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**LEGAL ISSUES OF PROFESSIONAL COMPETENCE OF JUDGES IN
CONSIDERATION OF ADMINISTRATIVE DISPUTES
IN ARBITRATION COURTS**

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Issues related to the professional com-
petence of judges in dealing with administra-
tive disputes in arbitration courts are consid-
ered in the article.

Keywords: arbitration court procedure,
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For the administration of justice in accordance with the current legislation, the State must have highly qualified judiciary establishment. In this regard, the issues of professional competence of judges are of particular relevance.

Any legal conflict situation, which is considered in court, requires judge's knowledge of legislation, skills to apply it, professionalism in communication with the parties, the study of norms of law and evidence on the case, professionalism in judicial discretion.

When considering even a seemingly ordinary dispute, court must take into account many things...

So, a limited liability company "Stayer" appealed to the arbitration court with an application to the State Construction Supervision of Kemerovo region for annulment of the decision, under which the company was imposed an administrative penalty under paragraph 1 article 9.5 of the Code on Administrative Offences of the RF (hereinafter CAO RF) (for violation of the established procedure for reconstruction of a capital construction object) in the form of a fine of 500 000 rubles.

In the present case it was determined that the company without a permit for the reconstruction carried out reconstruction of a capital construction object.

Refusing to meet the demands of the LLC “Stayer”, the arbitration courts presumed that the fact of committing the offence, the guilt of the company was confirmed by case materials, breaches of the order of bringing it to administrative responsibility were absent. Signing a contract of work and labour with a third party, the LLC “Stayer” was not released from the obligation to obtain permission for construction; it did not take all the measures to comply with the requirements established by the legislation; the case materials were not provided evidence of any obstacles for the company to comply with the violated norms.

The court of cassation recognized the legitimacy of the conclusions of the courts on the presence of the imputed administrative offence in the actions of the company [3].

According to D. A. Medvedev, “the judiciary establishment needs to be replenished and updated by highly skilled, well trained employees” [7].

Qualification and competence in relation to the level of professional training is used relatively recently [14, 310].

Competence is defined as a totality of knowledge and skills that allow professional performance of activity.

According to V. I. Dal’, competence is a full authority, and is used primarily in the legal field: “A competent judge, who can and has the right to judge anyone or anything ... is a fully legitimate judge” [14, 311].

In the modern understanding of competency and competence are complementary and reciprocal concepts and are considered in the following aspects:

- 1) the possession of knowledge and information in a particular area that allow to judge anything;
- 2) the possession of competency, powers.

There is a special place in the Code of Judicial Ethics [5] for the competency of judges – judge’s competency, level of its professional training are essential for the proper performance of judicial duties in the administration of justice.

Judge’s work, like no other, is related to human relations.

So, an individual entrepreneur Zhusupov T. I. appealed to an arbitration court with a claim to the municipal unitary enterprise of housing and communal services to recover losses of 1 695 244 rub. Meeting of the stated demands was denied by the decision of the arbitration court of Tyumen region from 03.06.2013.

Disagreeing with the above decision, IE Zhusupov T. I. appealed with an appellate complaint to the Eighth arbitration court.

The court of appeal returned the appellate complaint of IE Zhusupov T. I., since the petition for postponement of payment of state fee was rejected.

In the cassation appeal, filed in the Federal Arbitration Court of the West Siberian district, IE Zhusupov T. I. requested to repeal the decision of the court of appellate instance from 02.08.2013, referring to the violation of the norms of procedural law, and to send the case to the court of appeal.

Cassation instance court in the considering the case in accordance with article 286 of the Arbitration Procedure Code of the RF checked whether the conclusions of the arbitration court of first and appellate instance on the application of law norm correspond to the established by them case circumstances and to evidence in the case materials.

According to paragraph 2 clause 5 part 1 article 264 of the APC RF arbitration court of appellate instance returns a complaint if the petition for postponement of payment, payment in installments of state fee or decrease of its size is rejected.

The materials of the case confirm that when submitting an appeal IE Zhusupov T. I. made a petition for postponement of payment of state fee, explaining this by difficult financial situation.

Since IE Zhusupov T. I., in violation of the provisions of paragraph 4 of the Resolution of the Plenary Session of the Supreme Arbitration Court of the Russian Federation No. 6 from 20.03.1997 "On some issues of application by arbitration courts of the legislation of the Russian Federation on state Duty", did not attach to his appeal the confirmed by tax authority list of settlement and other accounts, the names and addresses of banks and other credit institutions, in which these accounts were opened, the appellate court rightly rejected the petition for postponement of payment of state fee and returned the appeal.

The court of cassation recognized the conclusions of the court of appellate instance lawful [4].

Considering a case in court hearing, a judge is constantly faced with complex plexus of human relations. At that a judge has to deal not only with criminals, but also with a wide variety of persons. Those, who deal with people, who are intended to influence on them, to decide their fate, must have not only the legal knowledge, but also the knowledge of psychological science.

