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ЖАУАПТЫ ХАТШЫ
Сманова А.Б., з.ғ.к., доцент *(Қазақстан)*
Телефон: +7727-377-33-36 (ішкі н. 12-57)
E-mail: Akmaral.Smanova@kaznu.kz

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Ғылыми басылымдар бөлімінің басшысы
Гульмира Шаккозова
Телефон: +7 747 125 6790
E-mail: Gulmira.Shakkozova@kaznu.kz

Редакторлары:
Гульмира Бекбердиева
Ағила Хасанқызы

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Айгүл Алдашева

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МЕМЛЕКЕТ ПЕН ҚҰҚЫҚ ТЕОРИЯСЫ ЖӘНЕ ТАРИХЫ

Section 1

THEORY AND HISTORY OF CHAIR OF SATE AND LAW

Раздел 1

ТЕОРИЯ И ИСТОРИЯ ГОСУДАРСТВА И ПРАВА

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[1]G.R. Useinova, [2]K.R. Useinova, [3]A.T. Bazarbaeva, [4]A.E. Zhainak

[1]doctor of law, e-mail: gulnara_usein@mail.ru
[2]the acting associate professor, Ph.D, e-mail: karlygash_usein@mail.ru
[3]Ph.D student, e-mail: oss.morphling@gmail.com
[4]The lecturer, e-mail: oss.kenfly@gmail.com
al-Farabi Kazakh National University, Kazakhstan, Almaty

THE DEATH PENALTY IN THE PUNISHMENT SYSTEM OF TRADITIONAL KAZAKH LAW

Abstract. The article is devoted to the study and analysis of the institution of the death penalty in the traditional law of the Kazakhs. The traditional law of Kazakhs was formed under the influence of nomadic lifestyle and political and legal structure.

The criminal law of the traditional nomadic society of Kazakhs is characterized by the presence of two basic principles. This is the principle of collective tribal responsibility and the principle of composition.

By the period of the accession of Kazakhstan to Russia in the Kazakh customary law, there was the following system of punishments: death penalty, corporal punishment, shameful punishment, extradition of the guilty party of the victim, expulsion from the tribal community, Kun, Aip.

Analysis of customary law shows that the death penalty under Kazakh customary law was applied very rarely and only with the consent of the Kurultai-people's Assembly. This rule lasted until the 18th century.

Starting from the second half of the 18th century, khans and sultans in Kazakh society began to use the death penalty more often, both against their political opponents and those who stubbornly disobey them.

The analysis of historical and legal literature shows that in the traditional legal systems of Central Asia and Kazakhstan there were many types of capital punishment.

Key words: right, society, tradition, kun, ayip, death penalty.

[1]Г.Р. Усеинова, [2]К.Р. Усеинова, [3]А.Т. Базарбаева, [4]А.Е. Жайнақ

[1]з.ғ.д., e-mail: gulnara_usein@mail.ru
[2]доцент, з.ғ.к., e-mail: karlygash_usein@mail.ru
[3]PhD докторанты, e-mail: oss.morphling@gmail.com
[4]оқытушы, e-mail: oss.kenfly@gmail.com
әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.,

Қазақ дәстүрлі құқығы бойынша жазалау жүйесіндегі өлім жазасы

Аңдатпа. Бұл бап қазақтардың дәстүрлі құқығындағы өлім жаза институтының зерттеуіне және талдауына арналған. Қазақ халқының дәстүрлі құқығы көшпелі өмір салты мен саяси-заңдық құрылыстың ықпалымен құрылды.

Көшпелі қазақтар қоғамының қылмыстық құқығына екі негізгі қағиданың бар болуы тән. Олар – ұжымдық рулық жауапкершілік және композиция қағидасы.

Қазақстанның Ресейге қосылу кезеңінде қазақтардың кәдімгі құқығында келесі жазалау жүйесі пайда болды: өлім жазасы, дене жазалары, масқаралау жазалары, кінәлінің жәбірленген жаққа берілуі, рулық қауымнан қуылу, кун, және айып.

Кәдімгі-заңдық ережелердің талдауы өлім жазасының кәдімгі заңдық құқық бойынша орындалуы өте сирек кездескендігін көрсетеді. Бұл тек құрылтайдың – халықтық жиналыстың шешімімен орындалған. Бұл ереже 18 ғасырға дейін жетті.

18 ғасырдың екінші жартысынан бастап, хандар мен сұлтандар қазақ қауымында өлім жазасын жиірек орындай бастады: өздерінің саяси жауларына да қарсы, қайраттанып бағынбағандарға да қарсы.

Тарихи-құқықтық әдебиеттің талдауы Орталық Азияның және Қазақстанның дәстүрлік құқықтық жүйелерінде өлім жазасының талай түрлерінің болғанын көрсетеді.

Түйін сөздер: құқық, қоғам, дәстүр, құн, айып, өлім жазасы.

[1]Г.Р. Усеинова, [2]К.Р. Усеинова, [3]А.Т. Базарбаева, [4]А.Е. Жайнақ
[1]д.ю.н., e-mail: gulnara_usein@mail.ru
[2]и.о. доцента, к.ю.н., e-mail: karlygash_usein@mail.ru
[3]докторант PhD, e-mail: oss.morphling@gmail.com
[4]преподаватель, e-mail: oss.kenfly@gmail.com
Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы

Смертная казнь в системе наказаний традиционного права казахов

Аннотация. Статья посвящена изучению и анализу института смертной казни в традиционном праве казахов. Традиционное право казахов сложилось под влиянием кочевого образа жизни и политико-правового устройства.

Для уголовного права традиционного кочевого общества казахов характерно наличие двух основных принципов. Это – принцип коллективной родовой ответственности и принцип композиции.

К периоду присоединения Казахстана к России в казахском обычном праве сложилась следующая система наказаний: смертная казнь, телесные наказания, позорящие наказания, выдача виновного стороне потерпевшего, изгнание из родовой общины, кун, аип.

Анализ обычно-правовых норм показывает, что смертная казнь по казахскому обычному праву применялась крайне редко и только с согласия курултая – народного собрания. Это правило действовало вплоть до 18 века.

Начиная со второй половины 18 века, ханы и султаны в казахском обществе стали чаще применять смертную казнь как в отношении своих политических противников, так и лиц, упорно не повинующихся им.

Анализ историко-правовой литературы показывает, что в традиционных правовых системах Средней Азии и Казахстана существовало множество видов смертной казни.

Ключевые слова: право, общество, традиция, кун, айып, смертная казнь.

Introduction

An integral element of the history of Kazakh society is the legal system. It was formed under the influence of nomadic lifestyle and political and legal systems.

As a rule, the behavior of people in traditional society is subject to the norms developed in society, certain stereotypes of behavior, the justification of which is the reference to such phenomena as Shezhire, laws of ancestors, including the first codification of Kazakh customary law. It is at the level of blood-related relations in the traditional Kazakh society that the process of educating the individual nomad takes place, laying in him the principles taken for faith in the nomadic society, stable beliefs generated by the worldview of nomads, which found expression in such peculiar phenomena as gerontocracy-respect for elders in age and kinship; meritocracy-the distinction between the categories of "good" and "bad", questions of origin and heredity, moral attitudes, good manners; collective ideas about tribal unity, religious beliefs, legends, norms of morality and law, symbolic elements of which are Tamga, Urans, various forms of mutual assistance, assistance between relatives and tribesmen, such as Asar, Zhylu, Zhurtzhylyk; adherence to a greater extent the norms of Adat, to a lesser extent shariat, as well as samples of customary law: amengerism, ant, barymty, etc. all those fundamental motivational attitudes that are initially focused on the self-knowledge of the nomadic society, assuming the identification of their " I "with the personal generic self-consciousness of"We". Strict strict observance of these provisions served as a "guarantor of life both for the individual Kazakh and for the entire Kazakh people as a whole" (Orazbayeva 2005: 168, 216).

Kazakh law, which has more than a long history, based on democratic and humanistic ideals, has stepped over its era. Until the beginning of the twentieth century, Kazakh customary law continued to maintain its regulatory function. Academician S. Z. Zimanov explains such longevity of the Kazakh law by two factors: first, economic and ideological foundations of nomadic civilization on a vast territory. Secondly, the maximum approximation of the Kazakh customary law to the people themselves, to the logic of his life (Zimanov 2004: 17).

Main part

The customary law of the Kazakhs was designated by the term adet or law. Quite often in the Kazakh society expressions and terms uniform for customs and usually-legal norms were used: "Eski

adet", "Adet guryp", "Ata-Baba salty" (ancient, long customs, traditions, customs of ancestors).

At the same time, when it was necessary to emphasize the importance of norms, other terms were used: "Zhora", "Jargy", "Zhol", "Zhoba", which can be translated as "rule", "establishment", "once tested way", "rules-guidelines". Sometimes these terms were used in a pair combination: "Zhol-Zhora", "Zhol-Zhoba". But the term "jargy" is not associated with other concepts.

As academician S. Z. Zimanov emphasized, " the types and forms of responsibility and punishment in the Kazakh law are extremely rich and diverse. There is a large choice that provides, on the one hand, great scope for the actions of courts and judges, and with another – imposes on judges a special responsibility for logical, business and moral reasons for its decision while choosing responsibility. Here just also personal qualities of the judge and his intellect which are valued not less, than an outcome of business" (Zimanov 2004: 632) have to be shown.

The basis for punishment in the law of traditional society was the Commission of a crime.

Researcher Useinova K. R. notes that "although in the Kazakh customary law, there was no clear distinction between the concepts of criminal offense and civil offense, yet the differences between criminal liability and civil liability, though weak, existed. In contrast to civil liability, which provides for compensation for the harm caused, criminal liability provided for a certain type of punishment. However, in practice, there was a mixture of these two types of responsibility" (Useinova 2007: 112 p.) That is why, in our opinion, the criminal law of the traditional nomadic society of Kazakhs is characterized by the presence of two basic principles. This is the principle of collective tribal responsibility and the principle of composition that we mentioned earlier.

Here is how N. Rychkov describes the presence of the ancestral origin in the Kazakhs: "No one in the Kyrgyz has such power to punish at the discretion of at least the most serious crime, no one, not even the rulers themselves, let alone the military chiefs. The stronger the race to which one belongs, the greater his influence and authority, for in case of need he can use the power of his kind for his protection, in addition to all justice. To move the Kyrgyz in any case only with the approval of many generic heads; the command of the Khan has relatively little value (Rychkov 1772: 104).

Relations of relatives of clan and non-clan, both internal and intergroup, were subject to strict etiquette, each line was carefully regulated for each subject – mutual rights and obligations, the level of claims to honor and gifts, the boundaries of reverence, permissiveness and impermissibility, prohibitions and penalties...all possible and even extremely rare situations on the scale of law, duties were painted. The system of rights and duties acted as a single and integral etiquette in the full sense of the word...the penalties were different up to the most severe – rejection from the native environment, that is, in fact, complete exclusion from the members of a single family. For a normal person there was no more terrible and shameful punishment" (Nazarbaev 1999: 296)

The presence of the same principle of composition, according to researcher K.R. Useinova, did not mean that criminal law relations in the Kazakh society were underdeveloped, as some researchers try to imagine. The existence of a system of fines and ransoms, in our opinion, meant only that property relations were developed in the Kazakh society (Useinova 2007). Some researchers of the past and present have criticized Kazakh customary law for the presence of the principle of composition. Thus, N. Rychkov believed that the Kazakhs have neither legal norms nor courts to resolve legal disputes. The responsibility under Kazakh customary law for committing murder and theft seemed to him at least very strange. In particular, he points out that " the set of legal provisions against theft, is the name of the Kyrgyz aybana. By force of these laws, the thief detained with a horse or with a sheep, brought to the foreman of the ulus, is obliged to pay 27 horses or sheep. It rarely comes to the point that any Kirghiz came under this court against theft: among his Kirghiz, in General, does not allow his thieving inclinations to break through, once he satisfies these inclinations to the full in neighboring countries" (Useinova 2003: p.44) One of the leaders of the Alash party, who dealt with the problems of Kazakh customary law, Dzhansha Dosmukhamedov, comes to a slightly different, more original conclusion. Based on the analysis of the principle of composition, which existed in the traditional law of the Kazakhs, Dosmukhamedov points out that in favor of this principle, " the character of the people speaks, the Kyrgyz (Kazakhs) are by nature very intelligent, impressionable and responsive. Full freedom, charming charm of fragrant nights of steppe, luxury of beauty of the spring nature-all this had to pacify to a certain extent cruelty in the nomad-Kyrgyz-and wide and free, a velvet carpet of a green murana the steppe inspired them with a community of interests, kinship of relations, it

(steppe) in itself was the element forcing all living on it to be considered more or fewer members of one family... " (Sajmanova 2019) As a representative of the indigenous population of the steppe, Dzhansha Dosmukhamedov very simply and clearly explained the existence of the principle of composition in traditional law, taking as a fulcrum the conditions, life, and manners of the Kazakhs, without inventing any over scientific explanations. It is difficult to disagree with this.

Kazakh customary law did not know a clear definition of the concept of "crime". Under the crime was understood to be "a bad thing", "bad behavior".

Formally, the crime was understood as inflicting moral and material harm to the victim. There was no clear distinction between a criminal offense and a civil offense in Kazakh customary law.

The subject of the crime under Kazakh customary law could only be a person. Animals and inanimate objects were not the subjects of the crime. Also, the subjects of the crime were not insane, mentally retarded, deaf and dumb. Slaves, too, could not be the subject of a crime.

Thus, the subject of the crime could be a natural, sane person, freely disposing of their property.

The subjective side of the crime was characterized by the presence of guilt. There is already a distinction between intentional and unintentional criminal acts. Intentional acts implied the existence of direct intent in all other cases of unintentional acts.

For the qualification of crimes, elements of the subjective side, such as the method, place and time of the crime, also played an important role.

The most serious crime from the place of its Commission was considered a crime committed in his native village. It was punished more severely than a crime committed in a foreign village.

The timing of the crime was equally important. Thus, theft committed during the day was punished more severely than theft committed at night, since in the first case it was associated with a special audacity and neglect to be noticed.

Of great importance for the qualification of crimes was the method of committing the crime. According to the Kazakh common law murder mystery, as it is, in the opinion of the legislators was connected with the robbery. An apparent murder was understood to be a murder committed in a quarrel, a fight, etc.

Kazakh customary law already knew the institution of complicity. However, it has not yet distinguished the degrees of complicity in the crime. All accomplices were equally, that is, jointly and severally liable.

As for the Institute of necessary defense, it should be noted that the laws of Tauke this Institute was not known.

Responsibility for the crime occurred from the age of 13.

By the period of the accession of Kazakhstan to Russia in the Kazakh customary law there was the following system of punishments:

- death penalty;
- corporal punishment;
- shameful punishments;
- extradition of the guilty party to the victim;
- expulsion from the ancestral community;
- kun;
- aip.

One of the main principles of "Zheti-Jargy" was the proportionality of punishment to the crime committed, that is, the principle of Talion (an eye for an eye, a tooth for a tooth).

According to some authors, " the application of the death penalty as a capital punishment by individual khans, sultans depended on the influence they enjoyed among the people, especially among the tribal nobility. The khans and sultans sentenced to death only those who did not have strong advocates behind them. Because each case of application of the death penalty was an occasion for a new crime, the emergence of barymta, lynching and other arbitrary actions" (Kozhonaliev 2000)

Analysis of customary law shows that the death penalty under Kazakh customary law was applied very rarely and only with the consent of the Kurultai-people's Assembly. This rule lasted until the 18th century.

