

On some issues of realization of fundamental rights and freedoms of person in criminal proceedings

Erbol Temirkhanovich Alimkulov, Mainura Okanovna Bayandina, Lyaziza Shaltaevna Bersugurova, Guljan Nusipzhanovna Muhamadieva, Akykozha Kalenovich Zhanibekov

Kazakh National University named by Al-Farabi, Al-Farabi Avenue 71, Almaty, Kazakhstan

Abstract. It will takes a long time for state not upon words, but upon deeds to be guided by the idea of human rights as the supreme value and these rights and freedoms are indeed determined meaning, content and use of legislation, the activities of the legislative and executive authorities and local self-government. In this case the task is to make the Kazakhstan Constitution with its focus on personality to be really effective law in order to create in society a profound respect for individual rights by system of legal, organizational and moral measures.

[Alimkulov E.T., Bayandina M.O., Bersugurova L.S., Muhamadieva G.N., Zhanibekov A.K. **On some issues of realization of fundamental rights and freedoms of person in criminal proceedings.** *Life Sci J* 2014;11(6s):93-96] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 16

Keywords: personality, rights and personal liberty, criminal procedure, criminal injury, redress of wrong

Introduction

The whole legal system is subordinated to human rights protection to one extent or another. In particular, human rights protection occupies an important place in such spheres as civil law, family law, labor law, administrative law and criminal law. The sphere of international and constitutional law occupies a special place in the legal regulation of human rights and freedoms. Determining the priority of a person in the system of state and legal institutions, the Constitution of the Republic of Kazakhstan thus established that a person, a citizen and a personality, which unites these two concepts, is the most important objective value of the world civilization, its history and development [1].

The Concept of Legal Policy in the Republic of Kazakhstan in the period from 2010 to 2020 emphasizes the need for "... the maximum combination of interests of the person and society, the application of law in accordance with its social purpose" [2].

The person provided with a system of legal constitutional guarantees, which include guarantees of the right to a dignified and secure life, may fully develop, work and function in the system of social relations. In the Republic of Kazakhstan, the person's interests are regulated by the branch system of the national law and protected by a certain degree of immunity.

Civil Code of the Republic of Kazakhstan stipulates that life, health, personal dignity, honor, reputation, business reputation, privacy, personal and family privacy, the right to a name, copyright, the right to inviolability of work and other intangible benefits are personal non-property rights (cl.3 Art. 115) [3].

The provisions of the Code of Civil Procedure of the Republic of Kazakhstan (hereinafter

referred to as CCP of the Republic of Kazakhstan) guarantee privacy, privacy of correspondence, telegraphic and other communications; inviolability of property. CCP stipulates that restrictions on these rights in a civil process are allowed only in cases and in the procedure directly established by law (Art.10, 11) [4].

The Administrative Code of the Republic of Kazakhstan established the principle of personal immunity (Art.16), principle of respecting the person's honor and dignity in the administrative process (Art.17). In particular, cl. 6 Art.16 says that "Commitment of actions that violate the personal immunity in the course of proceedings on the administrative violations against the will of the person or his/her legal representative is only possible in cases and in the procedure directly specified in this Code" [5].

Life and health of the person, privacy, privacy of correspondence, telephone conversations, telegraph messages and mails, as well as the right to inviolability of the home is a particular object of protection during operational search actions [6].

The concept of a personality may be regarded from the perspective of physiological being's integrity. Here the object of consideration is the personality as a biosocial being, and the object of legal protection is human life and health, which consist not only of biological processes but also include social relationships that ensure human activity and protect his life activity.

The person's right to life is a fundamental, natural and inalienable right. By proclaiming this right, the International Covenant on Civil and Political Rights specifies that it is "an inalienable right of every person. This right is protected by law. No one shall be arbitrarily deprived of his life" (cl.1 art. 6) [7]. Art. 3 of the Universal Declaration of

Human Rights proclaims the right of everyone to life, liberty and security of a person. [8]

The person's right to life is a fundamental principle of all the other human rights which no one can take away under any circumstances. Nobody has the right to deprive humans of life arbitrarily and attempt the human's life. Criminal legislation sanctions criminal infringement on the man's life by establishing liability for the actions that cause harm to human health and life or create a danger of causing such harm [9]. The more so, the development of criminal legislation on the protection of human rights and interests against criminal offenses associates with the protection and defense of sovereignty of the Republic of Kazakhstan, its constitutional order, public order and safety.

