

Reforms of criminal justice in the Republic of Kazakhstan

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Abstract. In this article, the author studies the main problems arising in reformation process of criminally-remedial legislation. In Kazakhstan, in accordance with the policy determined by its Constitution, we see a natural but at the same time complicated process of transition from the post-totalitarian society to the rule of law. The main task in reformation of criminal procedure legislation is adherence to all democratic bases, rights and legitimate interests of the person and citizen. The authors pointed the main problems in reformation of criminally-remedial legislation which raised at the moment of transition period.

[Alimkulov E.T., Bayandina M.O., Bersugurova L.S., Muhamadieva G.N., Zhanibekov A.K. **Reforms of Criminal Justice in the Republic of Kazakhstan** *Life Sci J* 2014;11(6s):155-159] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 28

Key words: reform, judicial system, criminal procedure, court, justice, state.

Introduction

Almost eighteen years have passed since the legal reform was performed in the Republic of Kazakhstan whose main trends were specified in the program of the legal reform approved on February 14, 1994 [1]. In the period of the main transformations many tasks were realized quite successfully. The most important transformations may be conditionally divided into two groups: organizational and functional reforms. The organizational ones, in particular, dealt with creation of a system of independent court and transformation of law enforcement agencies system, while the functional ones focused on reformation of justice execution procedures.

Main part

The reform of the judicial system first of all concentrated on creating a system of independent judicial power, which can resolve the tasks of protection of the person and citizen, and ensuring access to public justice for everyone. This complicated task is on the whole realized through holding a whole system of organizational and legal reforms.

In Kazakhstan, in accordance with the policy determined by its Constitution, we see a natural but at the same time complicated process of transition from the post-totalitarian society to the rule of law. One of its lines was aimed at the division of competencies among the three branches of power with strict constitutional limits. Many transformations within the framework of the reform aimed at the achievement of these goals, in particular those based on the development and adoption of two Constitutions of the Republic of Kazakhstan (in 1993 and 1995), two constitutional laws on the court ("On

courts and the status of judges in the Republic of Kazakhstan" - 1995, "On judicial system and the status of judges in the Republic of Kazakhstan" - 2000) and other legal acts aimed at strengthening of the judicial system and the status of judges as the judicial power holders [2, 3]. As a result of this activity, delimitation of the competences of the legislative, executive and judicial branches of power is a practical principle today not only for those that make decisions but also for the public consciousness.

Along with the reform of the judicial system, a reform of the pre-judicial criminally-remedial activity of an unprecedented scale has been conducted since Kazakhstan obtained the status of an independent state in 1991. The necessity to improve the activity of the prosecuting authorities arose a long time ago. Back in the times of the former state regime at the end of the 80s, the theoreticians and practitioners came to the conclusion that the laws made in 1959-1960 do not objectively reflect the present-day tendencies in law and do not comply with the world standards that set the priorities in the rule-of-law state: the person as the supreme value, its role in the system of arising relations, the role of the state and the nature of relations between the person and the state, and so on. From our point of view, attention should be paid to the possibilities of the prosecuting authorities to produce indirect but at the same time considerable influence on the high quality of justice execution, realization of possibilities for the person to receive protection against crimes from court. The existence of the stage of pre-trial criminal procedure itself could turn into an obstacle on the way to possible bringing of the guilty person to criminal responsibility. Simple failure to accept an application from the injured person about the crime committed against him/her quite definitely deprives him/her of

the opportunity to obtain protection of his/her rights from court and becomes a real obstacle for the execution of justice. Our procedural law certainly provides the procedures to appeal the actions and decisions of the officials that carry out the criminal process, but these procedures are long and in many cases insufficiently concrete, which in most cases discourages the applicants from passing these long procedures and results in renunciations. According to the General Prosecutor's Office of the Republic of Kazakhstan, in 2012 and in the first half of 2013 the prosecuting authorities committed violations of constitutional rights of 855 persons, namely, 104 were unlawfully arrested, 209 were unlawfully detained, 372 persons were illegally brought to criminal responsibility. Verdicts of not guilty were brought in respect of 66 persons.

Besides, prosecutors cancelled 3110 unlawful decisions of prosecuting authorities on institution of legal proceedings, 189 unlawful decisions on bringing to responsibility as a defendant. 1311 persons were released from the offices of the prosecuting authorities. At the same time, prosecutors instituted 62 criminal cases related to tortures. "Special attention should be drawn to temporary detention facilities many of which are located in basements where confinement conditions do not comply with the standards of prisoner population treatment", says the notice.

On the whole, according to the General Prosecutor's Office, in 2012 and the first half of 2013, 804 officials of the law enforcement agencies were brought to disciplinary responsibility for violations of the citizens' constitutional rights, including 739 employees of the bodies of internal affairs. 119 criminal proceedings were instituted on the same facts of gross violations in relation to the employees of law enforcement agencies [4].