Such a rule also worked in the nomadic and semi-nomadic environment of the Kyrgyz, where Adat prevailed. Thus, the researcher of Kyrgyz customary law Kozhonaliev S. K. notes that " the Death penalty by the court of biys was much rarer among the Kyrgyz than murder by revenge, lynching, barymta, etc. (Borubashov 2009: 284)

Another Kyrgyz researcher Borubashov B. I. notes: "in the second half of the XIX century. the death penalty as a form of punishment is not provided. Kun (ransom) was the most common form of punishment in Kyrgyz customary law... Paid kun cattle, things, money. At the same time, its size was not established and depended on the property and legal status of the victim and the perpetrator in society (Valihanov 1985)

Thus, based on the statements of the scientist, we can conclude that the death penalty for murder in the Kyrgyz in the second half of the XIX century. was imposed only in respect of persons who are

not able to pay the kun for the life of the murdered. Starting from the second half of the 18th century, khans and sultans in Kazakh society began to use the death penalty and other severe punishments more often, both against their political opponents and those who stubbornly disobey them. CH. CH. Valikhanov wrote: "not one Kyrgyz Khan did not have such unlimited power as Ablay. He was the first to grant the death penalty to his arbitrariness, which was carried out before not otherwise than according to the position of the people's diet" (https://www.eurasialegal.info/index.php?option=com_content&view=article&id=630:2011-03-03-07-33-52&catid=2:right-of-the-countries-cis&Itemid=1) This statement Valikhanov confirms the fact that the death penalty has become more often used in a relatively late period. With the consent of the injured party, the death penalty could be replaced by a ransom (kun).

As a rule, those guilty of the murder and rape of a married woman or a betrothed girl were sentenced to death. With the consent of the injured party, the death penalty could be replaced by kun.

If we talk about the types of the death penalty, they were diverse in the traditional Kyrgyz society. These include hanging, strangulation, leaving in the mountains bound to the wolves, drowning, pushing off the rocks, tying the tail of an untrained wild horse, etc.

The analysis of historical and legal literature shows that in the traditional legal systems of Central Asia and Kazakhstan there were many types of capital punishment. But we cannot regard them as inherent in customary law proper. For example, such punishment as stoning is more inherent in Muslim law. Such types of punishment as hanging from trees, impaling, burning on coals, starvation, cutting the throat, cutting the body into pieces, cutting the abdomen with the insertion of hands, feet, and head can not be attributed to the punishments of the customary law of the Kazakhs.

In the Kazakh law of traditional society, if the perpetrator was sentenced to death and relatives for some reason did not pay the kun, the execution was carried out either by strangulation or by hanging on a camel.

Corporal punishment is the most ancient Kazakh customary law was not known. The laws of Tauke did not provide for such punishment and in his time the court of Biy did not impose such sentences. The reason for this was that with the weakness of the state power, the use of cruel penalties usually caused internecine war, blood feud, and barymta, sometimes ending in the extermination of entire villages. After the accession of Kazakhstan to Russia in 1838 was introduced punishment shpitsrutenami.

Shameful punishment pursued one goal – to shame the offender in public, in front of all the people. The condemned to shame was subjected to the following humiliation: they put a dirty felt around his neck, put him on a cow or donkey backward and drove around the village, and then the condemned had to publicly make a solemn promise, an oath not to commit any more criminal acts.

Extradition of the guilty party to the victim was applied if relatives of the guilty did not wish to pay kun or aip. In this case, the injured party at best could force the convict to work kun or aip, and at worst to punish at its discretion.

Expulsion from the tribal community was considered a heavier punishment than the death penalty. Guilty sentenced to this type of punishment, cut off the hem of the clothes and expelled from the community, declared it illegal.

One of the most common types of punishment in the system of Kazakh customary law was kun (ransom). Kun-the Persian word which designates the payment for murder and the mutilation exempting guilty from blood (patrimonial) revenge or lawful prosecution. The death penalty and corporal punishment could be with the consent of the victim or his relatives replaced by the verdict of the court kun, that is, payment for blood and injuries. By paying the Kun, the perpetrator or his relatives were exempt from private vengeance and further legal prosecution. Kun among the Kazakhs and many other peoples of Central Asia and Kazakhstan was essentially the same as Vira and anniversary in Kievan Rus. Size purchase, according to legal monuments of different Nations, bore a class character. Thus, according to the law of Khan Tauke, the life of an ordinary man was estimated at 1000 rams, or 100 camels, or 200 horses, and the life of a woman was estimated at the half as much. This rule did not apply to members of the noble family, for their lives had to pay sevenfold the size of the Kun of an ordinary man. According to Russian truth, the amount of the fine also depended on the position of the person (40 hryvnias for the murder of a common man, 80 hryvnias for the murder of a privileged).

Kun was beneficial only for representatives of the propertied class, since, being exposed even in the most serious crimes, they were completely exempted from the death penalty or other more serious criminal penalties by payment of kun. At the same time, the application of the kun system also helped to reduce the number of useless bloodsheds,

to reduce mutual hostility and internecine strife among the members of the ruling class itself. So, for example, Maksimov N. in this regard wrote: "... for the murder of a person relies on penalty kun. However, Kun is not criminal punishment and a civil sanction, we can say, the value of the person". Soviet historian V. F. Shakhmatov, well familiar with the materials of customary law, also States: "with defaulters exacted" kun " force. But this strict observance of tribal traditions by the Khan and sultans pursued one goal – to appropriate most of the "kun". At that time, the main punishment imposed on the perpetrator was fine, which was collected in whole or in part in favor of the victim. Such penalty in case of its imposition for infringement of non-property rights of the person, obviously, it is possible to consider and as monetary compensation for the physical and moral sufferings caused to the victim. Therefore, we believe that kun was a measure of criminal punishment with elements of compensation for material and moral harm (Isagaliev 2003: 152)

Kun is a ransom paid by agreement of the parties by the guilty party to the injured party in the case of the most serious crimes, that is, murder or grievous bodily harm. Kun was two species: the main and an additional. The value of Kun depended on the social status of the victim and the severity of the crime. For the murder of an ordinary commoner, a kun was paid in the amount of 1000 rams, 200 horses or 100 camels. For the murder of a woman, a Kun of 500 rams, 100 horses or 50 camels was paid. In the case of the murder of the representative of "white bones" were paid seven kuns, that is 7000 sheep. For the murder of a slave, his master was paid a kun in the amount of the value of a hunting dog or Golden eagle.

As a rule, the kun was paid not by the culprit himself, but by his community.

Additional on were of two kinds: on the art of kun and kun on the bone. The first view of a Kun was introduced to poets, famous wrestlers, judges, and scientists.

For the murder of this category of people guilty paid kun in double size, as for the murder of two simple people. Kun on bones was imposed on the guilty in case of destruction of traces of the crime by it.

One of the most common types of punishment in Kazakh society was also "Aip" (fine). Aip on the Kazakh customary law the same as "sale", "lesson" taken together on "Russian truth". Aip is a punishment imposed by a court for a crime, but at the same time, it is a reward collected in favor of the victim or his relatives. He was appointed mainly for property crimes, as well as for crimes against the person (except murder and grievous bodily harm), against the order of management and for some other categories of crimes.

Usually, for various crimes, Aip was appointed in the amount of one "Toguz", but often there were cases that for more important crimes Aip reached three Toguz and even higher. For minor crimes, "Ayak-Toguz" was replaced by the so-called "tokal" (abbreviated) Toguz, consisting of 8 different small heads of cattle. For a misdemeanor appointed Aip "atchapan" – a horse and a robe, Aip "at-ton" – a horse and a fur coat or anything one thing. Aips were paid by the perpetrator or his close relatives, provided that the immediate culprit was not found or appeared in court, or if he was unable to pay the designated Aip. At insolvency of close relatives, responsibility for payment of the put aip was assigned to the whole aul to which the guilty belonged. Practically, the norms that operated in the customary law of the Kazakhs in solving this issue are similar to the norms of Russian Truth. The principle of imposing collective responsibility on the members of the community, very long preserved under Patriarchal-feudal relations among the Kazakhs and other nationalities, was one of the most reactionary customs of the ancient era, which served as an instrument of subordination of the oppressed masses of workers to the will of the ruling class.

In the pre-revolutionary literature and practice of the tsarist administration, there was a wrong view of the Aip as compensation to the victim of the damage caused. Aip was not merely a compensation for the damage done, but a punishment for the crime committed, which was applied by the court to protect the existing order, pleasing and beneficial to the ruling class. Thus, the appointment of Aip for theft in an amount several times higher than the value of the stolen (while under barymta property was recovered within its normal value), indicates that the Aip was not only a civil law norm of compensation for the damage caused, but one of the measures of state coercion.

Thus, Aip in the customary law of the Kazakhs is also a type of criminal punishment with elements of compensation for material and moral harm. Such conclusions are based on the fact that there were no sharp lines between criminal penalties and civil liability in our ancestors at that time. However, it should be noted that with all this traced attempts to compensate not only material but also moral harm in society. According to domestic authors, imbued with humanistic ideas, legal norms preached the

ideas of goodness and nobility, as evidenced by the conciliatory nature of the ordinary procedural law of the Kazakhs. Biy urged to love his people, to serve them faithfully, to strive to ensure the cohesion of the community and to restore good relations between people (Isagaliev 2003).

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[1]N. Zheksembayeva , [2]Inal Emrehan , [3]A. Jangabulova

[1]2nd year PhD Student, Al-Farabi Kazakh National University,
Kazakhstan, Almaty, e-mail: narkes.83@mail.ru
[2]Doctor of PhD, Professor, Istanbul University,
Istanbul, Turkey, e-mail: emrehan2020@mail.ru
[3]candidate of juridical science, Associate Professor, Al-Farabi Kazakh National University,
Kazakhstan, Almaty, e-mail: Arailym.Dzhangabulova@kaznu.kz

PROTECTION OF INFORMATION RIGHTS OF CITIZENS AS A DIRECTION OF LEGAL SCIENCE

Abstract. This article analyses the reasons for updating the protection of citizens 'information rights in modern conditions. Informatization, and then digitalization, allows the state to collect all the necessary information to ensure effective management and protect national and public security. However, information security issues of an individual person remain not fully protected from all sides: technological, technical, procedural, legal, etc. Based on the analysis of the structure of information rights, conclusions are drawn about the need to rethink the content of the human right to information protection. Based on the study of modern problems of information security of an individual, the author offers a number of recommendations in the field of constitutional and information law. In particular, amendments to the classical theory of human rights have been proposed. Namely, it is proposed to single out information rights, namely, the whole complex of individual rights into a separate generation of rights. Such an approach, according to the author, will ensure a comprehensive approach by the world community to solving problems of legal protection, the development of international conventions and ensure control over their implementation at all levels.

Key words: information, information rights, protection of information rights, information security, protection of individual rights.

[1]Н.Е. Жексембаева, [2]Инал Имрихан, [3]А.К. Джангабулова

[1]2-курс PhD докторанты, әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: narkes.83@mail.ru
[2]PhD докторы, Стамбул университетінің профессоры,
Түркия, Стамбул қ., e-mail: emrehan2020@mail.ru
[3]з.ғ.к., доцент, әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: Arailym.Dzhangabulova@kaznu.kz

Азаматтардың ақпараттық құқықтарын қорғау заң ғылымының бағыты ретінде

Аңдатпа. Мақалада қазіргі жағдайда азаматтардың ақпараттық құқықтарын қорғауды жаңарту себептері талданады. Ақпараттандыру, содан кейін цифрландыру мемлекетке тиімді басқаруды қамтамасыз ету және ұлттық және қоғамдық қауіпсіздікті қорғау үшін барлық қажетті ақпаратты жинауға мүмкіндік береді. Алайда, жеке тұлғаның ақпараттық қауіпсіздігі мәселелері барлық жағынан толық қорғалмаған: технологиялық, техникалық, процедуралық, құқықтық және т.б. Ақпараттық құқықтар құрылымын талдау негізінде адамның ақпаратты қорғауға құқығының мазмұнын қайта қарау қажеттілігі туралы қорытынды жасалады. Жеке тұлғаның ақпараттық қауіпсіздігінің заманауи мәселелерін зерттеу негізінде автор конституциялық және ақпараттық құқық саласындағы бірқатар ұсыныстар ұсынады. Атап айтқанда, адам құқықтарының классикалық теориясына түзетулер ұсынылды. Дәлірек айтсақ, ақпараттық құқықтарды, атап айтқанда жеке құқықтардың бүкіл кешенін жекелеген құқықтар ұрпағына бөлу ұсынылады. Автордың пікірінше, мұндай тәсіл әлемдік қоғамдастықтың құқықтық қорғау, халықаралық конвенцияларды әзірлеу мәселелерін шешуге жан-жақты қатынасын қамтамасыз етеді және олардың барлық деңгейде орындалуын бақылауды қамтамасыз етеді.

Түйін сөздер: ақпарат, ақпараттық құқықтар, ақпараттық құқықтарды қорғау, ақпараттық қауіпсіздік, тұлғаның құқықтарын қорғау.

[1]Н.Е. Жексембаева, [2]Инал Имрихан, [3]А.К. Джангабулова
[1]докторант PhD 2-го курса, Казахский национальный университет им. аль-Фараби,
Казахстан, г. Алматы, e-mail: narkes.83@mail.ru
[2]доктор PhD, профессор Стамбульского университета,
Турция, г. Стамбул, e-mail: emrehan2020@mail.ru
[3]к.ю.н., доцент, Казахский национальный университет им. аль-Фараби,
Казахстан, г. Алматы, e-mail: Arailym.Dzhangabulova@kaznu.kz

Защита информационных прав граждан как направление правовой науки

Аннотация. В статье проводится анализ причин актуализации защиты информационных прав граждан в современных условиях. Информатизация, а затем и цифровизация позволяют государству собирать всю необходимую информацию для обеспечения эффективности управления и защиты национальной и общественной безопасности. Однако, вопросы информационной безопасности отдельно взятой личности остаются не до конца защищенными со всех сторон: технологической, технической, процессуальной, правовой и др. На основе анализа структуры информационных прав сделаны выводы о необходимости переосмысления содержания права человека на защиту информации. На базе исследования современных проблем информационной безопасности личности автором предложен ряд рекомендации в области конституционного и информационного права. В частности, предложено внесение дополнений в классическую теорию прав человека. А именно, предложено выделить информационные права, а именно весь комплекс прав личности в отдельное поколение прав. Такой подход, по мнению автора, позволит обеспечить комплексный подход мировой общественности к решению проблем правовой защиты, разработки международных конвенции и обеспечить контроль за их исполнением на всех уровнях.

Ключевые слова: информация, информационные права, защита информационных прав, информационная безопасность, защита прав личности.

Introduction

Huge achievements in almost all areas of the natural and technical sciences led to the fourth industrial revolution. In 2011, the term «Industry 4.0» was born at the Hanover Fair, which outlined the process of fundamentally transforming global value chains.

It was about creating «smart plants», where «virtual and physical production systems flexibly interact with each other on a global level».

This is only one of the sides of this stage of industrial transformation. Today we are talking about high genetic engineering, modern nanotechnology, renewable energy sources, quantum calculus, etc., which in the process of synthesizing these technologies and their interaction is the fundamental difference between the nascent fourth industrial revolution from all previous revolutions.

In 2015, at the World Economic Forum in Davos (Switzerland), Klaus Schwab announced that we are at the origins of the fourth industrial revolution and noted that «The uniqueness of the fourth industrial revolution, in addition to the pace of development and wide coverage, lies in the growing harmonization and integration of a large number of different scientific disciplines and discoveries. Material innovations resulting from the interdependence between different technologies are no longer a scientific fantasy. For example, today, digital manufacturing technologies can interact with the biological world. To do this, they create (and even «grow» objects that are constantly changing and adapting).»

The transition to «industry 4.0» will make significant adjustments to the social, financial, economic, and political life of the whole world, which will be determined mainly by the deep introduction of science in all spheres of the life of society and the state, through the formation of the so-called innovative infrastructure. A vivid example of this is the introduction of digital technologies, which already represent a certain platform for public administration, business and human everyday life. At the same time, the 5th information revolution is being put at the state level, an indicator of which are a number of state program documents adopted by many states, including Kazakhstan. Information technology, software, the latest technical support and much more is nothing more than a transition to a new level – cyber. It is the level of cyber that introduces smart homes, offices, control systems, and much more, including its negative manifestations – the need to ensure cyber security, etc.

Innovative infrastructure covers many other areas – innovative medicine, biophysics, nanotechnology,

robotics, etc. All this is based on modern scientific research, which is everywhere introduced into our life.

