

Some problems of labor safety in criminal legislation in Kazakhstan and some other countries

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Abstract. The article is devoted to the necessity of further improvement of the main directions of the Institute for the protection of working conditions in the criminal law of the Republic of Kazakhstan. On the basis of comparative analysis of this institution with the same Institute of foreign criminal legislation assess the need and identify areas for further improvement of the Institute of protection of working conditions. Defined are the urgent tasks of optimization of criminal responsibility for violation of the rules of labour protection at the present stage. The author also studied the legal ideas embodied in the investigated criminal legislation of foreign States on the basis of which contains specific proposals for improving the criminal legislation of the Republic of Kazakhstan.

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Introduction

Legislator has introduced Chapter 152 “Violation of labor safety rules” in Clause 2 of Criminal Code of the Republic of Kazakhstan (RK) on crimes against the Constitutional and other rights and freedoms of a man and a citizen [1]. This chapter sets the liability for violation of safety rules and other labor protection rules performed by a person responsible for observance of these rules in case it causes involuntary infliction of severe health hazard or death of a man.

To assess the necessity and define directions of further improvement of labor protection institution it may be useful to study foreign experience of criminal legislation and compare it with norms of Kazakhstan's legislation.

According to the content of Chapter 152 of Criminal Code (CC) of RK and its place in CC structure, object of crime are social relations that provide the most safe labor conditions, i.e. such conditions that comply with the unite state regulatory requirements of workers' life and health preservation in the process of labor activity. National legislations of Russia, Azerbaijan, Armenia, Georgia, Kyrgyzstan, Tajikistan, Turkmenistan, Latvia, Lithuania, Moldova, Poland, Spain contains similar norm. In Byelorussia, China, Uzbekistan such act is considered as crime against social safety, in Ukraine analogous chapter is placed in a special section that contains crimes against production safety. Second direct object of this crime is life and health of a person. In Italy, Bulgaria this object of encroachment on labor safety is considered the main according to placement of the chapter.

According to the norm of Chapter 152 of CC of RK clarifying of the essence and the content of conception of labor safety and its correlation with the

concept of safety measures has theoretical and practical importance. These problems are paid great attention in literature covering labor and criminal law but common opinion hasn't been yet developed [2].

In Chapter 1 of the Law Code of RK labor safety is defined as “the system of workers' life and health safety provisioning in the process of labor activity including legal, social and economic, organizational and technological, sanitary and epidemiological, medioprophylactic, rehabilitative and other measures and means”.

Safety measures form one of components of labor safety institutions and include the following:

- a) appropriate maintenance of buildings, constructions, equipment, instruments, arrangement of different protective means and mechanisms, dangerous areas enclosure, etc.;
- b) using safe ways and methods of work by trained and instructed members of production process; control and surveillance of condition and safety of buildings, constructions, equipment, instruments, safety arrangements and of using safe ways and methods of work [3].

Rules of occupational hygiene and sanitation are considered the other rules of labor safety [4]. Safety measures protect workers from occupational injuries and occupational sanitation and hygiene from occupational diseases.

So for the purposes of criminal responsibility labor safety rules consists of the rules of safety and rules of occupational hygiene and sanitation [5]. In Kazakhstan's legislation in recent years (LC of RK and others) the term “safety measures” is not used. This term has been replaced by new conceptions such as “labor safety” (the system of labor safety standards (GOST 12.0.004-90 of Labor Safety System

Standards) [6]. Taking this fact into consideration it may be reasonable to set the problem of editorial correction of disposition of discussed norm namely about replacement of words “rules of safety and other rules of labor protection” with other words more closely reflecting modern terminology because prevailing use of common concepts in different branches of law is more effective.

Until recently death of a man was declared socially dangerous effects of violation of labor safety by Chapter 152 of CC of RK as well as severe health hazard and moderately severe health hazard. But in January, 2011 involuntary infliction of moderately severe health hazard was depenalized. One cannot be completely sure that it was actual and reasoned decision. Degree of health hazard – severe or moderately severe – that may be involuntary inflicted as a result of industrial accident often depends on the situation. As it is rightly noted in legal literature “effects of involuntary acts are often inadequate to violations of set safety rules, disproportionate to the degree of severity and the character of violated norms” [7]. Exclusion of the possibility of criminal liability for safety rules violation when causes moderate severe health hazard is questionable. Pressing task of optimization of criminal liability for this act should be solved by other means in particular by its differentiation with regard for the attitude of guilty person to committed violation of rules. “The “quality” of behavior of involuntary criminal should be rather accepted as approach that allows widening possibilities for personification of penalty than degree of severity of consequences. Penalty should be personalized firstly depending on the character of violation of these or that rules and on the attitude of guilty person to this violation” [8]. To add these arguments one may say that criminal liability for labor safety rules violation is valid in all states of former USSR. At the same time in Estonia incidence of this norm is limited to civil organization, chemical and dangerous production or enterprise where there is the threat of scale accident. This approach is hardly right. In all the former Republics of the USSR corpus deficit is defined as material.

