

Judicial control in a context of the Concept of legal policy of the Republic of Kazakhstan

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Abstract. This article is devoted to judicial control in criminal legal proceedings of the Republic of Kazakhstan in the light of the new Concept of legal policy till 2020. In article the general characteristic and concept of judicial control, and also its signs and types are considered. Different views of scientists are analyzed. Foreign experiment on application of judicial control is given. The author states also the point sight on this problem and gives the definition to concept of judicial control.

The code of criminal procedure of the Republic of Kazakhstan (RK Criminal Procedure Code) doesn't consolidate concept of judicial control. The author in article suggests to make change and addition to the existing Code of criminal procedure of the Republic of Kazakhstan by definition of judicial control.

The decree of the President of the Republic of Kazakhstan of August 24, 2009 No. 858, approved the Concept of legal policy of the Republic for the period from 2010 to 2020. The new Concept of legal policy of the Republic of Kazakhstan, defines prospects of development of national legal system of the country on the following decade. The concept of legal policy completely mentions also institute of judicial control.

Since finding of the independence by Kazakhstan the set of laws, including the rights directed on providing, freedoms and legitimate interests of citizens was accepted. Certainly, in any country, whatever democratic it was, there are problems to human rights. But that Kazakhstan strongly intends to guarantee all Republic of Kazakhstan proclaimed in the Constitution the rights and freedoms of the citizens is obvious. Our country seeks for creation of the constitutional state, tries to provide a guarantee from a various arbitrariness in activity of competent government bodies, officials.

In the Concept of legal policy of the Republic of Kazakhstan it is specified: "... priority of development of the criminal procedure right there is a further consecutive realization of the fundamental principles of the criminal legal proceedings directed on protection of the rights and freedoms of the person". And judicial control just also is such guarantee.

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Introduction

"Judicial authority is carried out on behalf of the Republic of Kazakhstan and has the appointment protection of the rights, freedoms and legitimate interests of citizens and the organizations, ensuring performance of the Constitution, laws, other regulations, international treaties of the Republic" says article 76 of the Constitution of the Republic of Kazakhstan. [1, with. 30].

Judicial authority in our country proved as the stabilizing factor, capable to protect the rights and freedoms of the person, to save societies from the social conflicts, approving supremacy of the principles of justice and legality.

In the Concept of legal policy of the Republic for the period from 2010 to 2020, the President of the Republic of Kazakhstan approved by the Decree of August 24, 2009 No. 858, it is noted that, "the most important link of legal policy of the state is the criminal policy which improvement is carried out by the complex, interconnected correction criminal, criminally – procedural and criminally – the executive right, and also right application". [2, with. 2].

The concept of legal policy defines the strategic directions of further improvement of the rule-making activity, all branches of the national right, law-enforcement and judicial systems, and also legal bases of foreign policy and external economic activity. It is possible to tell with confidence that with adoption of this Concept in Kazakhstan the new stage in the statement of the principles of the constitutional state begins. As we know, legal reform carried out in the Republic of Kazakhstan is directed on construction in our country of the democratic, secular, social, constitutional state. This purpose is fixed in the basic law of the state – the Constitution which has proclaimed observance of the rights and freedoms of citizens as priority activity of the state.

The main part

The concept of legal policy fully affects the institute of judicial control. Institution of judicial control encompasses a set of criminal procedural rules which regulate the judicial control in all stages of criminal proceedings.

Despite of numerous researches, the institution of the judicial control does not have a unique relationship, and numerous amends and additions which was included to the Criminal Procedure Code of the Republic of Kazakhstan does not solve the problem issues. The Authors who discuss the category of judicial criminal proceedings in Kazakhstan, today haven't come to a consensus about the concept and the nature of the judicial control. Legal dictionaries also don't give a plain and clear conception of the judicial control is also not allowed.

Thus, the control can be defined as a system of monitoring and verification of process of functioning object, which is driven by bodies which are endowed with powers of legality to eliminate deviation from the legal parameters and to ensure law and order and discipline.