Informatization, and then digitalization, allows the state to collect all the necessary information to ensure effective management and protect national and public security. However, information security issues of an individual person remain not fully protected from all sides: technological, technical, procedural, legal, etc.

Such widespread introduction into human life has both positive and negative sides. On the one hand, making human life more comfortable, modern technologies make it possible to penetrate deeper and deeper into the innermost aspects of his life, practically depriving him of the possibility of preserving and not disseminating personal information.

Information security in the current legislation is considered mainly at the state level. Thus, the Law of the Republic of Kazakhstan «On National Security» of January 6, 2012, by information security means «the state of security of the information space of the Republic of Kazakhstan, as well as the rights and interests of a person and citizen, society and the state in the information sphere from real and potential threats, which ensures sustainable development, and informational independence of the country» (https://online.zakon.kz/). This concept, given in the context of the Law «On National Security», namely in the context of the regulation of «legal relations in the field of national security of the Republic of Kazakhstan and the definition of the content and principles of ensuring the security of man and citizen, society and the state, the system, goals and directions of ensuring national security Of the Republic of Kazakhstan» (https://online.zakon.kz/) understands personal security in the information sphere only as an integral part of the security of society and the state.

Currently, the situation is such that the informational interests of the state, their provision prevail over the interests of both society and, moreover, of an individual person. It is information that becomes the object of the information interests of the state itself and commercial structures. Accordingly, ensuring the informational interests of the individual is becoming one of the most important issues of our time.

Main part

The concept of «informational interest» is sufficiently studied in the theory of modern informational law. The interests of the individual in the information sphere are «the realization of the constitutional rights of a person and a citizen to access information, use information in the interests of carrying out activities not prohibited by law, physical, spiritual and intellectual development, as well as protect information that ensures personal security» (Chebotareva A.A., 2010: 38-40).

Accordingly, the following components of informational interest should be distinguished, namely:

– access to the information;
– use of information;
– protection of information.

Only with all of these components you can talk about ensuring information security.

The first two components, to one degree or another, cover the concept of «information need», which can be considered as the objective need of a person for the reliable information that interests him in full. Mrochenko L.V. and Pirogov A.I. giving a characterization of the concept of informational need, they note that «A person needs this information for orientation in the surrounding reality, clarification of the existing social status, for choosing a line of behavior and overcoming difficult life situations, for achieving internal balance and coordination with the social environment» (Mrochenko L.V., Pirogov A.I.: https://cyberleninka.ru/).

If the vast majority of information systems and technologies are aimed at ensuring the process of obtaining information in the modern world, then information protection is no less complex and versatile process.

The world community has developed a huge arsenal of tools and programs to combat the illegal access and use of information. However, practice shows that the development of technology and programming allows you to achieve the desired result – access to information, especially since in the vast majority of cases information systems containing information are not properly protected.

Regarding Kazakhstan, it should be noted that it lags behind the world community in the field of quality of information support. State information systems are constantly hacked, according to the Central Communications Service, National Information Technologies JSC informed 142 million hacker attacks on state websites (https://ru.sputniknews.kz/). At least 10 thousand account credentials of Kazakhstan accountants were put up for sale at a closed hacker forum and the price of lots with the necessary logins and passwords on average varies between 3-4 thousand dollars (https://

ru.sputniknews.kz/). According to TSARKA, analysis of the quality of information systems of banks of the Republic of Kazakhstan showed that «employees inadvertently created gaps in the protection of their institutions by revealing malicious links in e-mail messages. Although Kazakh banks lost a lot of money as a result of the aforementioned attacks, they reported almost nothing about it, being afraid to tarnish their reputation », and concluded that that «the Kazakh authorities do not see this problem as an increase in crime and do not fight it accordingly. Instead, their strategy is to protect the country's network resources with semi-traditional military means» (https://profit.kz/news/50821/).

Only these data show that the protection system of information systems is not a guarantee of the complete safety and secrecy of the stored information.

Another problem is the safety of information by individuals on personal computers, which inherently do not have proper cybersecurity systems.

Clause 2 of the Article 16 of the Law of the Republic of Kazakhstan «On Informatization» establishes that the owner of objects of informatization is obliged to take measures to protect objects of informatization (https://online.zakon.kz/). Accordingly, citizens who have any information systems in both electronic and other formats are required to independently take measures to protect their integrity and security. In the vast majority of cases, citizens are not even aware of the existence of threats in the relations of their personal data and information, the dissemination and use of which can bring substantial harm to their interests, both property and mental.

But the biggest problem, in our opinion, is the fact that information about citizens, their personal and personal data is a commercial interest and an object of sale for many commercial entities. So, according to MetricLabs «Fraudsters buy and sell stolen personal data of users on the shadow Internet. This is not just credit card information. This includes profiles on various online services and social networks that also have access to your personal information. At the time of writing, the cost of personal data on the darknet can cost about $ 1,200 ... From the study it can be seen that the aggregate data of one average American will cost about 1,170 dollars» (https://goodlucker.ru/).

Information on personal data is owned by government agencies, banks, mobile operators and other organizations that serve individuals. And in all cases, the recorded sale of personal data by unscrupulous employees of these structures, which casts doubt on the effectiveness of the safety of information at any level.

Another important problem of information security of a person is the security of consciousness – a problem which, in our opinion, is no longer achievable. A person is constantly exposed to external informational influences emanating from the media, etc.

Modern man needs information already at the level of neutron bonds. So, according to psychologists, «information, being the basis of human life, is a kind of catalyst for mental activity and a social toxin that causes addiction, which is thereby a factor of increased danger.

The informational dependence of a person can be explained on the basis of psychophysiology. The psychological reason for any human activity is the «inclusion» of one or another of his needs. Indeed, for no reason, we do not lift a finger. The need "turns on" when the biological balance in the functioning of the body is disturbed. It is information that allows us to satisfy every level of need. In addition, it may be interesting to analyze neurohumoral indicators of the functioning of the body in the absence of positive information (or vice versa information that causes negative emotions and asthenic conditions) ... The uncomfortable feeling of lack of information is due to the fact that these hormones are not enough in the body. A chemical imbalance forms in the brain, which leads to the most deplorable consequences: a person is in the grip of depression, neurosis, panic states, various phobias and mania (Ivanova E.V.: https://labipt.com/569/).

A huge amount of information created and distributed by human society itself, which turned it into the most profitable commercial project. The buildup of information exchange poses a threat to untrained human consciousness. Psychologists have not yet developed a unified approach to protecting the personality consciousness from negative information impact, which in our opinion is explained by a number of reasons, the most important of which are that the level of consciousness and intelligence of all people is different and that modern people constantly absorb information and can't live without them. Modern man himself, purposefully receives information, which is his professional and personal need. And accordingly, he voluntarily goes to the informational «litter».

This analysis of the relevance of the problem of personal information security shows that all these aspects should be followed, require special, close attention from the world community, the state, society and the citizens themselves.

In the age of information and information technology, the issue of information interests and information security should be put at the forefront and brought to the level of human rights.

Information rights, namely the right to receive, disseminate and protect information, are guaranteed by the constitutions of a number of states, especially the young constitutions. However, practice shows that problems arise precisely at the application stage. Information legislation guaranteeing the implementation of this system of rights in almost all countries of the world is moving in a single direction, namely in the process of ensuring that citizens can participate in the circulation of information. At the same time, all countries, in spite of the economic, social and legal level of development, face the same problems – the complexity of the practical realization of the human right to information security.

This is largely due to the fact that the receipt, as well as the dissemination of information, is carried out for the most part via the Internet, which is poorly amenable to control and legal regulation. The main reasons for the complexity of legal regulation are quite clearly defined by R. Azizov, who in his dissertation study notes that «the Internet is a world of users (subjects of legal relations), for the most part identified, who «go through» various networks without a clearly defined owner, and carry out their functions thanks to the message protocol in order to search for the necessary information. It is this logic of queries that forms the sociology of the Network and allows it to go through evolution from a closed community of specialists and experts to a large global collective public user and the world of trade» (Azizov R.F., 2017: 5).

Analyzing the specifics of European Internet law, the researchers note that «modern European law has a small set of legal means used in this area, which nevertheless allows us to provide the necessary legal guarantees. Thus, we cannot talk about the lack of legal regulation in the EU countries, but rather, we can talk about the existence of general legislation on communications, communications and electronic commerce, which are used today in the Internet» (Baturin Yu.M., 2000: 112). Approximately the same situation has developed in other continents, that is, with the development of communication and commercial Internet law, one cannot talk about the existing effective system of Internet law to protect individual rights.

Such a situation, in our opinion, is unacceptable.

The basic laws of developed countries, as well as international conventions and declarations, establish that human rights and freedoms are recognized as the highest value. Whereas one of the most important blocks of individual rights is not provided with the legal mechanism of protection to an adequate degree.

Accordingly, we believe that the importance and multifaceted nature of information rights and, first of all, the right to information security should be equipped with legal regulation and an effective mechanism for ensuring fully. Practice has shown that this is difficult to do at the state level. It is necessary to bring these issues to the global level. and, first of all, by raising the status of this right – bringing the complex of information rights to the level of the next generation of human rights.

The concept of three generations of human rights introduced in 1977 by Karel Vasak includes:

1. civil and political rights («freedom rights»);
2. economic, social and cultural rights («equality rights»);
3. collective rights («solidarity rights»).

However, today we are already talking about the fourth and fifth generation of law.

The content of these generations of rights is completely different. So, according to Russian researchers, whose opinion was formed at the end of the twentieth century: the fourth generation is the spiritual and moral rights and freedoms of man and citizen, who proclaimed and proclaim the spiritual and moral values of the individual, and the fifth is Love, information and energy. The fifth generation of rights includes such rights as the right to Love, Faith and love of God, unity with the Creator, the right to be born in Love, the right to information and energy management, the right to Co-creation and perfection of the world, and other rights arising from Love and Divine energy (Iventiev S.I., 2010: 60).

Whereas representatives of European legal science have a different opinion. This category includes the so-called «rights related to genetic engineering», rights that are in doctrinal discussion regarding their recognition or prohibition of certain actions. Rights related to genetics can be classified as belonging to this last generation of rights, but even if the fourth generation itself is disputed as being. At the same time, rights have been identified that ensure the inviolability of human rights and the inaccessibility of the human body from the point of view of the development of medical science, genetics. The study of the human genome, genetic manipulation, in vitro fertilization, experience with human embryos, euthanasia and eugenics are actions that can create complex legal issues, ethical moral and even religious, the reason public opinion prompted states to tackle the regulation of these

problems. The European Council recommends that Member States adopt principles that will regulate the relationship between genetic engineering and human rights so that the right to life and dignity are understood as the right to human genetic characteristics. (Recommendation 934/1982) (Adrian V., 2009: https://www.law.muni.cz/). Then, as the fifth generation of human rights not yet considered in the scientific community of Europe and America.

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Conclusion

At the same time, we propose to single out information rights, namely the whole complex of individual rights, into a separate generation of rights.

Only such an approach, in our opinion, will ensure a comprehensive approach by the world community to solving the problems of legal protection, development of international conventions and ensure control over their implementation at all levels.

The lack of uniform mechanisms for protecting personal information rights is an important obstacle to ensuring their implementation. Each country moves in its own directions. The globalism of information exchange requires the adoption of adequate measures both at the level of international communities, individual states, society and an individual person.

In addition to normative and procedural regulation, in our opinion, attention should also be paid to the need to educate and prepare people to protect their rights and freedoms in the context of ever-increasing informatization and digitalization.

Only an integrated approach to solving the problem is able to provide a certain framework for protecting individual rights from negative information impact and from unlawful use of information about citizens. This task is today, in our opinion, before legal science and before the constitutional, informational, procedural and other branches of law.

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2-бөлім

КОНСТИТУЦИЯЛЫҚ ЖӘНЕ ӘКІМШІЛІК ҚҰҚЫҒЫ

Section 2

CONSTITUTIONAL AND ADMISTRATIVE LAW

Раздел 2

КОНСТИТУЦИОННОЕ И АДМИНИСТРАТИВНОЕ ПРАВО

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[1]A.Zh. Zharbolova, [2]N.K. Mynbatyrova,
[3]A.A. Aubakirov, [4]A.B. Smanova

[1]e-mail: Aygerim.Zharbolova@kaznu.kz
[2]e-mail: nurlaiym@mail.ru
[3]e-mail: Abilkair.Aubakirov@kaznu.kz
[4]e-mail: akmaralbahtyar@gmail.com
Al-Farabi Kazakh national University, Kazakhstan, Almaty

IMPORTANCE OF ELECTORAL RIGHTS AND ISSUES OF THEIR PROTECTION

Abstract. The right to vote is one of the most important rights of citizens of the Republic, allowing them to participate in the management of state affairs, in the formation of the highest echelon of power by the people. The article is devoted to the study of the protection of citizens' electoral rights and their importance. The article deals with the electoral law as a form of participation of citizens in the management of state affairs, its constitutional and legal consolidation, the place and role of the institution of elections in the functioning of the state, the constitutional basis for the protection of electoral rights of citizens in the Republic of Kazakhstan. The article considered main causes of violations of electoral rights were identify and ways to protect them were identified. In States that affirm the true popular community, voting rights recognize the most accessible and often used constitutional possibility of citizen interference in state and local power, direct participation of citizens in the state and local issues. However, the constitutional and legal consolidation of the suffrage as a form of participation of the population in the management of state affairs does not provide a full basis for determining the democratic nature of the state. The elected rights of citizens in state-legal instruments are not only enshrined, but in real terms can be observed the formal, realistic nature of the democracy of any state, if they have found and implemented their action in real terms Life.

Key words: democracy, the right to vote, source of state power, democratic state, protection of electoral rights

[1]А.Ж. Жарболова, [2]Н.К. Мынбатырова,
[3]А.А. Аубакиров, [4]А.Б. Сманова

[1]e-mail: Aygerim.Zharbolova@kaznu.kz
[2]e-mail: Almaty, nurlaiym@mail.ru
[3]e-mail: Almaty, Abilkair.Aubakirov@kaznu.kz
[4]e-mail: Almaty,akmaralbahtyar@gmail.com
әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

Сайлау құқықтарының маңызы және оларды қорғау мәселесі

Аңдатпа. Сайлау құқықтары Республика азаматтарының мемлекет істерін басқаруға қатысуына мүмкіндік беретін құқықтардың ішіндегі ең бір ықпалдысы, халықтың биліктің жоғары эшелонын құруының жалғыз жолы болып табылады. Мақала сайлау құқықтарының маңызы мен оларды қорғау мәселесін зерттеуге арналған. Мақалада халықтың мемлекет ісін басқаруға қатысуының нысаны ретінде сайлау құқығының маңызы, конституциялық-құқықтық бекітілуі, сайлау институтының мемлекет өмірінде алатын орны, Қазақстан Республикасында азаматтардың сайлау құқықтарын қорғаудың конституциялық негіздері қарастырылды, сайлау құқықтарын бұзу негізгі себептері ашылып, сайлау құқықтарын қорғау жолдары анықталды. Шынайы халық бірлігін бекітетін мемлекеттерде сайлау құқықтары азаматтардың мемлекеттік және жергілікті билікке араласуының, азаматтардың мемлекеттік және жергілікті мәселелерді шешуге тікелей қатысуының неғұрлым қолжетімді және жиі пайдаланылатын Конституциялық мүмкіндігімен танылады. Алайда, сайлау құқығын халықтың мемлекеттік қызметті басқаруға қатысу нысаны ретінде конституциялық-құқықтық бекіту мемлекеттің демократиялық сипатын айқындау үшін толық негіз бермейді. Азаматтардың мемлекеттік-құқықтық актілердегі таңдамалы құқықтары бекітілген ғана емес, нақты жағдайларда да, егер олар өмірдің нақты жағдайларында өз іс-әрекеттерін тапқан және жүзеге асырған болса, кез келген мемлекеттің демократиясының формалды, шынайы сипатын байқауға болады.

Түйін сөздер: халық билігі, сайлау құқықтары, мемлекеттік биліктің бастауы, демократиялық мемлекет, сайлау құқықтарын қорғау.

