

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

**Materials of scientific conference**

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

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Legalization (laundering) of money and (or) other property received in the criminal way is specified in the article 218 of the Criminal code of the Republic of Kazakhstan. According to this article this criminal action is punished by a penalty at the rate of three thousand monthly calculation index or corrective works in the same size, or restriction of freedom for a period of up to three years, or imprisonment for the same term, with confiscation of property. The same act made by a group of persons by previous concert, repeatedly and the person with use of the official position are punished by a penalty at the rate of five thousand monthly calculation index or corrective works in the same size, or restriction of freedom for a period of up to five years, or imprisonment for the same term, with confiscation of property.

Same acts in large sizes is considered by the made person authorized on performance of the state functions, or equated to it by the person, either official, or person, holding responsible state position if they are interfaced to use of official position by it, criminal group especially serious crime and it is punished by imprisonment for a period of three till seven years with confiscation of property, or with lifelong deprivation of the right to hold certain positions or to be engaged in a certain activity.

For effective fight against legalization of money a state policy in the sphere of counteraction of legalization of income gained in the criminal way have to be developed. Also, from government bodies there have to be a special control of ways and schemes of money laundering.

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#### **Powers of Attorney for initiation of proceedings on newly discovered facts (A modern interpretation of the question)**

**Abstract.** Article is devoted to the prosecutor office for applying for renewal of production of newly discovered circumstances. Considered to be a modern criminal procedure legislation of



the Republic of Kazakhstan, after his conceptual reform. A comparative analysis of the powers of the court and the prosecutor at the stage of the resumption of criminal cases.

**Keywords:** newly discovered evidence, the prosecutor, the powers of the prosecutor, petition for resumption of production.

Initiation of production in view of newly discovered circumstances - one of the essential guarantees of proper administration of justice and the protection of constitutional rights and interests of the convicted, acquitted, and other persons involved in the case. Smooth functioning of this stage of the process contributes to the establishment of objective truth in the case, correction of errors made by the court and the restoration of violated rights and legal interests of citizens. Meanwhile, this production as before remains the least developed in the procedural theory, and in the current criminal procedure legislation, which is still not precisely regulated by the competence of one of the most important subjects of this stage of the proceedings - the prosecutor. This can lead to significant practical errors.

Reviewing the activities of the prosecutor in the evaluation stage as a form of supervision of the legality and validity of entered into legal force of court decisions in criminal matters, we should recognize that its competence to initiate proceedings in view of newly discovered on the circumstances of the case is determined mainly by the Law on the Prosecutor's Office of the Republic of Kazakhstan in 1995 year and the head 53 of the Criminal Procedure Code of the Republic of Kazakhstan. Article 502 of the CPC states that the right to apply for the commencement of the newly discovered circumstances belongs to the prosecutor. This is the initiation of a special production, during which permit the investigation to establish the specific circumstances of the case, despite the fact that it has a court verdict, entered into force.

Prosecutor's activities to institute such proceedings is divided, according to V.S. Posnik, on two stages: a) prosecutor's preparing information about newly discovered facts; b) the decision to initiate production or refuse it [1]. In general, the assertion that the reopening of the case in view of newly discovered circumstances may be made only on the initiative of the prosecutor is not

disputed by anyone [2]. Modern criminal procedure law gives a fairly complete list of reasons, giving the prosecutor the opportunity to start to make the decision on the initiation of proceedings in view of newly discovered circumstances of the case. These reasons include: the application of citizens, including the members in the case of the process, officials of organisations, as well as data obtained during the investigation and consideration of other criminal cases.

In this application from the citizens about the presence of the new circumstances of the criminal case in which the judgment was held, no doubt can be considered a way to protect participants in the process of their constitutional rights and interests, the need for protection which makes a special emphasis Code of Criminal Procedure. In particular, setting the grounds for a review of court judgments and decisions which have entered into force in 499 article of criminal procedural law gives a list of them, including defined a violation of constitutional rights and freedoms of citizens, which were admitted during the investigation or the judicial proceedings or incorrect application of the law, which resulted in a miscarriage of justice in a criminal case. In the chapter addressing to the need of review of a decision, determine the fate of the criminal case, is based on the need to protect and restore the violated constitutional rights and freedoms of citizens in the field of criminal justice. Such an approach is quite timely, relevant and tactically correct. Any wrong decision in a criminal case undoubtedly has the most negative impact on the understanding of the rightly judgment, affects the formation of a society's respect to the law and justice, gives or not the confidence to pursue issuance of equitable judgment in a criminal case, even if it took force, executed or enforced.

