

**Actual problems of criminal law,
criminal procedure and criminalistics**

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Features and innovations of the new Criminal Code of the Republic of Kazakhstan

Abstract. This article is devoted to the peculiarities of the operative Criminal Code of the Republic of Kazakhstan. The characteristic peculiarities, the reasons of the adoption of the new Criminal Code of RK are analysed. Special attention is paid to the difference between new (operative) and old code. The article particularly deals with the innovations, the advantages and disadvantages of the operative code.

The article is assigned for students, undergraduates, PHD doctoral candidates of law department.

Keywords: crime, punishment, Criminal Code.

The policy on the improvement of all branches of the law system, conducted by the President of the Republic of Kazakhstan N. A. Nazarbayev, including the criminal legislation, has significantly changed legal awareness and legal culture of citizens of our country. The legislation of Kazakhstan is being formed in a close interrelation with history, culture and traditions of the people of the Republic. All positive is being selected, as well as more advanced, which, certainly, can only improve the operating law system of our government, promote effective implementation of justice and statement of legality [1]

Within the last two years, there was a development and now is adopted the new Criminal code of RK, which came into rightful force on January 1, 2015.

The need to adopt a new CC was due to several reasons. We will only name some of them. First, there is a process of intensive development of the public relations going on in our country, which compels to correct constantly the legislation, including the criminal one. Second, a significant amount of changes and additions annually brought in the Criminal code after its acceptance in 1997, and which generated many shortcomings, because some of them were included without taking into consideration the text of all code, resulted in inconsistency of some norms of CC among themselves. In order to eliminate the collected

defects, it was necessary to carry out audit of all text, which led to adoption of the new code.

The new Criminal Code of the Republic of Kazakhstan was adopted on July 3, 2014, entered into force on January 1, 2015. It uses the achievements of modern criminal law theory, advanced experience of foreign countries. Therefore, its content is much better than the old code. I will focus only on some of the benefits.

Unlike the old Criminal Code, the new one includes the concept of a criminal offence, which covers two types of criminal offence: crime and criminal offence. Crime - is the most dangerous criminal offence, for which there is a prescribed punishment in the form of a fine, correctional work, restriction on freedom, imprisonment or death penalty. The sanctions of the new Criminal Code articles on the responsibility for criminal offenses presume a punishment in the form of a fine, correctional work, community service and arrest (there is no imprisonment or death penalty). Therefore, the criminal offenses are different from the crimes of the sanctions of the Criminal Code articles: if there is a sentence of imprisonment or death penalty, then it means that this provision presumes a responsibility for an offense if these two types of punishment are not in place - hence, the responsibility for the criminal offence is presumed under the given provision. Convicted for a criminal offence shall not be

considered as an offender. This should be considered as an important matter, since a criminal record has a negative impact on the fate of the convicted person after his release from punishment.

Some experts were against about the new Criminal Code's introduction of the concept of "criminal offense", fearing that it will increase the repressive criminal law. It's a hardly to agree with that opinion, since the introduction of the concept that specified in above, other way round, shall lead to the fact that more than a hundred acts which in the old Criminal Code were recognized as a minor offense (for their commission penalizes non-custodial) – in the new way will be recognized as criminal misconduct. It's could be considered as the reduction of the repression's degree.

A lot of attention had been paid to the principle of humanization of criminal legislation during the development of the new Criminal Code. The compliance of such kind principle is observing in the many institutes of criminal law. It's especially noticeable in the rules that governing the exemption from the criminal liability. There are 7 articles in the common part of the Old Criminal Code that governs the questions of exemption from the criminal liability, but in the new one was provided two more fresh types of the exemption from criminal liability: in the conditions procedural agreement (Article 67) and with the establishment of a guarantee (Article 69). There are a lot of types of exemption from the criminal liability that permitted for ours law enforcement agencies and the law courts to not lead the case to the punishment if the person has committed a crime of minor or moderate severity.

