

ISSN 1563-0366
Индекс 75882; 25882

ӘЛ-ФАРАБИ атындағы ҚАЗАҚ ҰЛТТЫҚ УНИВЕРСИТЕТІ

ҚазҰУ ХАБАРШЫСЫ

Заң сериясы

КАЗАХСКИЙ НАЦИОНАЛЬНЫЙ УНИВЕРСИТЕТ имени АЛЬ-ФАРАБИ

ВЕСТНИК КазНУ

Серия юридическая

AL-FARABI KAZAKH NATIONAL UNIVERSITY

KazNU BULLETIN

Law series

№5

Алматы
«Қазақ университеті»
2015



ХАБАРШЫ

ЗАҢ СЕРИЯСЫ № 5



25.11.1999 ж. Қазақстан Республикасының Мәдениет, ақпарат және қоғамдық келісім министрлігінде тіркелген

Қуәлік №956-Ж.

Журнал жылына 4 рет жарыққа шығады

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TO THE CONCEPT OF THE CRIMINAL LAW

In the science of criminal law adopted to distinguish two kinds of laws- the laws of nature and society and legal laws. The first is the necessary, internal, inherent to the nature of phenomena, trend of changes, movements, etc., which defines the general steps of the process of formation of specific systems of phenomena of nature, society and the spiritual culture of mankind.

Second, in a general view, represents the rules of regulations of higher power.

Legal laws, such as a criminal law, created by human and like any product of his mental activity required the relevant amendments and additions by the virtue of continuous developments of the social production and other relations, changes of social-economic, political and ideological conditions of the society. [1, p. 75].

A Roman lawyer Papinian, for example, defined the law as "a requirement, the decision of the wise men, curbing of crimes committed knowingly or unknowingly, shared vow of the State." Marcian gave a similar definition of the law. [2, p. 15].

According to certain scholars, the law in Kazakhstan is interpreted in a broad sense is equated not only by the law, but by the state laws too. This is indicated by the contents of the Article 4. of the Constitution of the Republic of Kazakhstan, where it is written: «The provisions of the Constitution, the laws corresponding to it, other regulatory legal acts, international treaty and other commitments of the Republic as well as regulatory resolutions of Constitutional Council and the Supreme Court of the Republic shall be the functioning law in the Republic of Kazakhstan.». On the basis of this constitutional provision, it means that the Constitution of the Republic of Kazakhstan gives a provisional understanding of the law, under which any act regardless of its content, is the right [3, p. 144-145].

The urgency of the problem of right and law continues to prevail in common law theory too. The crux of the problem leads us to concepts of the division of laws like legal and non-legal. Scientists-lawyers offered a variety of basis for distinguishing the meanings between legal and non-legal laws, but there are still a lot of further questions and discussion. In this regard, law theorists have concluded that the ultimate solution of the problem of law and law "it is possible only on a fundamentally new methodological and ideological basis and it is the matter of a distant future [4, p. 295].

Without going into the depth of the discussions we believe that the right and the law are not identical legal concepts. Modern proponents of the differentiation of rights and laws (V.S. Nerseyants, R.Z. Livshits, V. D. Zorkin, D.A. Kerimov, L.E. Mamut, and V.A. Tumanov) also argued that the right and the law are inter-related, but not unambiguous. In particular, B.H. Toleubekova in her tutorial "Criminal law and procedure of the RK" refers to judgments of R. Z. Livshits: "The nature of the law, which we have, must be as it should be proper. Search of the proper, from the theoretical point of view, is the search of the nature of the right "[5, p. 21]. Thus, the right, versus the law, has a wider content and form of legal phenomenon, that is social-wider and in its development ahead of the law. For the many years of studying, we have a large amount of the knowledge about it and have developed a certain vision of this phenomenon, there is a definite stereotype. However, there are many unexplored sides of interest to current and future researchers. The identification of the law with other regulations, from the legal point of view, completely wrong, because it reduces the effectiveness of the law itself, which ultimately threatens to the legal chaos and endless legal conflicts. Because of these and a number of other circumstances in Kazakhstan i 24th of March, 1998 was adopted the law "On provisional legal acts" in order to realize the requirements of paragraph 8, art. 62 of the Constitution [6].