All of this ultimately reflects the aspiration to solve the major issues of justice: to seek condemnation of the perpetrators of crimes and correct decisions, which can be

judged innocent or wrongly acquitted guilty of committing a crime. Ultimately it solves the problem of protecting the interests of individual victims of a crime. There are many tasks, that can be defined for stage revision entered into force by court decisions in criminal matters, and they must be dealt with simultaneously. For maximum coverage capacity of such a revision the best formulation is the formulation of the need to protect and restore the constitutional rights and freedoms of citizens by the methods and techniques of supervisory review proceedings and supervising production in view of newly discovered circumstances.

The Criminal Procedure Code stresses that the prosecutor has the right to petition for initiation of newly discovered evidence in the case. Analyzing the current legislation, we conclude that the institution of such a special production is rather the responsibility of the public prosecutor, because if there is a sufficient reason and a cause for the beginning of production of newly discovered facts, he, in his official position, is obliged to fight for the truth and to seek correction of any violations of the law.

Referring to the analysis of the beginning of the public prosecutor's activity on the excitation of the proceedings in view of newly discovered circumstances. After receiving the application or report, the prosecutor checks the reason for the production of excitation due to newly discovered circumstances. It examines the statements and reports, familiarizing them materials, analyzes the information contained in them, checks the validity of the applicant's allegations about the opening in the case of new circumstances and performs other actions that contribute to making the right decision. If you received a statement or report, which refers to the existence of a court judgment, rendered in connection with the circumstances referred to in paragraph 1-3 of the second part of Article 499 of the CPC, the court by its decree brings proceedings in view of newly discovered circumstances and shall undertake the checks, seeks a copy of the judgment and a certificate court of its entry into force.

If the statement and the report point to other unknown circumstances to the court

about sentencing, the definition, which by themselves or in conjunction with the previously established circumstances, suggests the innocence of the convicted person or to commit them to a different in the degree of seriousness of the offense than that for which he was convicted, or the guilt of the acquitted person or persons against whom the case was dismissed, the court shall send the materials to the prosecutor for organization the investigation. When investigating newly discovered circumstances may be made in compliance with the rules of the Criminal Procedure Code, the interrogations, examinations, expert analysis, seizure and other investigative actions. If the statement and the report raises the question of the resumption of the case to the detriment of the convicted, acquitted or the person dealing in respect of which it was the court dismissed, the prosecutor finds if the statute of limitations for criminal responsibility is expired, then checks, were the reported details known by the court which rendered the judgment or ruling. If the court knew about them, the criminal case is not subject to renewal. While checking the information the prosecutor has the right to request the necessary materials and obtain explanations from the persons who participated in the process during the investigation, the trial of the case, to find out, executed if the sentence in respect of which raises the question of revision, if it was executed, to what parts it belongs and etc. If the prosecutor does not provide grounds for initiating a request for initiation of the newly discovered circumstances, he should render a reasoned decision.

According to Article 503 of the CPC regulation shall be communicated to the stakeholders who are entitled to appeal against it in a court. This is another story of the modern criminal procedure legislation, indicating the expansion of the court to control the functions of the legality of the activities and decisions of the prosecutor, affecting the fate of the criminal case. The law clearly states that such a prosecutor's decision could not be appealed to a higher prosecutor, namely the court, that is authorized to resolve the question of the resumption of production in view of newly discovered circumstances. Further

activities of the court is to address the issue of the fate of the criminal case, in the light of new circumstances discovered by him, does not clearly defined in the law. It turns out that the court must decide on the fate of the criminal case on the basis of the applicant's argument that the prosecutor refused. And

appealing the refusal of the prosecutor to initiate legal proceedings for the resumption of criminal proceedings, the applicant thereby raises the question of the court to verify the legality of the refusal of the prosecutor and at the same time for judicial review in view of newly discovered circumstances of the case.

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#### The moral content of integrity

**Abstract.** This article discusses the role of morality in society and as protected by modern legislation and moral qualities of the individual. The identity provided by the legal system of constitutional guarantees, including guarantees of the right to inviolability of the person, can fully develop, work and operate in the system of social relations. In the Republic of Kazakhstan, the interests of the individual industry regulated system of domestic law and protected a certain degree of immunity. The challenge is in this case to make the Constitution with its focus on the identity of the true, really existing Law to a system of measures - legal, organizational, moral - to create in society a deep respect for the rights of the individual.

**Keywords:** personality, morality, morality, rule of law, legal consciousness, legal culture, personal integrity, moral harm, compensation of moral harm.

Special attention in democratic States are given the spiritual health of its citizens. Unfortunately, in Kazakhstan, in this direction the progress is not significant. The reasons, in our view, explain our "depressed" self and consciousness. For many decades, people and especially his "opinion" on the rights and freedoms trampled, moreover, punishable by

law. It has been more than ten years of democratic construction, but the internal properties of a person change so quickly, especially if their expression of these properties is found in the use of power. This property has deeper roots, and a basis as a ground for them are the values of spirituality and morality.