As this norm set responsibility for violation of labor safety rules victims of criminal act defines in it may be workers of a company and other persons (trainees, students undergoing practical training, business travelers and others) whose full time or part time activity is connected with a certain production. Kazakhstan's criminal legislation has such a structure that this is one of the main distinctions of analyzed crime from contiguous acts related to violations of labor safety.

According to CC of RK, the subject of this crime may be a person of 16 and older that was

responsible for observance of labor safety rules. Analogous formulae are used in legislations of Azerbaijan (Chapter 162) and Turkmenistan (Chapter 151). Meanwhile the obligation to observe the requirements of labor protection is one of the most important obligations of each worker but according to legal scholars only a person responsible for observation of safety rules can be brought to account for their violation. This person is a worker responsible for observation of rules and norms of labor safety by other workers [9].

Fairness of this argument is proved also by the texts of foreign legislation that unlike CC of RK do not use description of crime subject. Foreign legislators limit the range of potential subjects with indicators mentioned earlier: a person responsible for observation (Chapter 306 of CC of Byelorussia; Chapter 146 of CC of Latvia; Chapter 170 of CC of Georgia; Chapter 257 of CC of Uzbekistan; chapter 154 of CC of Tajikistan; Chapter 142 of CC of Kyrgyzstan; Chapter 220 of CC of Poland), or a person who was responsible for organization or provisioning of observation of rules (Chapter 152 of CC of RK; Chapter 143 of CC of Russia). In this case it may be reasonable to clarify disposition of Chapter 152 of CC of RK.

In CC of RK analyzed crime is included into the range of crimes that may be committed only involuntarily. In most states with legislation having criminal liability for violation of labor safety rules in norm similar to those of Kazakhstan's the commitment is supposed to be only involuntary.

In criminal laws of Bulgaria (Chapter 136), Poland (Chapter 220), Spain (Chapters 316-317) liability for violation of labor safety rules is set by two norms. In one of them legislator does not define allowed form of guilt, the other set the liability for the same act when it is committed involuntarily. One should not think that in these countries it is allowed criminal liability for deliberately committed violation of labor safety rules. I.M. Tyazhkova noted, “matching of conscious violation of labor safety rules with deliberate is hardly possible” [10]. These chapters of foreign criminal legislations may be viewed as the way of differentiation of liability for involuntary crimes depending of the type of involuntary act. Second norm deals with negligence that is unconscious violation of rules while the first norm presupposes involuntary guilt as thoughtlessness when guilty person is aware of violation of special rules and foresee threat of hazard consequences of his(her) behavior and without valid base conceitedly reckons upon prevention of those. Penalty of the first norm is more severe than of second. This approach is reasonable because attitude of a person to committed

action allows distinguish thoughtlessness and negligence.

System of norms of criminal legislation of Kazakhstan that protect the right for safe labor besides Chapter 152 of CC of RK has Chapter 245 of CC of RK that presupposes liability for violation of safety rules for mining, civil and other works when if involuntary causes large-scale damage, severe health hazard or death of a man or death of two or more persons. Object of this crime is production safety of relevant works including safe labor conditions [11]. In this case it is not applicable who are the victim of this crime either workers of this enterprise or persons who bear no relation with it. The problem of distinguishing oh these crimes is a number of cases cause a certain difficulty. It is the case when damage is inflicted to a worker as a result of rules violation by person responsible for observation of these rules. Different ways of distinguishing were proposed but common opinion has not been yet achieved.

Legislator has expressed the belief that actions described in Chapter 245 of CC of RK are more socially dangerous that violation of labor safety rules by setting more severe penalties. Maximum punishment in Article 2 of Chapter 245 of CC of RK for involuntary causing death was limitation of freedom for 6 years, in Article 3 of Chapter 145-1 of CC of RK limitation of freedom for 8 years and in Article 2 of Chapter 152 of CC of RK – limitation of freedom for 5 years. Correction of penalties made by legislator is seemed to be reasonable. What remains is to realize the will of legislator in the form of criminal law disposition.