While researching the shadow sides of citizens' life, their relations in economic and other areas, often facing the most repulsive of its manifestation, a judge must be able to maintain personal immunity to negative influences and to avoid their impact on themselves, the distortion of its personality, the so-called professional deformation that may be manifested in the transformation of vigilance into excessive suspicion, fault-finding, distrust of any person who has done any wrong step [14, 312].

The issue of high-quality judiciary establishment is relevant to many countries of the world.

So, the President of the Republic of Kazakhstan N. A. Nazarbayev in his speech at the sixth Congress of judges, held in November 2013, noted the positive efforts of judicial system and highlighted problematic aspects requiring attention. Among one of these problems he called inadequate staffing policy in the judicial system and pointed out that there are insufficient barriers against unscrupulous persons trying to work in courts [9].

All the activities of a judge to a very great extent obey social norms and expectations. From a man of the long robe all surrounding rightly expect strictly certain kind of behavior – justice, complicity, assistance and protection.

A judge always works under close attention of people because it is a representative of authority and the law.

In this regard the requirements for candidates for judges are rightly developed at the legislative level [13].

The Russian Federation Law “On the Status of Judges in the Russian Federation” [2] provides for such requirements as: higher juridical education, no criminal record, the citizenship of the Russian Federation, the achievement of a certain age, legal capacity.

Also the candidate for the post of judge should not be registered in a drug or psycho-neurological dispensary and should not have other diseases affecting the implementation of the powers of a judge.

The age requirement for the applicant for the vacant post of judge in the Russian Federation, for example, and in the neighbouring country – the Republic of Kazakhstan, is 25 years.

Many scholars and practitioners disagree with these age requirement and they justify the necessity of raising the age requirement for candidates for judges [12].

At all times a judge was a respected person, and wisdom, knowledge and life experience were considered as its essential qualities.

Wisdom and life experience are achieved with age and as a result of persistent and painstaking work.

Statistics show that the average age of judges of the courts of general jurisdiction in the Russian Federation is from 40 to 50 years, the proportion of judges at the age of 25-30 years among judges at district level is 4%, 30-40 years – 34% [8, 6].

According to the Chairman of the Supreme Judicial Council of the Republic of Kazakhstan, the average age of those, who was firstly appointed to the post of a judge, was 34 years [10].

The age requirement is inextricably linked to the requirement of a length of service in legal profession.

In the RF – a candidate for the post of judge should have five years experience in legal profession, and in the Republic of Kazakhstan – the experience in legal profession is only two years [1; 13].

However, in many countries of the world before taking the post of judge candidates undergo thorough training in the bar (in the United Kingdom and the United States – for 15-20 years) or in posts of interns and assistants to judges (France).

In the majority of CIS countries, this qualification requirement is 5 years, and 10 years in Georgia.

The issue of seniority and work experience as a judge is inextricably linked to the issue of judicial career.

Under the judicial career we understand movement through the ranks of judicial posts (judge – court presidium member – chairman of judicial assembly – deputy chairman of court – chairman of court).

With that, the legislation of Russia does not contain a definition of judicial career. However, there are qualification degrees and qualification attestation of judges in the Russian Federation.

In the Republic of Kazakhstan, for example, qualifying degrees were abolished [1].

But both States provide for requirements concerning the pass of qualification exam and completion of internship.

So, for example, in the Republic of Kazakhstan graduates of specialized magistracy are exempted from passing of qualification examination [1].

In the Russian Federation the persons having the title of candidate of legal sciences or academic degree of Doctor of law, or those who are awarded the honorary title “Honored Lawyer of the Russian Federation” are exempt from passing of qualifying examination.

The position of M. I. Kleandrov is noteworthy concerning the issue under consideration; he believes that knowledge check should not be undertaken at the level of ordinary exam at a higher school, but at the level, at least, candidate examination in specialty, taking into account the knowledge of judicial practice, knowledge of theory, etc., [11, 86].

There is a justified proposal for the 4-month internship of a candidate to the post of judge in the period after the decision of qualification board of judges on recommendation of a citizen for the post of judge and before the consent (disagreement) of the Chairman of corresponding court on the appointment of the candidate [6, 30].

It seems that a citizen, who has a scientific degree of candidate of legal sciences and Doctor of law, could be released from the passing of a qualification examination for the post of judge.

The issue of conformity of dissertation research theme to the called specialization could be resolved by the qualification board of judges, which could also provide an assessment of the scientific activity of a candidate in the period after the award of scientific degree until the moment of meeting of the qualification board, that is, account of teaching activity, the presence of author's monographic works and scientific publications.

The Constitution of the Russian Federation reflects the understanding of social purpose of justice as a system aimed at protection of rights and maintaining of law and order, ensuring stability and strength of civil circulation relations and public-law relations [15, 67].

The State is interested in the effective operation of the third power in the State - judicial power. This is possible provided that the "holders" of the judicial power will have a high level of professional competence.

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