear, structured and use intelligible language. Judges are also now required to explain decisions thoroughly without ambiguity and dealing with each argument raised in the pleadings, again leading to enhanced public trust and confidence in the judiciary.

**Smart Court** refers to the move towards a technologically enabled and empowered judiciary. Its importance cannot be overemphasised as it helps ensure smooth operations and better access to services for Court users by maximising the automation of court services. The Kazakh digitalisation approach involves the use of technology to provide unimpeded

and convenient access to justice and the automation of legal proceedings, allowing front line Court staff to focus on serving the needs of Court Users. It is commendable that digital notices, the establishment of a virtual court, the roll-out of digital services such as a geo-location of courts, and an online digital assistant are now being employed. The Supreme Court has also launched an online feedback mechanism through which Court users can rate their experience and offer suggestions, something that few other Courts around the world have implemented.

The Supreme Court has further ambitions in this area which would make it among the world's most technologically advanced judiciaries, including AI-based case analytics and predictive tools, an AI-based judicial assistant for judges and an AI tool to assist in the drafting of judgments, something until now only seen in the Shanghai and Beijing Courts.

**Transparency** deals with how the Courts plan to improve public trust, confidence and awareness, as well as enhance the quality and impact of external communication channels. Outreach activities in 2019 included a TV show on notable cases, 273 press briefings, and over 2,000 open days at Courts around the country where the public and media could have tours. This led to almost 10,000 news articles in print media and 15,000 online, along with the launch of Facebook communities, YouTube

videos and an Instagram account. The impact has been significant, with negative media about the Courts reducing from 17,542 in 2015 to 8,362 in 2019, and with positive media increasing from 3,997 to 6,887 over the same period.

**Reconciliation** deals with conflict avoidance and the promotion of reconciliation procedures. The strategic goal has been to promote more out-of-court mechanisms to resolve disputes. To that end, out-of-court settlement centres now operate in 17 regions across Kazakhstan with a total of 47 centres. The results have been an impressive increase in out-of-court settlements, now representing 28% of all disputes.

Through pilot projects in district courts dealing with family cases children's interests are being protected, and more reconciliation services are helping families work through their problems together rather than falling back on the traditional adversarial approach. Night courts were also piloted from June 2018 - December 2019, and that led to over 20,000 administrative cases being disposed.

## **Global Rankings**

As well as the improvements at a country level, the reforms have also repositioned Kazakhstan and the Kazakh judicial system globally. The country has moved up 8 places in 2 years on the Global Competitiveness Index's rankings for judicial

independence<sup>6</sup>, 8 places in the World Justice Project Rule of Law Index<sup>7</sup> and the country is now 4<sup>th</sup> in the world in the World Banks' Ease of Doing Business score for 'Enforcing Contracts'

Although these are in themselves impressive, and an indication that the Supreme Court's strategy and implementation are paying dividends, more work is needed to further boost these scores and to ensure that the judicial components of the surveys align with the country's overall ranking. For example, Kazakhstan as a whole ranks 55<sup>th</sup> in the Global Competitiveness Index, so its position as 71<sup>st</sup> in the world in Judicial Independence is lagging. That said, Kazakhstan ranks 77<sup>th</sup> in the Ease of Doing Business rankings overall, and 4<sup>th</sup> when it comes to enforcing contracts, which shows that Judicial reforms can lead the country's reforms.

## **Judicial Administration**

An analysis of the judicial budget reveals that the 7 Pillars of Justice reforms have been implemented during a time of relative austerity for the Kazakh judiciary. Although its budget has grown from 2015 -2020, it has in no way kept track with the increased workload on the Courts. Amongst other former Soviet states, the Courts budget, both as a measure of overall State expenses (0.47%) and the economy as a whole (0.07% of

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<sup>6</sup> From 79<sup>th</sup> in 2017 to 71<sup>st</sup> in 2019.