[1]А.Ж. Жарболова, [2]Н.К. Мынбатырова,
[3]А.А. Аубакиров, [4]А.Б. Сманова
[1]e-mail: Aygerim.Zharbolova@kaznu.kz
[2]e-mail: Almaty, nurlaiym@mail.ru
[3]e-mail: Almaty, Abilkair.Aubakirov@kaznu.kz
[4]e-mail: Almaty,akmaralbahtyar@gmail.com
Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы

Значение избирательных прав и вопросы их защиты

Аннотация. Избирательное право является одними из самых важных прав граждан Республики, позволяющим участвовать в управлении делами государства, в формировании народом высшего эшелона власти. Статья посвящена исследованию вопросов защиты избирательных прав граждан и их значений. Было рассмотрено избирательное право как форма участия граждан в управлении делами государства, его конституционно-правовое закрепление, место и роль института выборов в функционировании государства, конституционные основы защиты избирательных прав граждан в Республике Казахстан. Были определены основные причины нарушения избирательных прав и определены пути их защиты.

В государствах, утверждающих истинную народную общность, избирательные права признаются наиболее доступной и часто используемой конституционной возможностью вмешательства граждан в государственную и местную власть, непосредственного участия граждан в решении государственных и местных вопросов. Однако конституционно-правовое закрепление избирательного права как формы участия населения в управлении государственными делами не дает полной основы для определения демократического характера государства. Избранные права граждан в государственно-правовых актах не только закреплены, но и в реальных условиях можно наблюдать формальный, реалистический характер демократии любого государства, если они нашли и осуществили свои действия в реальных условиях жизни.

Ключевые слова: народовластие, избирательные права, источник государственной власти, демократическое государство, защита избирательных прав.

Introduction

Today, most countries of the world define themselves as a democratic state. One of the criteria that determines the democratic nature of a state is that power is inherent in the people, respectively, the participation of the population in the management of the affairs of the state. The consolidation of rights on the part of the state, allowing citizens to participate in the management of state affairs, is a prerequisite for citizens to interfere in the life of the state, to participate in the governance of the state. In turn, the Republic of Kazakhstan, defining itself in the 1995 Constitution as a democratic state, enshrined a number of rights allowing the citizens of the Republic to participate in the management of the affairs of the state. One is integration, the only way for the population to establish the highest echelon of power is to elect and elect the citizens of the Republic to the state and local governments (p. 1 p. 33). At the same time, it should be noted that the first Constitution of independent Kazakhstan in 1993 enshrined that the Republic of Kazakhstan is a republic in a democratic regime, defined the people of Kazakhstan as the only source of state power, and also it was regulated that the Supreme Council and the President, local representative bodies, were elected on the basis of the principles of universal, direct suffrage of citizens to vote and election to the relevant bodies and positions were not constitutionally entrenched. The relevant Constitution enshrines only " the right of citizens of the republic to participate both directly and through their representatives in the management of state affairs, in the discussion, adoption of laws and decisions of state and local importance" (ConstitutionRK 1993). As we have noticed, in the relevant constitutional norm citizens are directly ... forms of participation in the management of state affairs have been settled in general without clarification.

In order for elections to be truly democratic, it is necessary: first, the existence of electoral legislation establishing rules that ensure the full implementation of free and fair elections; secondly, the existence of truly independent electoral bodies; thirdly, sufficient awareness of the electorate's rights and responsibilities; fourthly, the existence of administrative procedures guaranteeing all voters the free expression (Maklakov2003: 5).

These requirements, given by A.S. Autonomov and Y.A. Vedeneyev, can be agreed. Since they provide for conditions that allow citizens to participate in the management of state affairs through the exercise of voting rights, promote the policy of the state of citizens through the support of political candidates parties and candidates, ensure that the interests of various social groups of society are presented in elected state and municipal bodies, ensure stability, legitimacy of the electoral process, compliance with their international norms and the best electoral practices.

The institution of elections has a special place in the life of the state. In the political system, his assessment as a determining factor is not superfluous. Due to the fact that the elected rights of citizens in the life of the state are constantly enshrined and the real implementation in the state determines that the state established the following institutions and values – that the freedom of the majority of the population (citizens) is the defining of public policy (Institute of People's Power); priority of human rights and freedoms (interests) from the interests of the state.; Recognition by the state of the rights and freedoms of a person and a citizen; a variety of forms of protection of citizens' rights and freedoms; It is the duty of the State to ensure their implementation; equality of citizens, the legality of power. In terms of the importance of these values, it is possible to define the need for the institution of suffrage, to justify the importance.

The institution of elections in a legal, democratic state can be considered because the voting rights of citizens have a special place in the political life of the state, are one of the main prerequisites for further prosperity State. The will of citizens to elect a head of state and members of representative bodies is the main subjective factor, indirectly contributing to the effectiveness of the legislative branch regulating critical relations all areas of society in a real legal state, successful implementation of fundamental reforms carried out in the state. Since "... if unnecessary or substandard legislation is enacted in the future, if elected officials are incapable or ineffective, or the authorities suffer from widespread corruption, such tragic results are the result of a decision voters regarding the fact that they trust the government authority of the elected person " (Kenneth 2009: 107). This shows that the elected right of citizens, along with the importance in the life of the state, must be shown a special responsibility for the realization of the respective rights of citizens.

Today, the institution of suffrage at the international level is so important that the voting rights of citizens are recognized by the international community, voting rights are enshrined not only domestically, but also nearby international law. In addition, voting rights are recognized as basic rights of citizens and are accordingly guaranteed by the state in various cases (political, legal, material, etc.).

In civilized, democratic and legal states, citizens of the state are carriers, the origins of their political rights. Such States equally recognize, guarantee and protect the voting rights of their citizens, regardless of gender, age, education, property status and other circumstances. It's not for nothing, he has his own reason. In particular, for the legitimacy (legitimacy) of the authorities it is necessary not only to consolidate the voting rights of citizens on paper, but also to actually implement these rights in practice. If voting rights are exercised or exercised, they are invaluable. Today, violations of the voting rights of citizens in the most developed, established state in a democracy are very common. Consequently, the constitutional and legal consolidation of citizens' rights to the establishment of the upper echelon of state power and local elected bodies is not the only prerequisite for their reality in practice. In other words, enshrining in the republic's legislation voting rights, even at a level that meets international standards based on best electoral practices, is not the only criterion for defining the state purely Democratic. Only if the will of citizens is carried out on a legislative basis and voting rights are protected from various offences and only if it is possible to objectively determine and establish the results of the citizens' voting can be through elected representatives to talk about the participation of the population in the legislative settlement of important relations of the branches of society, about participation in the resolution of state and local affairs, that the will of the population has become the basis of the activities of the authorities (state, local). It should be taken into account that the adoption of legislation that meets international standards and the implementation of voting rights, the formation of a protection mechanism do not preclude the occurrence of any problems in the relevant area, do not lead to the conclusion, that true people's power is fully sustainable. Because, in accordance with the regularity of social development, the presence in real life of any positive or negative situations shows that legislation enshrining voting rights, and, accordingly, international standards mechanisms to protect them are not in the same place. Consequently, in accordance with various social conditions, the change in international standards itself is natural and normal. Therefore, it is necessary to keep the focus on and improve the

legislation that enshrines voting rights and the practice of enforcing them, with international standards.

An integral element of the electoral institution is the guarantee of the exercise of the voting rights of citizens in states with the establishment of true popular power. It can be said that in such states have created specific mechanisms for implementation, protection of voting rights. The guarantees of voting rights are observed in the relevant state by the established, permanent mechanism for protecting the voting rights of citizens (persons who are usually its citizens). It can be said that the mechanism of protection of voting rights, accordingly, shows a set of any state institutions, legal, moral approaches to the protection of voting rights. On the basis of them, the process of implementation, ensuring the voting rights of citizens is carried out. Therefore, for the proper exercise of citizens' voting rights, the protection of voting rights is an important, necessary institution. One of the criteria for democratic elections is the judicial and other protection of the voting rights and freedoms of the individual and citizen in the Convention on Democratic Electoral Standards, Voting Rights and Freedoms in the Commonwealth States Independent States" (p. 2 art. 1) (Lysenko 2008: 100).

The issue of protecting and ensuring citizens 'electoral rights as a form of citizens' participation in the management of state Affairs is not new to science and legal practice today. In other words, in any civilized democratic States, certain research institutes are organized to study the issues of improving the electoral rights of citizens and state-legal structures aimed at their protection and ensuring in real life. As the Russian scientist S. A. Shirobokov shows""... the Constitution establishes the right of citizens to participate in the management of state Affairs, respectively, its recognition, storage and protection is a direct duty of the state, its bodies and officials (Shyrobokov2016: 44). In addition, it can be said that ensuring and protecting the rights and freedoms of its citizens without any obstacles for States that today set themselves as a state governed by the rule of law is one of the priorities and main tasks. Accordingly, in order to ensure the implementation, not violation of electoral rights, the state establishes measures related to the implementation, protection of these rights in the domestic state legislation, interstate and international documents. Of course, state protection is not the only form of protection of citizenselectoral rights. Electoral rights can be protected by other forms (non-state protection-protection of the voter, Protection of public organizations, international protection). However, in the presence of other forms of protection of electoral rights, the state has priority, that is, their recognition and activities are determined by the state. As a rule, the state protection of citizens ' electoral rights is observed in the activities of authorized state bodies, including the courts, the legislature, the Executive bodies of state power, the Prosecutor's office, election commissions.

Since, in theory and practical terms, in democratic, legal states, public bodies are empowered by the people as the sole source of power, they must ensure that the whole complex is carried out in their activities, the rights and freedoms of citizens, accordingly to some extent participate in their indestructibility, protection, perform their functions in good faith to perform duties to the population.Due to the fact that the voting rights of citizens are recognized by the State and ensured by the forces of its political power, due diligence, the violation of voting rights largely depends on the activities of the authorized state bodies. Therefore, in order to ensure a high level of implementation, the protection of voting rights must be established a sustainable, effective mechanism of state protection. Consequently, without the formation of a strong and powerful state mechanism, the state will not be able to ensure the elected rights of citizens. In the field of elections, these functions are carried out by actors with the appropriate powers in each State. In general, they, within their powers, are obliged to ensure the accessibility of the electoral process to citizens, to prevent violations of voting rights, to ensure without distorting the will of citizens by countering various fraudulent manifestations, combat ingests, i.e. the safety of the electoral boxes. This, accordingly, determines that the protection of the voting rights of citizens in a real Constitutional State is considered as the main, priority for specific state bodies. In turn, in Kazakhstan, the legislation of the Republic has important tasks for the protection of citizens' voting rights. A number of bodies, starting with the President of the Republic, are included in the state mechanism of direct and indirect protection of citizens' voting rights: Parliament, Constitutional Council, executive authorities, law enforcement agencies, electoral Commission, Human Rights Commission, Commissioner. In this mechanism, the President of the Republic of Kazakhstan takes another place. It can be said that it protects voting rights as a symbol and guarantor of the rights and freedoms of citizens. The main functions of the President related to the protection of the voting rights of citizens, his exercise of the right of legislative initiative, opposition to laws passed by The Parliament, appeal to the Con-

stitutional Council on issues specified in section 1 of Article 72 Constitutions that are not within the jurisdiction of Parliament, as well as those outside the purview of Parliament ... to the activities of state bodies include the issuance of decrees on legal regulation of issues outside the statutory competence, an appeal to the Constitutional Council to consider compliance with the Constitution of the Republic of Kazakhstan, which came into force or other legal act in the interests of protecting the voting rights of citizens, the establishment of an advisory and advisory body – the Commission on Human Rights, which promotes the exercise of the constitutional powers of the President as a pledge of human rights and freedoms and a citizen.

The main constitutional foundations for the protection of the voting rights of citizens in the Republic of Kazakhstan can be considered: the Republic of Kazakhstan asserts itself as a democratic, legal, social state and affirms human rights and freedoms as one of the most Expensive Treasures (Article 1); The form of government defines Kazakhstan as a republic in the presidential form of government (Article 2); Kazakhstan recognizes and guarantees the rights and freedoms of a person and a citizen (Article 12); all citizens are equal before the law and the court (V. 14); citizens of the republic have the right to participate in the management of state affairs directly and through their representatives, to elect and be elected to state and local governments (p. p. 1, 2 p. 33).), etc.Analysis of the Constitution the Russian state shows that the Russian Federation should not issue laws abolishing or reducing the common rights and freedoms of a person and a citizen (P. 2 p. 55), that the provisions of Sections 1, 2 and 9 of the Russian Constitution cannot be revised by the Federal Assembly (p. 1 p. 135) (http://www.consultant.ru/document/cons_doc_LAW_28399).It is worth noting that among the provisions reflected in Part 2 of the Russian Constitution, which are not subject to revision by the Federal Assembly, there is a provision on the right of Russian citizens to elect and be elected to state and local governments (p. 2 art. 33).

Now, with regard to the state's obligation to protect the electoral rights of citizens, we can say that this is the state's activity to ensure the exercise of citizens ' rights to elections and election, participation in other electoral actions through the recognition and approval of various forms of protection of electoral rights. The protection of citizens ' electoral rights refers to the rights of citizens to elect and be elected to state and local government bodies ... implementation of the activities of intergovernmental organizations, public authorities, local governments, their officials, other organizations and citizens themselves ... defines the mechanism of enforcement (Matejkovich2003: 1). To our understanding, the corresponding scientist considers these subjects as unconditional, obligatory subjects of protection of electoral rights of citizens, irrespective of desire of the concrete States, defining protection of electoral rights of citizens as the compulsory mechanism of ensuring implementation of electoral rights of citizens. The following scientist A. R. under the protection of electoral rights to the subjects of Akchurin's protection is understood the mechanism of restoration of violated electoral rights or removal of obstacles to the exercise of the relevant rights, carried out with the use of appropriate forms and procedures, methods and approaches (Akchurin2007: 8). As noted, he considers the protection of electoral rights in contact with cases of violation of electoral rights, that is, does not introduce into the concept of protection of electoral rights the prevention of violations of electoral rights, its prevention. Consequently, in the definition of the corresponding scientist, the concept of protection of the electoral right is expressed in a narrow sense.

The need to protect voting rights stems from the importance of suffrage and the need to prevent violations of citizens' rights arising during the electoral process. Accordingly, in essence, the Institute for the Protection of Voting Rights is aimed at preventing situations preventing citizens from exercising their voting rights and preventing violations of voting rights. Inefficiency, weakness of the mechanism for the protection of voting rights causes distrust of citizens about the fairness of elections, the legality of electoral procedures.

The Constitution and constitutional legislation of the Republic of Kazakhstan assign to the state bodies of the Republic important tasks for the protection and observance of the electoral rights of citizens. Their activities in this area provide organizational and legal guarantees of citizens ' electoral rights. The establishment of electoral rights in the law is not a sufficient basis for the unhindered and free exercise of electoral rights by citizens. In most cases, the exercise of electoral rights depends on the work of state bodies, as noted. Republican legislation obliges a number of state and municipal bodies, including law enforcement and local Executive bodies, organizations for the operation of the housing stock to provide assistance, to assist election commissions on certain specific issues during the election campaign. In particular, in accordance with article 48 of the Law" on elections in the Republic of Kazakhstan " the Ministry of internal Affairs of the Republic and

organization for the exploitation of housing Fund is obliged to provide the election commissions during the vote to ensure public order and freedom of elections, the voter lists, and other matters arising out of activities of election commissions.And local Executive bodies are obliged to assist election commissions in ensuring the electoral rights of citizens with disabilities. If the election Commission, when checking the application filed in his name, considers it necessary to check the circumstances specified in the application by law enforcement agencies, the relevant law enforcement agencies, at the request of the election Commission, check the circumstances and make a decision on the request (http://adilet.zan.kz/kaz/docs/Z950002464_). Not violation, restoration in case of violation of electoral rights, first of all, is connected with work of judicial authorities. In most States, the judiciary sees the protection of citizens ' rights, including electoral rights, as a priority. Install the app on your smartphone and work offline.