It's pertinently to note that the Criminal Code of the foreign countries do not contains so much kinds of exemption from the criminal liability. For example: There are only 4 types in the Criminal Code of Russia, among 1-2 types in the far abroad countries.

The punishment for the offense that wasn't societal danger was softened, as well as in the cases when the crime was committed by infants, women and elderly persons. Also the responsibility and punishment for the more danger crimes was reinforced: for the murder,

terrorism, for the crimes against infants. It's also could be attributed to the changes of the humanistic nature as the humanization of the criminal law, as it was stated in the Concept of Legal Policy of Kazakhstan for the period from 2010 to 2020. It's not only about of soften the responsibility and punishment, but also about a tightening of the responsibility and punishment for the more danger crimes. [2]

This direction of humanization goes in favor of crime victims, it is presuming to increase the criminal law protection of the individuals. Annually a huge number of citizens suffer from the criminal acts. For example, in 2013 from the reported victims crime has been recognized 311,460 individuals, in the issue of those criminal acts was occurred the death of 5,125 people. In the many cases, such as a thievery, the damage from the criminal acts is non-refundable. That is way the humanization of criminal legislation in favor of persons who have committed a crime should be treated with caution, and thinking about how it will affect to the crime situation. One of the advantages of the new Criminal Code, unlike the old one – its a presence of the article, which provides an interpretation of more than 30 concepts and terms that shall help to reduce the errors in application of the criminal law.

Let's take a look to the features and innovations of the new Criminal Code. The innovation begins with the first article of the new Criminal Code:

In this document of the criminal offenses includes a new institution, which calls the criminal misconduct. There are only 156, including 47 former executive offenses, 100 minor offenses, which doesn't envisage as the imprisonment punishment, as well as 9 new acts that has not provided earlier in any of the Criminal Code or the CoEO (mainly medical and cyber offenses). Misconduct does not lead to the conviction. The maximum of the punishment measure constitutes the arrestment until 90 days.

There are changes in the Institute of relapse. Now, under the Criminal Code for the relapse will be consider only an unredeemed and non-dropped conviction for the serious and particularly serious crimes without of

accounting convictions for the less-serious crimes. The applicable rules of the punishment assignment in the relapse (at least 2/3, 3/4 upper limit of imprisonment) were excluded.

The lifetime ban has been installed for positions in the civil service which has officially convicted in corrupt, as well as a ban to working with the children for the persons who has convicted for sexual offenses against infants.

The ban on contingently anticipatorily dismissal had been introduced, replacing a less severe penalty an amnesty for persons who had convicted in the terrorism and extremism.

As compared with the existing Criminal Code the punishment system had been reworked with an emphasis on the more general measure applications which alternative to imprisonment.

As the only-begotten form of imprisonment punishment had been saved only for crimes which committed in an organized criminal group (OCG), that related with the murder of the person, especially serious crimes, including the terrorism, corruption, and war crimes which committed in wartime or in combat situation.

The content and the order of execution of corrective labors had been changed, which had been set as the closest alternative to the penalty. They are calculated in a specific size, which payable to the budget, for example, 1 thousand MCI. In fact that evasion of penalty or correctional labor involves to the replacement of punishment to imprisonment.

The CRIMINAL PROCEDURE CODE

In this case the initial stage of the criminal process has been changing radically by eliminating the pre-investigation stage, which will exclude the conduction of large volume of events, which preceding to the initiation of criminal prosecution. The concept of pre-trial investigation has introduced. It starts from the moment of statements registration and reports about the criminal offenses or the first urgent investigative actions which preceding the registration.

The procedure of the citizen's detention had been detailed. The concept of the actual arrest had been revealed. It had been established in the case that it's determining from the moment of actual restriction of

freedom, including freedom of movement, which regardless of giving any procedural status to the detainee. The delivery term is a part of the general term of actual detention, which will be specified in the detention protocol. If the person hasn't procedurally detained after delivery, then he will be immediately issued with the certificate which shall report about that the delivery had been accomplished. In order to improve the criminal investigations of unsolved crimes the trial investigation will be produced out within the time limits which has established by the Criminal Code.