With well-organized and clearly functioning system of the prosecuting authorities, the judicial activity shows considerable qualitative improvement. Dependence of the results of courts' activity on the quality of pre-trial preparation of the criminal case materials is widely known. It is considered that each second mistake of the preliminary investigation becomes the mistake of the court decision. The employees of the prosecuting authorities are quite aware of their powers and make full use of them by instituting criminal proceedings and making decisions to refuse to institute legal proceedings, detaining citizens or applying procedural coercion and suppression measures. On the whole, the criminal situation in the state shows that crimes take more and more organized forms. Notably, participation of state structures in criminal affairs plays an important role, as a rule being a method of crimes hiding. The first

steps of the prosecuting authorities reformation were aimed at the elimination of such factors that bring in destabilization.

It was necessary to establish the institution of the pre-trial procedural bodies staffed with professional personnel that can clearly and efficiently investigate and prevent crimes. It is for his purpose that the unified State Investigating Committee (SIC) was established in 1995 which excluded institutional separation of investigating authorities and to a certain extent achieved the goal of ensuring independence of investigators from state authorities [5]. However, in two years SIC was liquidated as it failed to perform its assignment. The reasons for that to a certain extent included errors in organizational and personnel-related matters, even though this idea was quite well perceived by the society and by investigative employees themselves at the beginning. In our opinion, the main gap in the resolution of this matter lies in the wrong solution of the question about organizing the system of successive interaction between the investigative authorities and pretrial investigation agencies. The investigative departments and directorates, traditionally organized and existing in the system of authorities of the Ministry of Internal Affairs and the National Security Committee of the Republic, were abruptly separated from the bodies and subdivisions of SIC mainly organized on the basis of investigative directorates and employees of prosecutor's offices. To a certain extent, this resulted in blocking the interests of new investigative forces on the part of investigative subdivisions that remained within the system of the Ministry of Internal Affairs. It turned out that it is hard to investigate crimes on an appropriate level without the database, well-established forms and methods of work of investigative subdivisions based on specific kinds of activity (special investigative techniques) which had to transfer them free of charge and even without any prospects of working within the system of the new investigative authority.

This experience was later taken into account during further reorganization of investigative authorities of the Ministry of Internal Affairs and the National Security Committee, as well as during establishment of new investigative authorities, such as financial policy.

The Rules of Criminal Procedure of the Republic of Kazakhstan, adopted in 1997, considerably reformed many procedural institutions existing up to now, optimized the procedural form of pre-trial procedure, expanded and specified the circle of investigation subjects [6]. But it did not fully resolve the general problems of good quality of preliminary investigation, creating only the starting base for their resolution. The investigative branch of

the Republic is based on functions and is only used to perform the functions of crimes investigation. It is a system of investigative subdivisions in territorial, traffic control and special bodies of internal affairs, national security and financial police where investigative directorates, departments, subdivisions and groups are formed [7].

In the present-day conditions the problem of ensuring the independent status of interrogating officers and investigators has become especially acute. When the interrogating officers perform their main duties related to detection of crimes and make procedural decisions, they directly depend on the decisions of the head of investigative authority as the head of the interrogative department approves the main procedural decisions during investigation of the case. This system of relations between them was established in the pre-reform period for successful control over the lawfulness of the interrogating officers' activity. At the present-day stage of procedural relations development, such dependence on the will of the head of the interrogative department tends to slow down the investigation, not direct it in the right way. The head of the interrogating body can make any procedural decision on criminal cases, even if there are prospects of their real detection, which becomes a final decision on it. It was suggested multiple times in the procedural literature that inquest as an independent form of investigation should be cancelled. According to these authors (mainly Russian ones as similar questions have long arisen in Russia and are more widely discussed in the scientific sphere), this would result in elimination of artificial division of the preliminary investigation into inquest and preliminary inquiry and establishment of the unified procedural order of investigating all criminal cases. The cancellation of inquest for the cases where no pretrial investigation is obligatory will strengthen the personnel of investigative authorities and improve the quality of investigation. The expenses on the upkeep of the executive personnel responsible for inquest will be reduced, and the investigative personnel may be based on the multi-level specialization as it will be possible to transfer the best interrogating officers to the bodies of pretrial investigation on a competitive basis while remaining within the same system. In this case the crimes which were earlier investigated by the interrogating body should be transferred to the bodies of pretrial investigation with limitation of investigation terms and a possibility to extend these terms if necessary. Investigation of such cases should be entrusted to investigators that do not have the sufficient experience of investigating complex crimes, that is, those related to the first level of specialization. At the second level, cases of difficult

categories will be considered within the framework of regional and municipal authorities. And the cases of increased complexity which require diligent analytical work should be transferred to regional and republican investigative directorates. It was, for instance, V. D. Zelensky that pointed to the necessity of adherence to such a principle of compliance of the investigator's professional level with the criminal complexity of investigation [8]. Such a good system of optimization of the pretrial investigation bodies' activity may be useful for our state as well, subject to correct resolution of the matter about recruitment and placement of cadres in this system.