Legislations of all former Republics of the USSR except for Lithuania have Chapters similar to Chapter 245 of CC of RK. In Russia, Tajikistan, Turkmenistan, Armenia, Azerbaijan, Georgia disposition of these Chapters repeat the regulations of CC of RK. In other countries the scope of such article is defined without the words “or other works”. Byelorussia, Moldova and Kazakhstan limit its scope with civil works and mining, Kyrgyzstan, Uzbekistan adds dangerously explosive works, Latvia points civil and blasting. Ukraine defines penal act as violation of safety rules “carrying out works of heightened danger” (Chapter 272).

Advocates of other point of view focus on the characteristics of violated safety rules. Violation of “general” labor safety rules should be qualified as crime against major human rights (Chapter 152 of CC of RK) and violation of “special” rules that provide for example safety of mining as a crime against social safety [12]. As it was noted on literature there is no common idea of “general” and “special” labor safety rules and qualifying the rule as “general” or “special” depends on judgment of law enforcers and thus may

appear to be conditional [13]. It was proposed to qualify these types of crimes depending on rules violated – general, end-to-end or industry specific. This proposal appeared to be non-applicable in practice because many norms of labor safety institution duplicate one another. General norms and end-to-end norms of inter-industrial character are also included in industry specific norms.

In latest literature covering law and crime it is recommended to apply difference in the content of the object of these types of crimes to distinguish liability. It is worth noting that the idea that despite placement of analyzed Chapters on different Clauses of CC of RK crimes mentioned in them encroach the same object – safety in the sphere of citizens' life and health protection while their fulfillment of production processes in different industries gains growing support on the doctrine of Kazakhstan.

Thereby above mentioned and relatively frequent cases of causing health hazard or death to a worker as a result of violation of safety rules by a person responsible for their observation in accordance with Kazakhstan's crime legislation in force may be qualified by both Chapters. In this situation analyzed norms of CC of RK duplicate one another so differentiation of liability may appear to be difficult to realize in practice. Survey results show attitude of legislators to ongoing unsuccessful attempts of the doctrine to find concrete and definite answer.

Does the necessity to keep both norms – general and special – in crime legislation exist now? It is taken to be that Chapter 152 of CC of RK may be explained by ideological reasons of maximal coverage of main rights and legitimate interests of a man by criminal and legal guarantees.

Let us turn to legal ideas that are realized in the studied criminal legislation of foreign countries. Criminal legislations of some countries do not contain norms analogous to Chapters 152 and 245 of CC of RK. In Austria, Albania, Denmark, Norway, Sweden, Belgium, the USA (Code of Laws, Model Criminal Code) legislators do not make difference between infliction of health hazard and death of a man as a result of non-observance of domestic safety measures and the same consequences resulted from violation of labor safety requirements. Legislations of these countries in sections on crimes against life and health contains just general norm that set criminal liability for involuntary causing death or health hazard.

There are no norms analogous to analyzed Chapters of CC of RK in legislations of the other countries but the difference is that liability for involuntary causing death or health hazard is differentiated. Besides general norms there is corpus delicti that set liability for the same actions done in professional activity (for example, Chapters 307-309

in Holland, Chapter 211 in Japan) or as a “result of the lack of experience in professional or handicraft activity, non-observance of rules, orders and statutes” (Chapter 455 in Turkey), Chapter 86 in Argentina) or related to “violation of the rules of road discipline or labor safety rules” (for example, Chapter 589, 590 in Italy).

There are countries that have included norm covering violations of labor safety rules in criminal law. Liability is being set in a Chapter that is constructed as delicti of danger creation. Both a worker “violation of labor safety rules” (for example, Lithuania, Bulgaria), “being responsible for safety and occupational hygiene” (Poland), “violation of legal obligation of provisioning of means necessary for carrying out their work by workers” (Spain) and any person “violation of generally accepted rules, that creates danger for life and health of the other man” Germany, “non-fulfillment of the duty of safety measures observance resulted in real risk for the other person” (France) may be a victim.

What concerns liability for real harm caused as a result of violation of labor safety rules it should be defined according to norms of crimes against life and health committed involuntary. Liability for involuntary causing harm in legislation of these countries may be set with above mentioned differentiation (for example, “involuntary causing death as a result of violation of special safety rules” (Chapter 132 – Lithuania, Chapters 123, 134 – Bulgaria, part 3 of Chapter 142 – Spain) or without it.

Review of foreign and national crime legislation with all differences conclusively shows that full-fledged protection of one of the main rights of a man – the right to safe labor – is acceptable without crime liability for violation of labor safety rules in individual norm.

Acts provided for in Chapters 152 and 245, 245-1 of CC of RK should be joined in one norm setting liability for violation of works fulfillment safety rules committed by a person responsible for their observation in case of results mentioned in the present edition of Chapter 245 (large-scale damage, health hazard, death of a man, death of two or more persons).

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