As a rule, despite the fact that elections are the main manifestation of the democracy of the state, today there are often facts of violation of electoral rights. The most common phenomenon is the existence of various forms of violation of electoral rights, even in States with a developed democracy. In General, the main causes of violations of citizens ' electoral rights are determined by the inefficiency, poor quality, instability of legislation regulating electoral relations, that is, the introduction of unclassified changes and additions to the legislation on elections, failure or improper execution of the law (lawlessness), legal illiteracy of citizens, low legal culture, political instability, vulnerability of guarantees of electoral rights in General. The process of historical development shows that in some countries there is also racial discrimination as one of the reasons for the violation of the electoral law. They Call Him J. We see the following justification by Kenneth Blakel and S. Kenneth Klyukovsky: "in the last half-century, the Federal judicial system of the voice ... many issues relating to protection against misrepresentation have been addressed through illegal newsletters. Most of the former cases dealt with racial problems, as most violations of the electoral legislation was due to racial discrimination. In such disputes, the courts had to uphold the constitutional rights of minority American citizens " (Kenneth Blackwell 2009: 115). In addition, in real life, the formation and consolidation of power as the main regulatory political force also indicates that it occurs as one of the main factors leading to the violation of electoral rights. This was announced by the acting Chairman of the Central election Commission of the Russian Federation. In Veshnyakov. «.. in our country, power means great value, so sometimes to achieve it opponents still go to the dirty deeds, not retreating from anything, " – admitted publicly (http://www.dissercat.com/content/ osobennosti-sudebnoi-zashchity-izbiratelnykh-prav-grazhdan-v-rossiiskoi-federatsi).

The rule of law is essential in protecting, protecting and exercising the voting rights of citizens. Legality prevents violation of voting rights, recognition of elections as a whole invalid. The rule of law is thus one of the conditions for ensuring the suitability of elections. The electoral process is carried out in accordance with the law and the results of the elections are legitimate only if the results of the elections have been cleared of fraudulent and other illegal votes, then for the latter the vote is valid by virtue of strict compliance with the requirements of the law is legal only if there is a result of legitimate votes, and in the case of identification within the law of the appropriate will of the electorate. Therefore, in order for any election to be valid, elections must be held in accordance with the law. This does not mean that in the electoral law several electoral actions and the consolidation of voting as a right for citizens exercise their respective voting rights at their discretion, i.e. in the manner in which it wishes. In this regard, some foreign scholars justify the need to recognize the vote not only as a right but also as a duty and must make the necessary efforts of the electorate to carry out this task. They point out that the right to vote cannot be exercised by an elected choice in accordance with the voter himself, i.e. that the State respects the definition of how the right to vote should be exercised, and that the citizen-voter is mandatory for execution in an order defined by the state. "Since voting is not only a right, but also a duty, voters must be aware of the legal criteria set by the state and be prepared to meet them... The right to vote does not entail the right to do it in any way of choice of the voter. States retain the right to regulate elections, and each electoral law unequivocally places a certain burden on individual voters" (Kenneth Blackwell 2009: 108, 115). Consequently, in accordance with the relevant scientific approach, citizens exercise the electoral right to vote not at their discretion, but by complying with the state-mandated rule, i.e. the obligation to comply with certain burdens placed the state on it by law.

Foreign scholar R. Paul Margi points out that offences that violate voting rights interfere with the right of citizens to participate on an equal footing in elections, giving preference to a certain voter or group of voters or political structure to another person (persons) (Paul Margie1995: 495). As a rule,

violation of the voting rights of citizens is expressed in discrimination of their (voting rights), obstruction of the use of voting rights and failure or improper execution by actors participating in the electoral process statutory duties. As a rule, the protection of voting rights against such offences is provided by authorized entities through the following actions: to prevent violations of voting rights; to eliminate situations that violate voting rights, hinder their implementation and, in the appropriate case, the imposition of sanctions that establish responsibility for specific offences; restoration of the infringed right.

In order to protect electoral rights, the relevant law enforcement agencies must be equipped with the most necessary means. In other words, the state and public bodies should be able to prevent and eliminate various offenses occurring in the elections. In General, the efficiency and effectiveness of the relevant activities of the subjects authorized to protect electoral rights have a great influence on the quality and stability of the electoral legislation. Since the critical instability of the electoral legislation, that is, the introduction of non-core changes and additions to the relevant legislation, in turn, can lead to instability of the mechanism of protection of electoral rights, improper organization of its work, reducing the level of legal literacy of citizens. Hence, the instability of the electoral legislation,"... a large number of contradictory norms that do not quite correspond to the existing system of electoral legislation, often corrected by the judicial authorities, do not create the necessary legal guarantees, do not effectively contribute to the confrontation of cases of violation of citizens 'electoral rights and do not allow for prompt, full protection of citizens' electoral rights (https://www.dissercat.com/content/osobennosti-sudebnoi-zashchity-izbiratelnykh-prav-grazhdan-v-rossiiskoi-federatsii). As noted, to protect the electoral rights of the authorized entities should have all the necessary capabilities. Since the relevant subjects ensure the availability of electoral actions, the voting process to voters only if they have the ability to prevent and eliminate various offenses that violate electoral rights. The choice of ways to protect electoral rights depends on the powers of certain subjects. That is, the protection of citizens ' electoral rights is carried out by specific subjects within their powers established by law. The protection of electoral rights is carried out both by informing citizens about electoral actions and the procedure for their implementation, and by controlling the electoral process through the broad involvement of observers in the elections, the establishment and publication of the results of voting. "Control contributes to the compliance of the electoral process with the legal system and prevents and prevents suspicious actions" (Musin 2017: 47). That would be an obstacle to distorting the election results.

Many representatives of constitutional and legal science are currently engaged in the search for ways to overcome negative phenomena in the organization and conduct of elections. Thus, the most important aspects of the complex and multifaceted problem of human rights are being addressed. The efforts of science and practice should be directed to this, pointing out that the creation of the necessary prerequisites, guarantees and mechanisms for the realization of individual rights, overcoming the crisis in this area, respectively, is the main direction of science, – he said (Matuzov 1999: 74).

Thus, summarizing the above, the provision of the Constitution of the Republic, which states that the only source of state power is the people, that the people directly exercise their power and delegate the exercise of their power (Article 3) determines that public officials have the authority of the public and assume that they must exercise their respective powers in order to serve the public, aware of the greater Responsibility. In Kazakhstan, such a responsible and complex activity in ensuring the free exercise of citizens' voting rights on an alternative basis, in the process of organizing and holding general elections, is carried out by a number of public bodies. They, to some extent participating in the protection of the voting rights of citizens during the organization and conduct of elections, provide convenience, accessibility of elections for citizens, prevention of violation of rights, restoration in case of violation. Thus, the confidentiality of the electoral boxes can be protected from various illegal actions, fraud. This is a complex and responsible business. However, because the will of citizens is important, it should be sought by specific state actors. Failure to ensure the security of ballot boxes, in turn, results in a lack of conformity between the election results and the specific will of the electorate. And the inconsistency of the election results to the will of the voters in defaults on the sovereignty of the people, as it does not allow the population, as the only source of state power, to exercise the entire amount of its power. "Even individual violations of voting rights are an infringement on the sovereignty of the people. If these offences are of a massive nature, which does not allow to establish the true will of the population, it can be said that the unconstitutional appropriation of power belonging to the people can be said. Accordingly, the protection of voting rights is the protection of a single, indivisible people's sovereignty " (Matejkovich2003: 21).

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[1]Ч.К. Утегенов, [2]А.К. Ибраева

[1]доктор PhD, майор полиции, e-mail: utegenov.chingiz@mail.ru
[2]кандидат юридических наук, подполковник полиции, e-mail: ayguul.1977@mail.ru
Актюбинский юридический институт МВД Республики Казахстан
имени М. Букенбаева, Казахстан, г. Актобе

НЕКОТОРЫЕ ВОПРОСЫ ИМИДЖА И ДОВЕРИЯ ОБЩЕСТВА К ДЕЯТЕЛЬНОСТИ ОРГАНОВ ВНУТРЕННИХ ДЕЛ В РЕСПУБЛИКЕ КАЗАХСТАН

В данной статье рассматриваются вопросы, связанные с повышением имиджа и правовой культуры сотрудников полиции. Отмечается, что сотрудники полиции первыми стоят на страже защиты прав и свобод граждан и первыми встречаются с правонарушителями. Обосновывается вывод о том, что в правовом государстве полиция выполняет функции обеспечения правопорядка и защиты прав и свобод граждан и ориентирована на применение предупреждающих и превентивных мер.

Авторы полагают, что во всем мире именно полицейская служба и сотрудники полиции являются объектом повышенного внимания со стороны гражданского общества. Ограничение возможного административного самоуправства полиции в способе реализации государственных велений и обеспечении порядка зависят от того, как право, юридические нормы определяют компетенцию полиции и направляют деятельность ее подразделений.

Объектом исследования являются общественные отношения, связанные с деятельностью органов внутренних дел. Исходя из данного объекта определен предмет исследования. Это вопросы, связанные с повышением престижа и правовой культуры органов внутренних дел. Цель данного исследования – разработать рекомендации по повышению престижа и доверия со стороны общества органам полиции.

Ключевые слова: полиция, престиж, доверие, правосознание, правовая культура, нравственные начала.

[1]Ch.K. Utegenov, [2]A.K. Ibrayeva

[1]Doctor PhD, Police Major, e-mail: utegenov.chingiz@mail.ru
[2]PhD in Law, Lieutenant Colonel of Police, e-mail: ayguul.1977@mail.ru
M. Bukenbaev Aktobe Law Institute of the Ministry of Internal Affairs
of the Republic of Kazakhstan, Kazakhstan, Aktobe

Some issues of public image and trust in the activities of internal affairs bodies in the Republic of Kazakhstan

This article discusses issues related to improving the prestige and legal culture of the police. It is noted that the police are the first to guard the protection of the rights and freedoms of citizens and the first to meet with offenders. It substantiates the conclusion that in the rule of law the police performs the functions of ensuring the rule of law and protecting the rights and freedoms of citizens and is focused on the application of preventive and preventive measures.

The authors believe that all over the world it is the police service and the police that are the object of increased attention on the part of civil society. Limiting the possible administrative arbitrariness of the police in the manner of implementing state orders and ensuring order depends on how law and legal standards determine the competence of the police and direct the activities of its units.

The object of the study is public relations related to the activities of the police. Based on this object, the subject of research is determined. These are issues related to enhancing the prestige and legal culture of the police. The purpose of this study is to develop recommendations to increase the prestige and trust of the public on the part of the police.

Key words: police, prestige, trust, legal awareness, legal culture, moral principles.

[1]Ч.К. Утегенов, [2]А.К. Ибраева
[1]PhD докторы, полиция майоры, e-mail: utegenov.chingiz@mail.ru
[2]з.ғ.к., полиция подполковнигі, e-mail: ayguul.1977@mail.ru
Қазақстан Республикасы ІІМ М. Бөкенбаев атындағы Ақтөбе заң институты,
Қазақстан, Ақтөбе қ.

Қазақстан Республикасында ішкі істер органдары қызметінің имидж және қоғам сенімі туралы мәселелері

Бұл мақалада полиция қызметкерлерінің құқықтық мәдениетін және имиджін көтерумен байланысты сұрақтар қарастырылған. Мақалада полицияның азаматтардың құқықтары мен бостандықтарын қорғауда бірінші және құқықбұзушылармен де бірінші болып кездесетіндігі туралы, сондай-ақ, құқықтық мемлекетте полиция құқықтық тәртіпті қамтамасыз ету функциясын және азаматтардың құқықтары мен бостандықтарын қорғау, ескерту және алдын алу шараларын қолдануға бағдарланғандығы туралы қорытынды негізделген.

Авторлар бүкіл әлемде полиция қызметінің азаматтық қоғамдағы ерекше ашық назарда болатын келелі мәселе екендігін қарастырған. Құқықтық тәртіпті қамтамасыз ету және мемлекеттік пәрменділікті жүзеге асыруда полициядағы әкімшілік өзін-өзі басқаруды шектеу, олардың қызмет бөліністерінің бағыттарын анықтау, полицияның қызметінің құзырлылығын айқындайтын құқық нормаларына, нормативтік бекітілген актілерге қатысты байланысты.

Зерттеу обьектісі болып, ішкі істер құқық қорғау органдарындағы полиция қызметімен байланысты туындайтын қоғамдық қатынастар танылады. Берілген анықтамалық мағынаға сәйкес объекті негізінде зерттеу пәні анықталған. Бұл полиция қызметінің беделін және құқықтық мәдениетін көтерумен байланысты туындаған өзекті сұрақтар. Қарастырылып жатқан зерттеудің мақсаты – полиция орган ретінде қызметінің қоғам алдында беделі мен сенімін көтеруге байланысты ұсыныстарды әзірлеу болып табылады.

Түйін сөздер: полиция, бедел, сенім, құқықтық сана, құқықтық мәдениет, моральдық бастаулар.

Введение

Республика Казахстан находится на пути построения демократического, правового государства и гражданского общества. Это стремление повлекло за собой изменение функций правоохранительных органов. Особое место в правовом государстве занимают органы внутренних дел. Именно органы полиции первыми стоят на страже защиты прав и свобод граждан и первыми встречаются с правонарушителями.

В Конституции Республике Казахстан, в главе второй получили закрепление права человека. Согласно ст. 12 в нашей стране признаются и гарантируются права и свободы человека. При этом подчеркивается, что права и свободы человека принадлежат каждому от рождения, признаются абсолютными и неотчуждаемыми. Эти положения конкретизируются во всех законах. Большое значение имеет ст. 14. Ее смысл в том, что здесь провозглашено равенство всех перед законом и судом. Соответственно запрещается дискриминация по любым основаниям. Это и особенности происхождения, социального, должностного и имущественного положения, пола, расы, национальности, языка, отношения к религии, убеждений, места жительства. Подчеркнем, что РК – это светское государства. Значит каждый человек может быть свободным в своих религиозных взглядах и убеждениях.

Для каждого человека значима свобода действий, слова, убеждений. И здесь наиболее значимо содержание ст. 16. Полагаем необходимым привести ее полностью: «Каждый имеет право на личную свободу. Арест и содержание под стражей допускаются только в предусмотренных законом случаях и лишь с санкции суда с предоставлением арестованному права обжалования. Без санкции суда лицо может быть подвергнуто задержанию на срок не более семидесяти двух часов. Каждый задержанный, арестованный, обвиняемый в совершении преступления, имеет право пользоваться помощью адвоката (защитника) с момента, соответственно, задержания, ареста или предъявления обвинения» (Конституция Республики Казахстан, 1995).

Именно данная статья является основой ограничения действия для правоохранительной системы в целом. Укажем, что юридической науке под правоохранительной системой понимается совокупность государственных органов и общественных организаций, целью которых является защита прав и свобод граждан.

Со времен возникновения государства полиция являлась главным институтом в обеспечении общественной безопасности. Обращение к доку-

ментам истории показывает нам, что одним из первых государственных органов были органы полиции. Как известно, первые государственные образования возникли в IV – V тысячелетии до н.э. в Шумерах, Древнем Вавилоне, Египте, Китае, Индии. И во всех государственных системах особое внимание уделялось работе органов полиции. И также во всех государствах органы полиции выполняли самые разнообразные задачи. Именно с органами полиции впервые сталкивается человек, если его права нарушены. Вместе с тем в зависимости от классовой сущности государства можно определить сущность полиции в целом.

Отметим, что в механизме тоталитарного государства органы полиции практикуют использование репрессивных форм деятельности при реализации воли государства. Тогда как в правовом государстве полиция выполняет функции обеспечения правопорядка и защиты прав и свобод граждан и ориентирована на применение предупреждающих и превентивных мер. Эта главная цель органов внутренних дел четко и ясно закреплена в законодательстве Казахстана.

В преамбуле Декларации о полиции, принятой Парламентской Ассамблеей Совета Европы 8 мая 1979 г., подчеркивается, что «для полного осуществления прав человека и фундаментальных свобод, гарантированных Европейской Конвенцией по правам человека и другими национальными и международными инструментами, необходимо наличие мирного общества, где царит порядок и общественное спокойствие». Также в данной Декларации подчеркивается, что «полиция играет жизненно важную роль, что она вынуждена действовать в условиях, связанных с риском для сотрудников, и что выполнение ими своих обязанностей еще более осложнено, когда нет четко определенных правил поведения». И далее в пункте 1 Декларации о полиции закреплено: «Полицейский выполняет обязанности, возложенные на него законом, защищая своих сограждан и общество от насильственных, грабительских и других вредоносных действий, как определено по закону» (Декларация о полиции: 1998.).