Article 1, Paragraph 7 of the mentioned legal act stipulates that laws and provisional-legal acts are adopted by the highest State authorities, the Parliament of the Republic of Kazakhstan, and in the cases stipulated by paragraph 4 of art. 53 of the Constitution, the President of the Republic of Kazakhstan shall have supreme legal force and direct effect on the territory of the Republic.

The next method is the adoption of laws by the decision of the President of the Republic of Kazakhstan trough Republican referendum. The subject of the referendum, in accordance with article 2 of the constitutional law of the Republic of Kazakhstan «On Republican referendum», may be the adoption of the Constitution, constitutional laws and laws of the Republic of Kazakhstan. At the same time, the paragraph 4 of article 3 of the aforementioned Constitutional Act establishes that issues of Justice, defense, national security are not the subject of popular vote. Consequently, the legislature does not provide for the criminal law the discussion at the referendum as a way of adoption a law.

In the light of the foregoing, we can formulate the following characteristics of the criminal law. Firstly, the criminal law it is the legal document with the prescribed form. Secondly, the relevance of the requirements, contained in the Penal Law, refers to the number of ordinary laws. Third, it is accepted only by the highest representative bodies, Parliament, and in the case statutory in the

Constitution, by the President of Kazakhstan- the highest official of the State. The law shall have supreme legal force and priority over all legal laws and regulations.

The legal validity of the act- the feature of the legal act to produce certain legal effects - depends on the position of the organ, the issuer of the instrument, in the system of organs of the State and its competence. In accordance with paragraph 1 of article 92 of the Constitution, the legislation of the Republic of Kazakhstan for a period of two years from the date of adoption of the Basic Law (August 30, 1995) should be brought into line with its provisions. At the same time the discrepancy of the existing legislation into line with the Constitution, does not mean its automatic cancellation: the existing legislation at that time of the entry into force of the Constitution of the Republic legislation retains its legal force in the part, not contradicting to it [7].

Legal and political features of the supremacy of the law as the highest legal force of a legal act enshrined in the law «On normative legal acts». According to article 4 of this Law Correlation of legal force of other regulatory legal acts except for the Constitution shall conform to the following descending levels:

- 1) Laws introducing amendments and supplements to the Constitution;
- 2) Constitutional Laws of the Republic of Kazakhstan and edicts of the President of the Republic of Kazakhstan with force of Constitutional Law;
- 3) Codes of the Republic of Kazakhstan;
- 4) Regulatory edicts of the President of the Republic of Kazakhstan; laws of the Republic of Kazakhstan and edicts of the Republic of Kazakhstan with force of law;
- 5) Regulatory resolutions of the Parliament of the Republic of Kazakhstan;
- 6) Regulatory resolutions of the Government of the Republic of Kazakhstan;
- 7) Regulatory legal orders of Ministers, regulatory resolutions of the State Committees, regulatory legal orders and resolutions of other central state bodies;
- 8) Regulatory legal decisions of Maslihats and Akims.

The feature of criminal law is that it consists solely of the Criminal Code of the Republic of Kazakhstan. Other laws providing for criminal responsibility can be applied only after their incorporation in the criminal code.

The Constitution, ratified by the Republic of Kazakhstan, international legal acts, decrees, normative decisions of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan also included to the substantive sources.

On the basis of the analysis of these signs, we can conclude that Criminal law is the only formal source of criminal law legislation, which is a legal act of the primary type, adopted by the highest organs of State power, establishing the

beginning of criminal responsibility that defines which kinds of acts constitute crimes and what penalties apply to a person found guilty of committing them.

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