Speaking in general about control, as a way of ensuring the rule of law and

legal institutions, we can identify a number of specific features that characterize it. First, in most cases it is clear that between the controlling body (official) and controlled exists a relationship of subordination or jurisdiction. In - the second, the object of control is the legitimacy and expediency of an activity of controlled when controlling body can interfere in current administrative - economic activity of controlling body. In the - third, the controlling body is empowered to cancel the decisions of controlled. In - fourth, in corresponding situations controlling body can apply to disciplinary action for violations to controlled.

This control activity that serves to ensure law and order is dispersed on different bodies and organs: control functions are performed by a certain amount of many authorities - legislative, executive and judicial. Therefore, based on the specificity and the role of the bodies which these functions are entrusted on, control is divided into species. Depending on what stage of the controlled object is checked, distinguish - Control preliminary, current and subsequent. [3, p. 166-168]. The control which is carried out over the execution of bodies from other bodies (legislative, judiciary, public organizations) is called external, and carried out by the authorities in their system - internal. There is a departmental controlling which is carried out by industry bodies, as well as by inter-branch coordination on issues which concerned with their jurisdiction in respect of subordinates. [4, p. 326-327].

Introduced in our criminal proceedings as a special judicial procedure, legality and validity of the arrest and other procedures that restrict the constitutional rights of the individual, judicial immediately announced itself as a vital constitutional function of the judiciary and due process of the individual in criminal proceedings. And the form of judicial review due to problems ranging and criminal proceedings. In some cases, the procedural form of judicial review should include a procedure for filing complaints of parties to the proceedings as a prerequisite for the excitation control of production. In other procedural form is a special mechanism deciding on investigative action, limiting the constitutional rights of citizens. The Criminal Procedure Code of the Republic of Kazakhstan the concept of judicial review in general is not given. And this, in my opinion, our lack of legislation. Should be fixed in the CPC definition of judicial control to indicate at least an indicative list of its manifestation.

The need to provide the control functions of the court as part of the preliminary investigation is caused by the importance of the protection of constitutional rights, freedoms and interests of citizens. "At the stage of preliminary investigation the right to appeal against the actions and decisions of the investigator, the prosecutor played an important role in shaping the view of the judiciary as a mechanism to protect human rights and freedoms. Judicial control extends to the nodal points of the investigation and at this stage provides access to a participant in the trial. You must enter a general specifying the criterion, indicating no individual cases, and base unit, allowing an appeal to the court of illegal actions and decisions of the prosecuting authority in the pre-trial investigation. " [5, p. 26].

As part of the criminal process control functions are implemented in the form of prosecutorial supervision, judicial and institutional control. Common to them in pre-trial stage is the participation of entities such as the court, the prosecutor, the head of the investigative body, the chief of the inquiry body, otherwise everyone is different.

Judicial control - owing to legal properties (signs) inherent in it - is an independent, special form of implementation of justice in courts of law.

Depending on this or that subject or functional sign based on classification, it is necessary to distinguish the following types of judicial control:

a) current judicial control of actions and (or) decisions of body of preliminary investigation;

b) total judicial control of a course and results of the ended preliminary investigation;

c) judicial control of actions and (or) decisions of inferior court (the appeal, cassation and supervising production, production on again opened circumstances).

As a whole, it is possible to tell the following about control functions – their essence is that representatives on that government bodies (legislative, executive, judicial authority) and public organizations, using organizational and legal ways and means, find out, whether any violations of legality and if those are available are allowed in activity of under control bodies and their officials, in due time to eliminate them, the rights violated thus are restored, make guilty responsible, take measures for prevention of violations of legality, a law and order and discipline.

The tasks facing court for achievement of a goal, consist in the following: 1) not to allow violation of constitutional laws and freedoms of citizens realization of illegal actions and solutions of faces and the bodies making preliminary investigation; 2) to allocate with a strength of evidence of action and the decision of bodies and the persons holding preliminary investigation and inquiry as the subsequent control; 3) to restore already violated rights and freedoms.