Несомненно, что во всем мире именно полицейская служба и органы полиции являются объектом повышенного внимания о стороны гражданского общества. Необходимо подчеркнуть, что полиция как элемент государственного механизма является для гражданина и общества одним из главных институтов защиты и охраны. Вместе с тем, если действия органов полиции квалифицируются законом как правонарушающие, то в общественном сознании органы полиции могут олицетворяться как риски и угрозы. Данное обстоятельство наблюдается в период кризисов и при проведении административных реформ. Именно поэтому в науке и практике сегодня ставится вопрос об ограничении возможного административного самоуправства полиции. И при этом в законодательстве вводятся нормы, четко и прямо регламентирующие деятельность полиции не только в период работы, но и в нерабочее время. Эти юридические нормы направлены на повышение имиджа органов полиции.

Объектом исследования являются общественные отношения, связанные с деятельностью органов полиции. Исходя из данного объекта определен предмет исследования. Это вопросы, связанные с повышением престижа и правовой культуры органов полиции. Цель данного исследования – определить проблемы и тенденции развития полицейской деятельности, связанные с повышением имиджа и доверия со стороны гражданского общества, разработать рекомендации.

Задачи исследования вытекают из данной цели. Так, задачами являются следующие: рассмотреть вопросы, связанные с воздействием общества на деятельность органов полиции; раскрыть некоторые вопросы, связанные с проблемами профессиональной социализации, повышения уровня правосознания и профессиональной культуры сотрудников органов внутренних дел; выработать рекомендации и предложения по повышению имиджа полиции.

Методы, применяемые при подготовке данной статьи

В настоящее время проблема общественного контроля над полицией находится в центре юридической науке. Одним из способов решения данной проблемы является проведение опросов и анкетирование различных слоев населения. В этой связи в данной статье были использованы материалы социологического опроса, опубликованные в СМИ. Отметим, что социологический метод исследования не может быть абсолютно достоверным. Поэтому для изучения поставленной проблемы были использованы различные научные методы. В первую очередь, диалектический метод познания. Используя данный метод, были пересмотрены некоторые положения относительно функциональной направленности органов внутренних дел.

Были использованы методы анализа и синтеза, сравнительно-правовой и социологический методы познания правовых явлений. Данные методы позволили определить с точки зрения общетеоретических позиций место и роль полиции в механизме современного демократического государства, ее функции, формы и методы деятельности.

Основная часть

В юридической литературе под полицейской деятельностью следует понимать особый вид государственно-управленческой деятельности. Цель такой деятельности – охрана общественного порядка, обеспечение общественной безопасности, зашита прав человека и гражданина. При этом органы полиции могут применять как методы государственного принуждения, так и убеждения. Среди всех правоохранительных органов именно органы полиции отличаются многогранностью и полифункциональностью. Также органы полиции применяют меры пресечения и предупреждения правонарушений. Говоря о полиции, подчеркнем, что данный институт есть атрибут любого государства. Полиция понимается как специальный аппарат, призванный осуществлять важную и наиболее трудную государственную деятельность.

В настоящее время появилась наука – полицейское право. Здесь под полицейским правом понимается совокупность правовых норм, регулирующих деятельность полиции как исполнительного органа власти. Органы внутренних дел осуществляют полицейские функции. В тоже время подчеркнем, что понятие «органы внутренних дел» гораздо шире, чем понятие полиции.

Отметим, что термин «полиция» имеет греческое происхождение. Слово «politeia» («polis» – город) означало государственное управление, государственное устройство. Здесь основной смысл сводился тогда к обеспечению внешней безопасности. Однако в целом термин употреблялся применительно к государственным органам охраны правопорядка и борьбы с преступностью. К началу XVIII в. «полиция» обозначала всю правительственную, административную деятельность, государственное управление. В этом виде данный термин стал употребляться в официальных источниках, затем стал применяться в научном обороте.

К концу XIX в. преобладающим становится понимание полиции как части государственного управления. При этом уточнялась цель – охрана правового порядка. Поскольку в качестве полиции стала рассматриваться не вся, а лишь определенная часть администрации, а с точки зрения содержания государственной деятельности перестала включать «административное попечение», сохранив за собой лишь «административное принуждение», в теории стал использоваться термин «внутреннее управление».

В настоящее время в подавляющем большинстве стран мира аппарат исполнительной власти, применяющий государственное принуждение, называется полицией, а его деятельность – полицейской.

Определим различные направления деятельности органов полиции. Это деятельность контролирующая, и организующая, и государственно-властная. В настоящее время деятельность полиции можно характеризовать и как воспитательную. Это связано с реализацией принципа нулевой терпимости, с принципом «Соседский контроль».

Одной из особенностей деятельности полиции является ее непрерывность. То есть деятельность полиции является круглосуточной. Эти все особенности влекут за собой возможность злоупотребления властью. Именно поэтому полицейская деятельность должна быть под пристальным вниманием общества и органов прокуратуры и судебных органов. Подчеркнем, что органы полиции первыми встречаются с правонарушителями. Органы полиции относятся к исполнительной власти. И все действия должны проходить в строгом соответствии с конституционными нормами и законом.

В целом, полицейская деятельность – это особый вид государственного управления. Главная особенность, на наш взгляд, заключается в полифункциональной деятельности и возможности применять легализованное принуждение в необходимых случаях. Полагаем справедливым мнение профессора Ибраевой А.С. о том, что по деятельности органов полиции можно судить об уровне правовой культуры общества (Ибраева 2016).

В правовом, демократическом государстве органы полиции осуществляют разнообразные функции. Так, репрессивные и карательные функции, в большинстве своем, уступают место задачам обеспечения правопорядка и общественной безопасности, профилактики и контроля над преступностью, предоставления широкого спектра социальных услуг населению.

Полиция является одним из основных звеньев механизма государства. Главным направлением

полицейской деятельности является обеспечение защиты существующего государственного строя и безопасности как государства в целом, так и отдельных его граждан. При этом подчеркнем, что в системе национальной безопасности именно общественная безопасность является наиболее широкой и этот вид национальной безопасности обеспечивают органы полиции.

Согласно ст1. Закона об органах внутренних дел Республики Казахстан «ОВД являются правоохранительным органом, предназначенным для защиты жизни, здоровья, прав и свобод человека и гражданина, интересов общества и государства от противоправных посягательств, охраны общественного порядка и обеспечения общественной безопасности» (Закон об органах внутренних дел РК: 2014).

Одними из главных проблем в деятельности полиции в настоящее время являются проблемы профессиональной социализации, повышения уровня правосознания и профессиональной культуры сотрудников органов внутренних дел, и в целом проблемы повышения имиджа полиции. В настоящее время в Казахстане проводится большая работа по формованию профессионального правового сознания сотрудников полиции. Принимаются специальные программы, проводится реформирование органов полиции в целом, действуют общественные советы при департаментах полиции (Ibrayeva 2014).

Формирование гражданского общества активизирует контроль за деятельностью полиции. Наиболее эффективным является сочетание общественного и государственного контроля. Также повышение уровня правосознание общества, повышение правовой грамотности и правовой культуры социума налагает на органы полиции повышенные требования. Одним из таких требования является профессионализм полиции, а также соблюдение сотрудниками полиции этических норм и принципов.

Поэтому особое внимание в этом контексте должно уделяться соответствующей профессиональной подготовке кадров. Отметим, что в основе подготовки профессиональных кадров полиции лежат общие принципы и технологии высококвалифицированного менеджмента. И особенно важными являются такие принципы как транспарентность, компетентность, законность, меритократия (Ibrayeva 2016).

В настоящее время наблюдается низкий уровень доверия граждан к правоохранительной системе в целом. Подчеркнём, что деятельность полиции будет эффективна тогда, когда в обществе высок уровень доверия к государству в целом. Но, с другой стороны, государство ожидает от своих граждан не только доверия, но и проявления определенных гражданских качеств. Это значит, что и сам гражданин должен быть социально активным, не нарушать правовые предписания.

В качестве определенной проблемы отметим, что на практике наблюдается отсутствие согласованного взаимодействия правоохранительных органов при предупреждении действий, связанных с совершением тяжких преступлением, таких как терроризм, экстремизм. В трудах известного казахстанского ученого Байкенжеева А.С. раскрываются проблемы, связанные с взаимодействием органов полиции и органов обеспечения национальной безопасности (Байкенжеев 2018).

В современном демократическом, правовом государстве актуальна задача создания действенных механизмов эффективного контроля за деятельностью полиции. Выделяются два вида контроля – внутренний и внешний. Это, носящие как формальный, так и неформальный характер. Казахстанские ученые отмечают особенности объекта исследования юридической науки – государства и права. «In the modern world the jurisprudence holds a specific place in the system of social sciences. This is connected with a research object. An object of jurisprudence are concrete spheres of objective reality, namely the state and the right» (Ibrayeva 2019).

Отметим значимость самодисциплины полицейских. В связи с этим высокий уровень самоконтроля полицейского необходимо развивать и поощрять. И здесь необходима поддержка и государства и общества (Ibraeva 2017).

Поддерживаем мнение казахстанских ученых о том, что «деятельность полиции находится под неформальным и формальным контролем. Межличностный контроль коллег, осуществляемый при проведении оперативных мероприятий в группе, входит в понятие неформального контроля. Исходя из коллективного характера своей деятельности можно сделать вывод о том, что полицейские придают большое значение оценке коллегами своих действий. Особенно значима роль полиции в обеспечение прав мигрантов» (Nyssanbekova 2016).

В ближайшие три года, то есть в 2019-2021 гг. в Казахстане пройдёт одна из самых масштабных реформ органов внутренних дел с момента создания полиции в 1998 году. Так, должны будут поменяться форма, зарплата, социальный па-

кет, условия службы и формат обучения сотрудников полиции. Будет принят национальный стандарт полицейского.

Все эти действия направлены на то, чтобы сотрудники органов внутренних дел были сформированы в профессионалов. Данная проблема волнует не только юристов-профессионалов, но и общество в целом. Приведем некоторые данные социологического опроса, которые были опубликованы автором Дубовой М. в 2019 году. В опросе приняло участие 200 жителей Алматы. Так, вызывает большую озабоченность то, что 81% опрошенных считают себя абсолютно незащищёнными со стороны правоохранительных органов. При этом 89% опрошенных отметили, что Министерство внутренних дел в Казахстане нуждается в реформе.

Также обратим внимание на то, что за последний год 69% опрошенных оказывались в ситуациях, требующих участия полиции. Это означает высокий уровень правонарушений в городе Алматы. При этом на первом месте кражи и аварии, ДТП (38% и 37% респондентов, соответственно, обращались в полицию по таким фактам). На втором месте респонденты выделяют такие правонарушения как вымогательство и взяточничество (23%).

И соответственно на третьем месте такое правонарушение как мошенничество (16%).

Если смотреть итоговый результат, то здесь наблюдается следующая картина. Так, большинство респондентов (82%) оценили работу полиции в целом как плохую (44%) или очень плохую (38%). И соответственно очень хорошую оценку дали работе сотрудников правоохранительных органов лишь 2% опрошенных. Подчеркнем, что очень плохую оценку работе полиции значительно чаще давали те, кто столкнулся с необходимостью обращения в органы правопорядка за последний год (45%).

Вызывают интерес ответы на вопрос «С какими трудностями вы сталкивались при обращении к полиции за последний год?». Здесь 73% опрошенных отметили безразличие сотрудников к результату, отсутствие стремления решить проблемную ситуацию. 50%, опрошенных отметили, что сотрудники полиции проявляли к гражданам грубость, высокомерие, угрозы. Также отметили наличие некомпетентности сотрудников и долгое ожидание приезда полиции. Подчеркнем, что факт коррупции отметили лишь 4% участников.

Интересными являются ответы на вопрос о том, какие сотрудники полиции вызывают наибольший уровень доверия у жителей города Алматы. Так, наибольшее доверие вызывают сотрудники по чрезвычайным ситуациям (48% респондентов) и сотрудники департамента по противодействию экстремизму (22%). И меньше всего горожане доверяют сотрудникам уголовно-исполнительной системы (5%).

Отрадно отметить, что почти каждый пятый респондент (19%) знает своего участкового инспектора лично либо заочно.

Обратимся к ответам о том, какие правила нарушают чаще всего сотрудники полиции. Так, большинство опрошенных считает, что зачастую сотрудники полиции сами нарушают правила (86%) и используют служебное положение в личных интересах (80%). 59% опрошенных считает, что полиция не решает проблемы на дорогах.

Среди отрицательных качеств, присущих сотрудникам МВД, опрошенные отметили склонность к взяточничеству (63%), высокомерие (60%), безразличие (56%) и непрофессионализм (51%). Среди положительных качеств опрошенные выделили опрятность внешнего вида сотрудников полиции и готовность оказать помощь (по 21%), а также храбрость (19%).

Подчеркнем, что 86% опрошенных алматинцев высказали свою готовность оказывать содействие сотрудникам МВД в добросовестном исполнении ими своих обязанностей по устранению нарушений закона или последствий различных инцидентов (Дубовая 2018).

Конечно, данные проведенного опроса являются промежуточными. Здесь количество опрошенных – 200 человек. Но в тоже полагаем, что эти данные свидетельствуют о низком уровне доверия казахстанцев к полиции. В связи с этим необходимо проводить постоянную работу по повышению имиджа сотрудника полиции, а правоохранительным органам необходимо находиться в постоянном контакте со СМИ. Отметим необходимость тесного взаимодействия полиции с населением. Ни один другой орган государства не находится в такой тесной взаимосвязи с обществом, участвуя при этом в политическом и гражданском воспитании населения.

Некоторые примеры из зарубежной практики

Обратимся к зарубежной практике. Изучение опыта деятельности полиции в зарубежных странах позволяет сделать вывод о том, что полиция в зарубежных демократических стра-

нах выполняет множество функций. В юридической литературе функции полиции подразделяются на «коммунальную» и оперативную. Первая функция означает оказание разного рода социальных услуг. Вторая, или «оперативную», и есть собственно правоохранительная. В задачи данной функции входят предупреждение и борьба с противоправными деяниями (Otynshiyeva 2019).

Во всем мире высока значимость роли полиции, ее авторитет. «В сознании граждан полиция олицетворяется с государством. К примеру, в США сотруднику ФБР на суде верят как непререкаемому авторитету – представителю государственной власти, чье слово не подвергается сомнению. В Англии, Италии, ФРГ, Франции, США, Канаде и ряде других стран предусматриваются различные виды административной и уголовной ответственности за публичное оскорбление полицейских или нападение на них, распространение клеветы в отношении полиции и т.д. В США в случаях умышленного убийства полицейского или сотрудника ФБР виновный приговаривается к тюремному заключению (вплоть до пожизненного) или к смертной казни» (Горшенева 2002).

Следует отметить, что в целом внешний контроль может быть политическим, парламентским, правительственным, осуществляться органами юстиции. В ряде стран континентальной Европы, например, деятельность полиции рассматривается в контексте ее подчиненности судебным властям. В плане внешнего административного контроля интерес представляет опыт США.

В США существует горизонтальная сеть не подчиненных единому центру полицейских ведомств и законодательством некоторых штатов, также в США предусмотрено официальное контролирование полицейских структур органами ФБР. Имиджу и престижу профессии полицейского уделяется пристальное внимание за рубежом. Отметим извечную и почти повсеместную непопулярность полицейской службы. Так еще в Древней Греции свободный афинянин предпочитал позволить арестовать себя рабу, нежели исполнять полицейские обязанности по отношению к какому-либо иному свободному человеку. В настоящее время за рубежом работа в полиции является, как правило, хорошо оплачиваемой, но не особенно престижной. Американские полицейские, по данным исследований Д. Бейли, считают, что заслуживают большего уважения населения. Но верхний слой общества смотрит на них свысока, средний слой игнорирует, а нижний – боится. Поэтому они склонны даже относить себя к группе меньшинств общества (Bayley 1976). «В ФРГ полицейские говорят, что предпочитают, как можно реже надевать полицейскую форму, чтобы «не раздражать» окружающих. Однако изменившаяся роль полиции в обществе требует, чтобы сложившиеся у граждан негативные стереотипы были бы сломлены, и им на смену пришли новые, положительные представления о сотруднике полиции» (Кикоть 2004).