Such categories as "health" and "morality" have a special role when considering this issue. We must agree with the authors of the scientific and legal comment to the Constitution of the Republic of Kazakhstan who believe that "the parameters of health determination and morality ideals of both the individual and the society are historically flexible and embody the interaction of stable social values with the new ones" [10].

Health includes both physical and spiritual health of the population. In accordance with the Code of the Republic of Kazakhstan dated September 18, 2009 "On people's health and the healthcare system" [11], the state policy of the Republic of Kazakhstan in the field of public health protection is based on the following principles: joint responsibility of the state, employers and citizens for the preservation and strengthening of individual and social health; inclusion of public health, safety, efficacy and quality of drugs to the factors of national security, etc.

In criminal proceedings, the health of the suspect and the accused is put in extreme conditions. First, the person's rights and freedoms are limited (he/she cannot take care of his/her health in the same way as people who are not under investigation); second, the person is subjected to procedural coercion, which itself is an added pressure both on the mental and physiological conditions (stress, worries, changes in daily life, etc.). Therefore art. 14 of CCP of the Republic of Kazakhstan stipulates that "No one may be involved in participation in legal proceedings that are dangerous to person's life or health. Legal proceedings that violate personal integrity may be instituted against the will of a person or his/her legal representative only as is directly prescribed by this Code" (cl.6). "Pretrial detention conditions of a person restrained in this way, as well as a person detained as a criminal suspect shall exclude any danger to life and health" (cl.7) [12].

The special law "On state protection of persons involved in the criminal procedure" provides additional guarantees of health protection during legal proceedings for participants of the criminal procedure, their family members and close relatives. This law ensures the safety of the said persons in order to prevent unlawful interference in the criminal proceedings [13].

The issues of health protection of persons that fell under the criminally-remedial coercion provisions are also regulated by the Regulatory Resolution provisions of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 No. 8 "On judicial practice related to use of compulsory measures of medical nature" [14], which stipulate that "correct application of compulsory measures of medical nature contributes to treatment or improves the health of persons that committed socially dangerous acts in a state of insanity or became insane after commission of a crime or committed a crime and need psychiatric care or compulsory treatment for alcoholism, drug abuse, substance abuse, and also prevents these persons from commission of new crimes responsibility for which is established by the criminal law".

Inviolability as a legal category consists of certain rights and freedoms of a person, as well as their guarantee and security in the state. Proceeding from cl. 8 art. 14 and cl. 2 art. 15 it follows that reimbursement of damage caused by the violation of his/her rights and freedoms during criminal proceedings (including false imprisonment, detention in the conditions that are dangerous to life and health, including inhuman treatment) is subject to indemnification as set forth by CCP of the Republic of Kazakhstan (chapter 4). In accordance with art. 42 CCP of the Republic of Kazakhstan, the right to damage reimbursement shall take effect only after complete or partial rehabilitation of the person. CCP imposes the responsibility to bring a formal apology to the rehabilitated person on the authority that conducts the criminal proceedings (cl. 1 art. 44). This provision, of course, meets the requirements of criminal proceedings ethics and respect for human rights.

The indemnification institution is also the subject of civil legal regulation. In accordance with art. 923 CC of the Republic of Kazakhstan, Main Part: "the government shall compensate the damage caused to an individual as a result of unlawful conviction, unlawful prosecution, unlawful use of preventive detention, house arrest, written undertaking not to leave the place, illegal administrative penalties in the form of detention or correctional labour, unlawful admission to psychiatric or other medical facility."

Further issues for damage reimbursement by authorities conducting the criminal proceedings are itemized in the Resolution of the Plenary Meeting of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 No. 7 "On practices of application of law related to reimbursement of damage caused by unlawful actions of the authorities conducting the criminal proceedings" [15] in which it is stipulated that "unlawful actions of the authorities conducting the criminal proceedings include:

- unlawful institution of criminal proceedings;
- unlawful criminal prosecution;
- incorrect application of criminal standards for crime classification;
- unlawful use of a preventive measure or other procedural coercions provided for by law;
- detention of a person that was seized on suspicion of commission a crime, or pretrial detention of a person in the conditions that are dangerous for his/her life and health;
- involuntary admission to medical institution of a person who is not held in detention for forensic psychiatric or forensic medical examination in absence of the relevant court decision;
- application of violence, cruel treatment or humiliation of human dignity;
- conducting proceedings in the circumstances creating danger for life or health of the persons involved;
- making decisions and committing actions that humiliate the dignity or disparage the person involved in criminal proceedings;
- the use and distribution of information about privacy, as well as other personal information that the person considered necessary to keep secret, for the purposes that are not provided for in CCP;
- unlawful conviction; unlawful use of compulsory measures of medical nature; unlawful use of compulsory measures of educational influence and other.