To reach goals and to solve problems the court when performing concrete powers needs to approach with due consideration to consideration presented by the bodies holding preliminary investigation or inquiry, the materials proving violation of the rights and freedoms of citizens. In this case into the forefront such procedural category, as a proof assessment acts. One of making process of an assessment of proofs is the internal belief, and the purpose – achievement of truth on a studied question.

Foreign experience of application of judicial control exists in a number of the countries. For example in France, there is a position of the so-called investigator who allows a collision between charge and protection on preliminary investigation. We don't have it. It is necessary to balance charge and protection on preliminary investigation in all other relations, and first of all in collecting of proofs. Protection has to have more ample opportunities for detection and procedural fixing of data which it will be able to present to the

investigator and court as proofs. Certainly, the prosecutor's office has traditional advantages at least because a consequence – public prosecutor's. And if it is conducted by the Ministry of Internal Affairs, all the same the prosecutor supervises. But the most dangerous that don't interrogate investigators in court (concerning criminal cases which they conducted) as in Britain or the United States. Our investigators send instead of themselves to court protocols. And domestic process can't already be competitive because it not oral. It is conducted on the basis of reading papers, the prosecutor discloses expert opinions which aren't absolutely clear to jurors and judges it too plainly not clearly. Where here to speak about real competitiveness. Preliminary investigation has to be competitive, on as present reform is directed.

The Conclusion

The main vector of development of judicial and legal system further specialization of vessels and judges, including development of juvenile courts, creation of specialized courts in consideration of criminal cases seems, formation of tax and other specialized courts, a wide circulation of conciliatory procedures and mediation is in the long term possible.

Judicial control to some extent is present at all forms of realization of judicial authority. However the control exercised by court during pre-judicial production, is most specific. It is carried out not only in traditionally inherent administrative justice to a form of consideration of complaints of participants of criminal legal proceedings on decisions and actions (inaction) of the investigator, the investigator and the prosecutor, restraining, violating both otherwise limiting rights and freedoms of these participants, but also in the form of giving permission of separate acts, the preliminary investigation, limiting constitutional laws and freedoms of citizens.

Unlike control in general, to judicial control signs are inherent characteristic only for it.

First, it is the activity which is carried out only by court.

Secondly, all-obligation of the decisions passed by court as a result of implementation of judicial control.

Thirdly, object of judicial control – the constitutional and other laws and freedoms of citizens.

Fourthly, a subject of judicial control – action making the preliminary investigation, limiting or violating constitutional rights and freedoms of citizens.

New "The concept, keeping continuity, opens a new stage of judicial reform at which it is thought, many problems connected with ensuring efficiency of judicial authority" will be consistently resolved. [6, page 149].

Thus, judicial control is the activity of court which is expressing in test measures for law enforcement and validity of decisions and actions of bodies of criminal prosecution, limiting the constitutional and other laws of citizens.

Today our state introduce reform measures to improve the work of the courts. For example, recently introduced the institution of mediation - court

dispute resolution. This corresponds to international practice. In short, there are all preconditions for a truly constitutional state in which a person's rights and freedoms are the highest value, as it is recorded in our Basic Law.

In addition, the Concept of Legal Policy of the Republic of Kazakhstan, define improvement of criminal procedure in the coming years in the following areas:

- Legislative regulation of pre-investigation, defining its limits;
- Creating conditions for increased use of preventive measures alternative to arrest, including security;
- The gradual introduction of new institutions of restorative justice based on reconciliation of the parties, and reimbursement of damages;
- The possibility of expanding the categories of criminal cases in which the prosecution and the prosecution in the trial can take place in private and private-public order;
- The gradual expansion of categories of criminal cases before the court by jury;
- Further improvement of mechanisms for providing quality legal assistance in criminal matters, not only for defendants and suspects, and victims, witnesses.

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