В настоящее время в развитых зарубежных странах проблема создания нужного имиджа и поддержания должного престижа полицейской деятельности постоянно находится в центре внимания как науки, так и практики.

Заключение

В заключение полагаем возможным сделать следующие выводы.

1. Среди всех государственных органов власти и управления органы внутренних дел занимают особое место. Это связано с полифункциональностью данных органов. Также полагаем необходимым подчеркнуть, что полиция как часть органов внутренних дел обеспечивает внутреннюю безопасность.

2. Вопросы повышения профессиональной правовой культуры полиции важны. Сама природа и ценностная ориентация полицейской культуры неразрывно связаны с общественной средой, местом и ролью полиции в механизме конкретного государства. Полагаем, что особое внимание следует отвести средствам массовой информации в механизме осуществления социального контроля за полицейской деятельностью. Необходимо учитывать, что средства массовой информации представляют общественное мнение и выступают защитниками общества.

3. Особое внимание необходимо уделять имиджу и престижу профессии полицейского. Чем выше уровень демократизации общества, тем больший объем социальных задач стоит перед полицией. В связи с этим полагаем заслуживающим внимание утверждение некоторых ученых о том, что в современном правовом государстве полиция – это не столько правоохранительный, сколько социальный орган. Полицейская деятельность отличается полифункциональностью. Приоритетной задачей органов полиции должна быть защита прав и свобод граждан.

4. Предлагаем стандарт полицейского дополнить требованиями, касающимися нравственных основ службы в полиции. Так, по нашему мнению, «полицейский должен придерживаться в своей деятельности беззаветного служения Республике Казахстан и защиты благородных общественных идеалов: свободы, демократии, торжества законности и правопорядка. Органы полиции обязаны быть профессионально подготовлены, соблюдать законность и служебную дисциплину, придерживаться стандартов общей и профессиональной культуры поведения. Полицейский должен быть верным своей присяге, неукоснительно соблюдать нормы этики, не допускать проявлений некорректного поведения при осуществлении любых действий, в общественной деятельности и в быту, чтобы его поступки соответствовали его высокому статусу. Полицейскому следует быть разборчивым в личных знакомствах и связях, избегать совершения гражданско-правовых сделок, влекущих возникновение финансовых обязательств, с лицами, находящимися от него в служебной зависимости, а также с лицами, являющимися участниками процессов по делам, находящимся в его производстве. Полицейский должен заботиться о своей репутации и репутации членов своей семьи и не использовать служебное положение в своих личных интересах, интересах членов семьи и других лиц. Полицейскому следует прилагать усилия к надлежащему исполнению обязанностей по содержанию, воспитанию своих несовершеннолетних детей, содержанию родителей и других нетрудоспособных членов семьи. Полицейский обязан придерживаться общечеловеческих моральных правил и нравственных норм в своих поступках и решениях. Обязательным правилом поведения полицейского являются честность и бескорыстность. Постоянное внимание со стороны общественности налагает на полицейского обязанность принять на себя ряд ограничений. Полицейский должен избегать общественных мероприятий и других публичных мест, если это может навредить его репутации».

Именно поддержка общества гарантирует эффективность действия органов полиции. Со своей стороны, органы полиции должны соответствовать ожиданиям общества, и в первую очередь с точки зрения нравственных начал.

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3-бөлім

АЗАМАТТЫҚ ҚҰҚЫҚ ЖӘНЕ ЕҢБЕК ҚҰҚЫҒЫ

Section 3

CIVIL LAW AND LABOUR LAW

Раздел 3

ГРАЖДАНСКОЕ ПРАВО И ТРУДОВОЕ ПРАВО

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A.A. Baltabayeva

[1]undergraduate, KIMEP University, Faculty of International Law,
Kazakhstan, Almaty, e-mail: 7174192@mail.ru

THE LEGAL STATUS OF SOCIALLY VULNERABLE SEGMENTS OF THE POPULATION ON THE EXAMPLE OF PERSONS WHO HAVE REACHED THE AGE OF MAJORITY (comparative analysis)

Abstract. The article examines the situation of orphans who have reached 18 years of age. In particular, the author examines the laws of the Republic of Kazakhstan and other countries in the context of comparing the provision of state assistance to alumni of orphanages, as well as scientific publications and newspaper articles. The total number of orphans in the Republic of Kazakhstan is twenty million children. On June 8, 1994, the Republic of Kazakhstan ratified the Convention on the Rights of the Child. In this Convention, the child has the right to life, the right to citizenship and a name, the right to express his opinion, protection from the government. In the Kazakhstan there are several organizations and legislations, which support orphans who over eighteen, in other words the graduate of the orphanage. They are the house of youth, housing and education legislations, and non-governmental organizations. The House of Youth, like the Children Village of Family Type, is the part of the international organization, which is called SOS Kinderdorf. This house accepts the students of children's villages and graduates of orphanages, residential boarding schools for orphans and children left without parental care. Furthermore, there are non-governmental organizations like, association of legal entities, "Association of Graduates of Orphanages in Kazakhstan", and "Jastar Uyi" (Home of Youth), which is center for adaptation and support of graduates of social institutions. These kinds of organizations help graduates. Although Kazakhstan provides some assistance to graduates of orphanages, or orphans over 18 years of age, it is nevertheless necessary, according to the author, to make some changes and increase assistance to reduce problems and challenges that alumni faces on the daily basis.

Key words: orphans, the Convention on the Rights of the Child, the Constitution of the Republic of Kazakhstan, citizenship, children's rights.

А.А. Балтабаева

магистрант, КИМЭП, Халықаралық құқық факультеті,
Қазақстан, Алматы қ., e-mail: 7174192@mail.ru

Халықтың әлеуметтік қорғалмаған топ қатарына жататын кәмелеттік жасқа толған тұлғалардың құқықтық жағдайы (салыстырмалы талдау)

Аңдатпа. Мақалада 18 жасқа толған жетімдердің жағдайы қарастырылған. Атап айтқанда, автор балалар үйінің түлектеріне мемлекеттік көмек көрсетуді, сондай-ақ ғылыми басылымдар мен газет үзінділерін салыстыру тұрғысында Қазақстан Республикасының және басқа елдердің заңнамаларын зерттейді. Қазақстан Республикасындағы жетім балалардың жалпы саны жиырма миллион бала. 1994 жылы 8 маусымда Қазақстан Республикасы Бала құқықтары туралы конвенцияны ратификациялады. Осы Конвенцияда баланың өмір сүруге құқығы, азаматтығы және есімі, өз пікірін білдіру құқығы, үкімет тарапынан қорғалуы керек. Қазақстанда он сегіз жастан асқан жетімдерге, яғни балалар үйінің түлектеріне қолдау көрсететін бірнеше ұйымдар мен заңдар бар. Бұл жастар үйі, тұрғын үй және білім беру құқығы және үкіметтік емес ұйымдар. Отбасы типіндегі балалар ауылы сияқты Жастар үйі SOS Kinderdorf атты халықаралық ұйымның құрамына кіреді. Сонымен қатар, заңды тұлғалар қауымдастығы, Қазақстандағы балалар үйінің түлектерінің қауымдастығы және әлеуметтік мекемелер түлектерінің бейімделуі мен қолдау орталығы болып табылатын «Жастар үйі» (Жастар үйі) сияқты үкіметтік емес ұйымдар бар. ұйымдардың түрлері түлектерге көмектеседі. Қазақстанда балалар үйінің түлектеріне немесе 18 жастан асқан жетім балаларға қандай-да бір көмек көрсетілсе де, автордың пікірінше, өзгерістер енгізу, көмекті көбейту және проблемаларды азайту қажет.

Түйін сөздер: жетім балалар, бала құқығы туралы Конвенция, Қазақстан Республикасының Конституциясы, азаматтығы, балалардың құқығы.

А.А. Балтабаева
[1]магистрант, КИМЭП, Школа права, Казахстан, г. Алматы,
e-mail: 7174192@mail.ru, ORCID ID: 0000-0002-4630-4232

Правовое положение социально незащищенных слоев населения на примере лиц достигших совершеннолетия (сравнительный анализ)

Аннотация. В статье исследуется положение детей-сирот, достигших 18-летнего возраста. В частности, автором рассматриваются законодательства РК и других стран в контексте сравнения оказания государственной помощи выпускникам детских домов, а также научные публикации и вырезки из газет. Общее количество детей-сирот на территории Республики Казахстан составляет двадцать миллионов детей. 8 июня 1994 года Республика Казахстан ратифицировала Конвенцию о правах ребенка. В этой Конвенции ребенок имеет право на жизнь, право на получение гражданства и имя, право выражать свое мнение, защиту со стороны правительства. В Казахстане существует несколько организаций и законодательств, которые поддерживают детей-сирот, которым более восемнадцати лет, то есть выпускников детских домов. Это дом молодежи, жилищного и образовательного законодательства и неправительственных организаций. Дом молодежи, как и Детская деревня семейного типа, является частью международной организации, которая называется SOS Kinderdorf. Кроме того, существуют такие неправительственные организации, как ассоциация юридических лиц, «Ассоциация выпускников детских домов в Казахстане» и «Jastar Uyi» (Дом молодежи), который является центром адаптации и поддержки выпускников социальных учреждений. виды организаций помогают выпускникам. Хотя Казахстан оказывает определенную помощь выпускникам детских домов, или детям-сиротам старше 18 лет, все же необходимо, по мнению автора, внести некоторые изменения, увеличить помощь и уменьшить возникающие проблемы.

Ключевые слова: дети-сироты, Конвенция о правах ребенка, Конституция РК, гражданство, права ребенка.

Introduction

The total number of the orphans in the Territory of the Republic of Kazakhstan is twenty million kids. Among them 375 kids are in custody, guardianship, patronage and guest and foster families ('The Number of Orphans in Orphanages is Reduced in Kazakhstan' BNewskz). Recently, the adaptation center for homeless kid received 1688 children. Among them 233 kids who are with out parents, twenty-one kids with deviant behavior, and twelve the underage in difficult life situations. The 1528 received kids are established to the families, orphanage, custody and etc. The 1271 transferred to the families, ninety-seven placed to the orphanage, twenty-one and kids were taken under custody. Also, nine kids were transferred to patronage, four kids placed to the guest families, and twenty-two kids transferred to the special schools (" The Main Results in the Feld of Protecting the Rights of Children for the First Quarter of 2018 and the Priorities of Activities until the End of 2018", 2018).

The Law of Kazakhtan: Overview

Convention on the Rights of the Child

On the June 8, 1994 the Republic of Kazakhstan ratified the Convention on the Rights of the Child. In this Convention the child has right to life, right to obtain citizenship, and name, right to express his own opinion, protection under government, etc. The convention is based on ten principles. The first principle states that the child has to have all the rights, which are on the convention. These rights should be recognized for all children without exception and without distinction or discrimination on the based on of race, color, sex, language, religion, political or other beliefs, national or social origin, property status, birth or other circumstance concerning the child himself or his family. According to the second principle the child should be provided with special protection by law and other means and provided with opportunities and favorable conditions that would allow him to develop physically, mentally, morally, spiritually and socially in a healthy and normal way and in conditions of freedom and dignity. The third principle declares that the child has to have a right to the name and citizenship. Based on the fourth principle the child must enjoy the benefits of social security. He must have the right to healthy growth and development. Based on that reason, special care and protection should be provided to both him and his mother. This includes proper prenatal and postnatal care. The child must have the right to adequate food, housing, entertainment and medical care. The fifth principle is talking about the provi-

sions of mental and physical wellbeing. A child who is physically, mentally or socially inferior must be provided with special treatment, education, and care necessary because of his special condition. For the full and harmonious development of his personality, a child needs love and understanding, according to the sixth principle. Whenever it possible, he or she should grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of love and moral and material security. Besides, a young child shall not be separated from his mother, except in cases where there are exceptional circumstances, And, society and public authorities should have a responsibility to take special care of children who do not have a family and children who do not have sufficient means of livelihood. It is advisable that families with large number of children should be provided with state or other child support allowances. According to the seventh principle, the child has the right to education, which should be free and mandatory, at least in the initial stages. He or she should be given education that would contribute to his overall cultural development and through which he could, on the basis of equality of opportunity, develop his abilities and personal judgment, as well as a sense of moral and social responsibility and become a useful member of society. Besides, best interests of the child should be the guiding principle for those who are responsible for their education and training. This responsibility lies primarily on his or her parents. Furthermore, the child should be provided with the full possibility of games and entertainment that would be aimed at the goals pursued by education. Society and public authorities should make efforts to facilitate and make possible to the kid exercise of this right. According to the eight principles, in all circumstances the child should be first among those, who receive protection and help. The ninth principle states that The child must be protected from all forms of neglect, cruelty and exploitation. He or she should not be traded in any form. The child should not be hired until he or she would reach appropriate minimum age for work. In no case and circumstances, he or she should be entrusted or allowed to work or occupation that would be harmful to his or her health or education or interfere with his or her physical, mental or moral development. According to the last principle, the child should be protected from practices that may encourage racial, religious or any other form of discrimination. He or she should be educated in the spirit of mutual understanding, tolerance, and friendship between nations, peace and universal brotherhood, as well as in the full knowledge that his energy and abilities should be dedicated to serving others (Convention on the Rights of the Family).

In the domestic law, there are the legislation that describes the rights of children and orphans. First legislation is the Constitution, which is the primary law. It states that the marriage, family, motherhood, fatherhood and childhood are protected by government (The Constitution of the Republic of the RK art 27).

Besides, in legal system of Republic of Kazakhstan there are two main sets of laws that deal children rights describes the legal position of kids and defines who are the orphans. They are the Law on the Rights of a Child in the Republic of Kazakhstan from august 8, 2012, and the Code of the Republic of Kazakhstan on the Marriage and Family. The law of the of the rights of the the Child defines the child as the who did not reach the adulthood, in the Republic of Kazakhstan it is under eighteen years old. The legislation covers up the main key points, like the rights of kids and his responsibilities, the obligation of the state, the disabled kids and orphans. Under this law the kid also have the right to freedom of speech, rights to necessary level of living, right to education, foredoom of labor, rights to spare time and leisure, right to have property. There are articles about state protection of economic exploitation, prostitution, and protection from negative effects of social environment. The kids responsibilities are in the article twenty, which states, “Each child shall be obliged to comply with the Constitution and legislation of the Republic of Kazakhstan, respect for the rights, freedom, honor and dignity of other persons, state symbols of the Republic, take care of parents being incapable for work, of preservation of historical and cultural heritage, keep historical and cultural monuments in safe, save nature and treat with due care with natural resources

Besides, the orphans in the Republic of Kazakhstan is described at the Law of the of the Rights of the Child. The Law states that, child orphan is the child, whose parents died, or only parents died (The Law of the of the Rights of the Child art 1.8). The law, also says that children with out parents, orphans, are under the state security (The Law of the of the Rights of the Child art 17.2). There are a few options how the orphan is dealt by government. The first choice is to located to the special organizations that can be medical, adaptation centers for children, children village of family type, or educational. In the medical, there is a child, from age of three to eighteen who has either deviant behavior, or physical or mental development delays or defects. The type of medical organizations where child is located

is depends on his or her age, and whether the child temporary or not, and is the risk of abandonment of the child.

Moreover, the adaptation center accepts homeless kid, from age of three to eighteen in order to establish their parents, or legal guardians (The Law of the of the Rights of the Child art 30.1). This organizations accept and provide the temporarily care for the underage. The main objectives for the organizations are delivering social and psychological assistance for the underage, establishing preventative work for avoidance of homelessness among underage, and providing the protection rights and legitimate interests who are attending the organization (Standard Rules for Activities of Adaptation Centers art 5). In the Republic of Kazakhstan the villages of family type are known as international organization, SOS Kinderdorph.