The existing forms of the investigation had been improved (inquiry and preliminary investigation), which provides: the accelerated production, the procedural agreement to the confession, and the procedural agreement to the cooperation. The protocol form of investigation for "criminal offenses" has been introducing. In this case, the appointment of the preliminary investigation is necessary for the criminal offenses which had committed by infants and the persons who are using the privileges from the prosecution.

The procedure of the obtaining the suspected person status into the offense committing (since interrogation) and reviewing the cases of the criminal misconducts in a court had been simplified. In general, the decision-making process during the pre-trial investigation has been simplifying.

Such procedural act as "the indictment" has been excluding. A short indictment will be constituted by investigator of the investigation results in which: he is indicating the data about of suspected person, describing the committed criminal offense, making qualifies and transferring the collected evidence of the cases, and procedural costs.

The figure of "Procedure" prosecutor has been introducing, which has transmitted the considerable number of powers from the head of the prosecuting authorities. This had been done in order to increase the responsibility of ordinary prosecutors who is carrying out the surveillance of the investigation and inquiry, but now they will support on the same cases in the court and state prosecution to appeal against their court acts.

The cases shall be investigated no more than 15 days within the framework of the accelerated production. The time of usual production of pre-trial cases investigation of inquiry is in so far as 30 days, and a preliminary investigation is in so far as two months. In order to protect the citizen's rights and freedoms, to secure the information about their work places and the witness's residence address, victim, expert, specialist, interpreter, witness, counsel body which is conducting the criminal proceedings will be taking the measures which shall restrict the access to the address data. [4] [5]

The new investigative action "provision of documents and objects" had been introduced, which is submitting the court matters of the person's initiative to the investigator.

In the criminal proceedings shall be one more innovation - The Institute of procedural agreement. It shall be designing in form of the transaction about the crimes confession: small, medium or heavy category in the case if the suspect is agreeing with the suspicion and accusation. This institution is so far new and had been borrowed from the criminal proceedings of the several countries where such agreements had been completed the production of 80-90% criminal cases. This allows to make the process more economical and to focus on the investigation of complicated cases. The main burden will fall exactly on the prosecutor which supervising the pre-trial stage, and including the procedural prosecutors. Particularly, considering the possibilities of the deal institution application about: the concession, clarification of the circumstance's conclusion, an explanation of the consequences, and also directly drawing up the agreement, sign it – it all shall be made exclusively by the prosecutor, in which he will spend on average 10.4 hours, taking into account the revision of the agreement, and the prosecutor's participation in court and protestation.

The prosecutor shall immediately forward the pre-trial investigation to the court in the case if the necessity of the other proceeding has lack of after the conclusion of the agreement, the pre-trial investigation of the case shall be considered as ended. After the

checking the legality of the drawn up agreements, court shall to clarifies the related issues which related with the voluntary volition of the parts, indemnification, and whereupon the court shall make his decision, which shall significantly reduce the burden against the judiciary.

The Conclusion: And so, the new Criminal Code of the Republic of Kazakhstan which had been adopted in July 3, 2014, and includes 467 articles. The common part has consisted from the 7 chapters, 98 articles; the special part has consisted from the 18 chapters and 369 articles which are more humane in relation to socially vulnerable groups and persons who have committed petty crimes. But at the same time in the new Criminal Code had tightened the liability for extremism and terrorism, as well as criminalized acts conducive to the spread of radical ideology. And also a new concept of the criminal offense had introduced that will help to reduce the degree of repression. In my opinion the advantages of the new penal code are significantly much more than minuses, as in the old Criminal Code annually makes a significant number of changes and additions, which have generated a lot of shortcomings, because some of them were made without taking into account the entire text of the Code and this has led to inconsistency of certain provisions Criminal together. The new Criminal Code on the achievements of the modern criminal law theory, advanced experience of foreign countries. Therefore, the content of the new on is much better than the old one. I must admit that generally the new Criminal Code shall intended to play a main role in the struggle against the crime in our country.

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