<sup>7</sup> From 73<sup>rd</sup> in 2016 to 65<sup>th</sup> in 2019

GDP) is low<sup>8</sup>, which is further testament to the Supreme Court's effective budget management. It also demonstrates that impactful and significant reform can be achieved on a relatively small budget provided there is clarity of strategic vision and a dedicated team.

## **International Cooperation**

It is telling that, for the first time in their history, both the International Association of Judges and the International Association for Court Administration held their annual conferences in Kazakhstan in 2019. Kazakhstan also hosted, again for the first time, the International Forum on the Quality of Justice. These brought over 1,200 Court leaders from over 120 countries to Nur-Sultan and reinforced the ever-greater international attention being given to the Kazakh judiciary, and its programme of reforms.

## **Covid-19 Response<sup>9</sup>**

It has been interesting to observe the resilience of the Kazakhstan Courts to the current crisis, especially as they are part way through the implementation of the reforms, which it might be thought makes them more susceptible to disruption.

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<sup>8</sup> Data for the Russian Courts shows comparative numbers of 1.14% and 0.22%.

<sup>9</sup> Information provided on the Council of Europe website: <https://www.coe.int/en/web/cepej/compilation-comments>

In March 2020, the leadership of Kazakhstan introduced a state of emergency throughout the country and severe restrictions in a number of large cities. Citizens were not able to visit courthouses, whether to file cases or take part in adjudications. However, because of the Smart Court reforms which have improved the quality of electronic case processes, case filing and scheduling of hearings was not affected and the Kazakhstan courts continued to fulfil their core functions without disruption.

In the first days of the lockdown, the Supreme Court issued the operational guidelines, rule adjustments and technology for local courts to be able to operate virtually, as well as guidelines for emergency physical hearings aimed at protecting the health and life of judges, court employees, trial participants and court building attendees.

In 2018, on average there were 40 online courts sessions each day. In 2019, the average rose to 110 and in January and February 2020 the average was 150 online court sessions a day.

In the first week after the introduction of the state of emergency, this rose to around 1,000 cases daily (representing 50% of all court hearings). During the week of April 6-10, the Courts of Kazakhstan held almost 2,000 online court hearings per day, representing 99% of all Court hearings.



In absolute figures, during the week of April 12<sup>th</sup> to 17<sup>th</sup> out of 10,800 court hearings held, only 9 sessions were held with the direct participation of parties in the courtroom. These outliers were due to temporary disruptions in communication lines, or where the defendants were homeless and lacked technical means to get online.

On April 13, all trials across the country were held virtually.

This speed of implementation is even more impressive when one considers that geographically Kazakhstan is larger than Western Europe, and under strict lockdown.

### **What the future holds**

The trajectory of the reforms shows no signs of slowing: 2020 will witness more extensive judicial monitoring, training and assessments through the Judicial Quality Commission, with the methodology being amended based on 2019 outcomes. A CEPEJ based court assessment system will be implemented across the country to ensure uniformity in the application of those international standards. Judges will be given greater authority to investigate claims and to impose penalties on non-compliant State agencies. The Judicial Academy will be overhauled with a more practical and inclusive style of teaching for judges. The Appeals process looks set for significant reform and improvement and, in addition, 2020 is expected to be the year of enhanced quality in communication from the Courts.

Based on the impressive results already demonstrated by the Seven Pillars of Justice strategy over the past 2 years, and the ongoing commitment of the Supreme Courts' Chief Justice and his Head of Strategy to delivering fair, fast and accessible justice to the citizens of Kazakhstan, it can be said that Kazakhstan remains a beacon for how reforms can be developed implemented, monitored and adjusted with clear vision, a resolute focus and without the need for significant additional resources. The Covid-19 response, and the ability to move to 100% online court hearings in one month, also speaks to the robust and ingrained nature of the reforms. Many other countries in the region and beyond can learn from the work done by the Kazakhstan Supreme Court, including its work on outreach and the use of a dedicated Project Management Office to manage and monitor change. That said, the Courts still lag the country on a number of international rankings, and so further investment will be required to accelerate the already proven track record of the Supreme Court in delivering positive change.