It follows from CCP (art. 39 - 42) and CC (922, 923) provisions that damage shall only be reimbursed to persons that can be rehabilitated. However, from the viewpoint of the principle of person's inviolability in criminal proceedings, the main thing, in our view, is to resolve the question of whether damage will be reimbursed to the persons who are not subject to rehabilitation. After all, legally detained criminal suspects and persons in legal detention also have the right to personal inviolability. And what if violation dangerous to life and health, humiliating honour and dignity, was committed against them with correct application of CCP provisions? Here it is important for public safety officers authorized to conduct criminal proceedings

to know that according to the Decision of the Plenary Meeting of the Supreme Court of the Republic of Kazakhstan dated July 9, 1999 No. 7 "On the practice of application of law related to reimbursement of damage caused by unlawful actions of the authorities conducting the criminal process" (cl. 5) and "in accordance with part 2 art. 13 and part 8 art. 14 CCP, the detained, suspects, accused and convicted persons also have the right to reimbursement of damage caused to them in those cases when they were subjected to violence or inhuman treatment in the course of proceedings, when the decisions or actions of the authorities conducting the criminal proceedings humiliated their honor and dignity or when personal information that that the person wanted to keep secret was unnecessarily collected for proceedings, disclosed or disseminated, and also when the imprisoned person was detained in conditions that are dangerous to life and health". Consequently, the provision of art. 42 CCP needs to be changed and amended in accordance with the Resolution of the Plenary Meeting of the Supreme Court of the Republic of Kazakhstan. The notice explaining the procedure of damage reimbursement to rehabilitated or partially rehabilitated persons is issued with a copy of the verdict of not guilty, but the Resolution itself, and even more so the code, does not say anything about the procedure of damage reimbursement to the aforementioned parties.

Corresponding Author:

Dr. Alimkulov Erbol Temirkhanovich
Kazakh National University named by Al-Farabi
Al-Farabi Avenue 71, Almaty, Kazakhstan

References

1. Constitution of the Republic of Kazakhstan 30.08.1996 #4-217
2. Substantive Due Process – Fundamental Rights. Date Views 15.02.2014. www.nationalparalegal.edu/conlawcrimproc_public/DueProcess/SubstantiveFundamentalRights.asp
3. Civil Code of the Republic of Kazakhstan (Special part) of 1.06.1999 # 409
4. Code of Civil Procedure of the Republic of Kazakhstan of 13.06.1999 #412-I
5. Code of Administrative Violations of the Republic of Kazakhstan of 30.01.2001 #155.
6. Integrating human rights into development: a synthesis of donor approaches and experiences. Date Views 15.02.2014 www.odi.org.uk/rights/publications.html
7. Human Rights and Criminal Prosecutions: General Principles. Date Views 15.02.2014

- www.cps.gov.uk/legal/h_to_k/human_rights_and_criminal_prosecutions_general_principles/
8. International Human Rights Acts. Collection of documents: The Universal Declaration of Human Rights. Moscow. NORMA Publishing House.
 9. Criminal Code of the Republic of Kazakhstan of 16.06.1997 #167.
 10. Dinah Shelton. Protecting human rights in a globalized world. Date Views 07.02.2014. www.bc.edu/dam/files/schools/law/lawreviews/journals/bciclcr/25_2/06_FMS.html
 11. Code of the Republic of Kazakhstan "On health of the nation and healthcare system" of 18.09.2009 #193-IV.
 12. Rules of Criminal Procedure of the Republic of Kazakhstan of 13.12.1997 #206-1.
 13. Law of the Republic of Kazakhstan "On state protection of persons that take part in the criminal process" of 05.07.2000 #2-II.
 14. Regulatory resolution of the Supreme Court of the Republic of Kazakhstan "On judicial practices related to application of enforcement actions of medical character" of 9.06.1999 #18.
 15. Decision of the Plenary Meeting of the Supreme Court of the Republic of Kazakhstan "On the practice of application of law related to reimbursement of damage done by illegal actions of the authorities that conduct the criminal process" of 9.06.1999 # 7.

4/2/2014