We have long thought that the organization of the inquest to be performed by a body that uses its methods and ways to play an auxiliary role for pretrial investigation will be subjected to organizational changes. Inquest exists as the fastest method of crimes detection within the shortest terms, so there is traditionally no strict adherence to all the general rules of investigative activities performance (with participation of attorneys for the defense, adherence to all the principles of the criminal process), but it is necessary to carry out emergency investigative activities, and thus the probability of crimes detection on hot pursuit is quite high. In our country this statement of a question is not even widely discussed, even though this form of criminal proceedings generates the largest number of violations of the rights of a human that gets into the system of criminal justice as a suspect or accused [9].

The existence of inquest with the simplified procedural order resulted in the conscious division of criminal cases into complicated and uncomplicated ones under which it is possible to infringe the procedural rights of the process participants. As the interrogating authorities investigate a considerable number of crimes in the reduced form, it results in mass violations of constitutional and procedural rights of the citizens that got into the sphere of criminal justice.

The investigator remains the main official that embodies the prosecuting authority, empowered by the state within its competence to conduct pre-trial activity in accordance with the aims, goals and principles of criminal proceedings. It is during the pre-trial investigation that the investigating activities are traditionally conducted in the most correct and appropriate way, with adherence to all the necessary rules of their conduct listed in the rules of criminal procedure.

The protocol resolutions of meetings with participation of Assistant to President-Secretary of the Security Council of the Republic of Kazakhstan dated July 5, 2011 and August 17, 2011 on the basis and for execution of the orders of the Head of State, a

decision was made on the radical reformation of criminal proceedings, preparation of a concept and new version of the Rules of Criminal Procedure of the Republic of Kazakhstan. The concept of the new project of Rules of Criminal Procedure of the Republic of Kazakhstan was published and is now being widely discussed.

Creation of new rules of criminal procedure is quite a complicated task, especially if we consider that the laws of criminal procedure should become a new legal phenomenon and resolve many conceptual tasks related not only to procedural laws. Procedural laws may be adopted only after adoption of material laws, that is, the criminal code whose draft concept is also being actively discussed. On the other hand, the rules of criminal procedure touch upon the allied interests of many systems of law enforcement agencies involved in fighting crimes. The analysis of almost eighteen-year process of development of norms for the present-day criminal procedure laws makes it possible to draw a conclusion that our criminal procedural laws are quite dynamic. However, the notion of "dynamic law" does not seem quite acceptable to characterize the state of laws. From our point of view, laws should be characterized by more concise and meaningful notions, such as stability and sustainability. The dynamic nature and flexibility of law sometimes testifies only to its short-lived nature, and sometimes to lightness, which is better to avoid even during creation of laws characteristic of the period of reorganizations and reforms.

The Rules of Criminal Procedure of the Republic of Kazakhstan, adopted on December 13, 1997, were many times amended and revised which was caused, first of all, by the necessity to bring the national laws in compliance with the general requirements of international laws. But on the whole, from the viewpoint of structure and content, the Rules of Criminal Procedure of the Republic of Kazakhstan, adopted in 1997, became a completed legal phenomenon and still perform the tasks faced by it.

The draft concept of the new Rules of Criminal Procedure (RCP) of the Republic of Kazakhstan fairly reflect that in the past years many things have been done to form a system of the present-day system of criminal proceedings in Kazakhstan that meets the high international standards. To develop these tendencies, it is suggested to introduce a number of innovations that were not known earlier to our procedural laws but were successfully implemented in a number of countries with developed legal systems. The whole procedure of pre-trial preparation of criminal case materials should undergo a considerable reformation

[10]. In particular, it is suggested to exclude the stage of pre-investigation support and institution of criminal proceedings. On the whole, the concept contains the scheme of the widespread general European model: policeman-prosecutor-court, when the policeman does not give legal classification of the actions; does not apply the measures of procedural coercion, except for detention in cases strictly stipulated in laws; does not commit the actions related to the constitutional human rights and freedoms without the prosecutor's and court's sanctions [11].

Conclusion

There is no doubt that each innovation should be discussed on all parts, and there may be varied opinions each of which should be weighted and evaluated. For example, the concept proposed to introduce the notion of "reasonable terms" instead of the abolished fixed term. At the same time, it is established that evident crimes, including grave ones, should be investigated within the shortest terms, but no more than 30 days, and minor crimes and crimes of average gravity subject to the person's admittance of guilt and the amount of damage – within up to 15 days. Thus, a new notion of "reasonable terms" is introduced, but at the same time it is sufficiently itemized by introducing deadlines for investigation. We think that the introduction of the notion of "reasonable terms" will make the processualists try to explain this newly introduced notion. The more so it appears in logical connection with the notion of "evident crimes" whose legal definition has not been given despite the fact that it has been used for a long time.

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4/10/2014