In addition, the Children Village of Family Type and educational centers accept kid, who is from three to eighteen years old (The Law of the of the Rights of the Child art 30.1). The village is the legal entity and non-governmental organization, which has apartment like living accommodation. Office buildings, special buildings, that intended for the families, outdoors, and utility facilities also located in the villages (Law about Children Village of Family Type and House of Youth art 12). The main goal of these organizations is to create of favorable conditions for the education, rehabilitation and preparation for independent life of orphans and children left without parental care in a environment that is very close to the family (Standard Rules for Activities of The Children Village of Family Type art 2). The village consists of several families. The family contains of children and people called mothers, who are taking care of kids (Law about Children Village of Family Type and House of Youth art 11). The total number of kids who lives in the family should not exceed ten people (Standard Rules for Activities of The Children Village of Family Type art 2). In this organization child has right which can be divided into right of right to live and be raised the village, express own opinion, and to have living space. He or she right of protection legitimate interests, and rights to property, and right to welfare payments. Each child has right to live and be raised in the village, and has a right be taken care of (Law about Children Village of Family Type and House of Youth art 5). Besides, the child has right to express his or her opinion in the family, which affects his or her interests. When the child's opinion, who reaches ten years old, has to be taken into account, especially if the court considers to return him or her the parents, or to deprive or revoke parental rights (Law about Children Village of Family Type and House of Youth art 6). In addition, the child has a right to protection of his interest, which has to be secured by the administration of the village, child care and protection authorities court, prosecutor and etc. if the child's interest were violated, he or her has a right to apply for the protection of the interests by himself. The example of violation of the interests can be the poor living conditions or restricted access to elementary, middle of high school, or to vocational or higher education. The child under fourteen years old can apply to child protection authority. If the child fourteen years old and over he or she can clam violation of the rights to the court (Law about Children Village of Family Type and House of Youth art 7). In addition, the child keeps the right of the common property during the stay of the village (Law about Children Village of Family Type and House of Youth art 8). In addition, the child preserve the right to the property, like properties received by gift or inheritance and profits, which are obtained in the form of interest from a bank deposit, from the lease of his or her house or apartment, and earnings from professional, creative, labor or other activities (Law about Children Village of Family Type and House of Youth art 9). Lastly, the child has the right to the welfare or other social payments. All payments that he or she receives, as well as revenue received from the parents to the maintenance for hos or her existence are transferred (Law about Children Village of Family Type and House of Youth art 10) to the personal account of the child.

Besides, there are orphanages. The "Standard Rules for Activities of Types of Educational Organizations for Orphans, or Children who Left without Parental Care", from June 18, 2003, defines orphanage as the legal entity, which has the separate property, stamps with its own name, bank account, and standard forms. The orphanage independently develops an educational program in accordance with psychophysiological features of the child, health requirements, and the requirements of protection rights and interests for the orphans, or the kids, who are left without parental care, as well (Order on the Approval of the Standard Rules for Activities of Types of Educational Organizations for Orphans, or Children who Left without Parental Care art 2). Besides, the orphanage accepts all kids from the birth till the eighteen years old all years around, including orphans, or the kids who is left with out parents, because of death, incapacitation, or deprivation of parental rights (Order on the Approval of the Standard Rules for Activities of Types of Educational Organi-

zations for Orphans, or Children who Left without Parental Care art 18.1). Some of objectives of the orphanage include creation conditions of educational development by providing necessary conditions for living, education, and placement to live. Others objectives are assisting in establishing of creative, spiritual, and physical developments and personal capacities, building strong foundations of morality and a healthy lifestyle, and improving intelligence by creating conditions for the development of personality (Order on the Approval of the Standard Rules for Activities of Types of Educational Organizations for Orphans, or Children who Left without Parental Care art 6). Groups of different ages or the same ages are at the orphanage. Each group has to have no more than fifteen people. There are, also two categories of groups, which are preschool category and category of school age. The preschool is divided into three groups. The first is" junior group", which consist of kids from three to four years old. The second group is middle group, which include kids from four years old till five years old. The last group is preschool group, which prepare to school the kids from five till six or seven years old (Order on the Approval of the Standard Rules for Activities of Types of Educational Organizations for Orphans, or Children who Left without Parental Care art 16). The older kids, who at the school age, attend comprehensive corresponding local school. Another option for kids at the school age is to attend residential boarding school. The definition of the residential boarding school, is the same as orphanage, which is legal entity with own property, stamps, bank account and develops educational programs in in accordance with psychophysiological features of the child, health requirements, and the requirements of protection rights and interests for the orphans, or the kids, who are left without parental care (Standard Rules for Activities of Types of Residential Boarding Schools for Orphans, or Children who Left without Parental Care art 2). Additionally, the other definition is that the residential boarding school is organization for residence for orphans or children, who are left with out parental care, and which teaches the kids from first to the eleventh grade. The kids from six or seven till eighteen years are attending these educational organizations (Standard Rules for Activities of Types of Residential Boarding Schools for Orphans, or Children who Left without Parental Care art7). The school has to have up to twenty students. The main objectives are providing to students with the conditions for education, social adaptation, rehabilitation and integration into society, introducing new modern educational methods, and establishing social protection, medical, psychological, educational rehabilitation and social adaptation (Standard Rules for Activities of Types of Residential Boarding Schools for Orphans, or Children who Left without Parental Care art 3).

The other type of taking care kid, who is left with out custody of, is when other people make the decision to take care him or her. It has the different forms, which include trusteeship, guardianship, patronage, foster care, guest gamily, and adoption. The difference between trusteeship and guardianship is that guardianship takes kids take kids up to fourteen years old, whereas guardianship takes care of kids from fourteen to sixteen years old (Law of the of the Rights of the Child art 27.2). The guardianship or trusteeship can be person who in an adult. There are several exceptions of becoming trusteeship or guardianship. Some of them include that people who are deprived from parental rights. Who has no permanent place of living, or without citizenship are restricted to become trusteeship or guardianship. In addition, the main duty is to take care of his health, physical, mental, moral and spiritual development. He or she can chose the type of school and methods of raising child. They, also receive monetary pension for taking care of the child. Besides, patronage is when the children transferred to the family based on agreement between the agencies and the family, which is willing to take care of the family. The main goal is to create socialization of the child, gaining experience in family life. The patronage, also receive the monetary pension for providing for the child (Code of the Republic of Kazakhstan on the Marriage and Family art 133).

Furthermore, a foster family is one of the most common forms of raising orphans in the world. And, it is a great alternative to orphanages and the coming decades is the way for Kazakhstan to solve the problem of integrating orphans into society. If in foster care, wages are paid to one parent, in foster care the wages are paid to both parents. The foster family can accept from four till ten kids, also it can accept siblings. The division of the siblings is prohibited, except when it is it meets the interests of children, in other words, the children do not know about their relationship, they did not live and were not raised together. The foster care also has the agreement. The livings conditions, raising methods, education, and obligations and rights of the specials organs, and parents have to be included to the agreement. The foster parents gave the same obligations as parents in trusteeship, or guardianship. The child placed in the foster care family according to his or her opin-

ion. If the child is ten years or more, he or she is placed to the family only with his or her agreement (Code of the Republic of Kazakhstan on the Family art 132).

Besides, guest family is the type when the kid, who is in orphanage and as the guest, visits the family on the weekend or holidays in order to be in a family atmosphere. The family can take several kids into the family. The division of the siblings is prohibited, except when it is not contradicted to his or her interests. For example, when siblings do not know about each other existence, do not grow up or live together. There is no payment for taking the child into a guest family. Additionally, the guest family is based on the agreement. The agreement lasts for one year. For the preschool child the terms for staying in the guest family has to be up to one month. Usually the terms of staying is determined by executive bodies of child care and protection authorities which deal trusteeship and guardianship, and based on agreement of parties. The separate agreement is made for each kid. The kid, who is ten years or older or older, can be send to the guest family only with his agreement, The agreement can be terminated before the expiration if the person who is adoptive parent decides to cancel it based on valid reasons, such as disease, feud between kids, miscommunication and misunderstanding between child and parent or change in marital or financial status. Other reasons are based on executive body decisions. The excusive body can terminate contract early if there are unfourable conditions for raising the child. The last reasons is when child is transferred to trusteeship or guardianship, patronage or adoption (Code of the Republic of Kazakhstan on the Marriage and Family art 137). Besides, the person who took the child into the guest family is obliged to be responsible of the life and health of the child during his or her temporary stay in the family, create the necessary conditions for leisure activities and teach new skills. The other obligations include returning the child to the agency on time, to inform executive body about any emergences with in twenty-four hours, and keep in touch with the executive body. Additionally, the guest parent is prohibited take the child abroad, and leave the child under the supervision of third parties, except when child is placed to the medical center in order to receive medical care. The adult can be a guest expect, person who is deprived from parental rights, has no permanent place of living, former adoptive parents, if the adoption is canceled due to their fault, person who is convicted for intentional crime and who is registered the drug rehabilitation center or mental institution (Order of the Minister of Education and Science of the Republic of Kazakhstan on the Approval of the Guest family Regulations).

Last, the adoption is the form, which is based on the court decision. In the adoption child should feel like the full member of the family and becomes the daughter or the son to new parents. The adoptive parent should be older than his or her adoptive child no less than sixteen years old. The maximum age difference should be forty-five years (Code of the Republic of Kazakhstan on the Marriage and Family art 92). The adoptive parents, also can adopt siblings, or several kids, that are not related The siblings have to be adopted together with the exceptions, if it is not contradict the interests of the kids (Code of the Republic of Kazakhstan on the Marriage and Family art 90). Moreover an adult can become adoptive parents, except person who is deprived from parental rights, legally incompetent, or who at the time of the adoption does not have enough income to provide child. Enough income should be equal to minimum living wage of the Republic of Kazakhstan, which is 29 698 tenge (Law of the of Republic of Kazakhstan about the Republican Budget for 2019-2021art 8). Other prohibitions include the person who is suspended from the duties of a guardian or trustee because of the improper performance of the duties former adoptive parents, if the court through their fault cancels the adoption, and due to health conditions where parents cannot exercise parental rights (Code of the Republic of Kazakhstan on the Marriage and Family art 91). AIDS, alcoholism, or drug addiction is included to these health conditions (Order of the Minister of Health and Social Development of the Republic of Kazakhstan on Approval of the List of Diseases of which a Person Can not Adopt a Child, Take Him or Her under Guardianship Trusteeship, or Patronage). Besides, the duty of the adoptive parents includes taking care of children's emotional, physical, and moral well-being. The parents have a right to choose the type of education and the methods of raising child according to the his or her opinion, recommendation of the agencies and the laws of the Republic of Kazakhstan. They, also, receive one time payment that related to adoption (Code of the Republic of Kazakhstan on the Marriage and Family art 86). The adoptive parents, who are the resident of and permanently lives in Kazakhstan, can choose to take child under guardianship, trusteeship or patronage. The child has be to under one year old (Code of the Republic of Kazakhstan on the Marriage and Family art 85). The consent of parents is necessary for the adoption of a child, the consent of legal representatives is also necessary, when the adoption of the child, who is under of sixteen years old. If the

child is under the patronage agreement, the consent of patronage parent is needed (Code of the Republic of Kazakhstan on the Marriage and Family art 93). The child can be adopted with out consent if his or her parents are deprived from parental rights, unknown, or declared by court dead or legally incompetent (Code of the Republic of Kazakhstan on the Marriage and Family art 94). The adopted child loses personal non-property and property rights. And he or she is relieved of duties in connection to his or her blood related parents, as well. In a relationship of the adoptive parents to the child, and vice versa has the same personal, property or non-property right as it was given by birth (Code of the Republic of Kazakhstan on the Marriage and Family art 100). For the parents adoption is the highest degree of responsibility for the life and development of the child.

Problem and

The law is mostly concentrated on an orphan who is under eighteen

In the Kazakhstan there are several organizations and legislations, which support orphans who over eighteen, in other words the graduate of the orphanage. They are the house of youth, housing and education legislations, and non-governmental organizations. The House of Youth, like the Children Village of Family Type, is the part of the international organization, which is called SOS Kinderdorf. This house accepts the students of children's villages and graduates of orphanages, residential boarding schools for orphans and children left without parental care. This organization accepts the young people, who are from eighteen to twenty-three years old, except of he or her did not suffer from neuropsychiatric diseases (The Law of the of the Rights of the Child art 30.1). There are five houses in the Kazakhstan, which are located in Nursultan, Almaty, and Temirtay. Each house has about sixteen students. And, overall there are about 102 people, including students and teachers during their stay in House of Youth, adolescents acquire the skills of independent living, receive professional education and accumulate funds to purchase housing after leaving custodianship. The main goal is to educate adolescents in social and life skills, to help them orient themselves and obtain a profession. The other goals include create conditions for social adaptation to public life, provide professional training, assist in finding employment. The rights of adolescents who lives in the village include demanding protection of their legal rights and interests, using the property and equipment, which are provided to him or her, getting a professional and vocational education, and enjoying the benefits provided by the legislation of the Republic of Kazakhstan. Besides, utilize the provided living space, or room, for its intended purpose, and keep it clean and tidy, ensure the safety of the living space, and equipment, and comply with safety regulations are obligations of the adolescents who lives in the village. The adolescents in these types of villages live under full government support. Also, there is a guarantee of full state support during the time they receive higher, post-secondary or vocational education. The adolescent has to be the full time student (Law about Children Village of Family Type and House of Youth). The critism of the organization, that there is not enough House of Youth in Kazakshstan. The other regions need these organizations too. Especially in a huge need is in the North Kazakhstan and Kostanay Regions, because the resolving the housing issue is very crucial there (Anel Urazbayev, 'Housing Policy Analysis of Implementation of Housing Rights for Orphans in Republic of Kazakhstan' (Corporate Foundation SOS Children's Village Kazakhstan 2011)).

Besides, each child has the right to obtain property according to the laws of the Republic of Kazakhstan. The law which is allowed orphan the obtain property is also described at the Law of the Republic of Kazakhstan about Housing Relationship from April 16, 1997. The law states that the housing, which is rent by local authorities, is provided to the social vulnerable population (Law of the Republic of Kazakhstan about Housing Relationship art 67). The social vulnerable population consists of disabled person, the veteran of Great Patriotic War, WWII, mother of many children, and orphan (Law of the Republic of Kazakhstan about Housing Relationship art 68). The citizen, who has no permanent place of living is acknowledged of being need of the place of living from the state housing fund, if he or she they do not have or own any housing at the moment of the registration, does not have rented place which is with out foreclosure right, or the place of living is in dangerous zone (Law of the Republic of Kazakhstan about Housing Relationship art 69). The registration of the citizen, to whom the housing is can be provided, carries out at the place of the residence. The orphans has is on the list of candidates who has the prerogative right to receive the place of living. And has the high priority to be one of the first to obtain it (Law of the Republic of Kazakhstan about Housing Relationship art 74). In order to the orphan receive the permanent place of living, the legal representative has to register him o her to the

local authorities (Law of the Republic of Kazakhstan about Housing Relationship 71). The size of the housing from the fund should be no less more than fifteen and no more than eighteen square kilometers. It should not be bigger than one bedroom apartment or room from municipal apartments (Law of the Republic of Kazakhstan about Housing Relationship). The child orphan, or the child who is left with out parental care saves the right to property, even if he or she under the guardianship or trusteeship, or patronage. Beside, the child saves the rights to the provided housing until reaching eighteen years old, even he or she is temporary located at medical or other organizations, or temporary isolation from society. The orphan cannot be evicted from occupied housing, with out providing another one. Alienation transaction, including exchange of giving housing is not allowed for the orphans who have not reached fourteen years old. Also, conclusion of guarantee agreement on his or her behalf, mortgage transactions, transaction of division of the home or apartments, abandonment of his or her right by inheritance or will are strictly prohibited (The Law of the of the Rights of the Child art 14). In addition, the local executive authorities keep records, practices and provide control for safety for housing for orphans, and establish custody of the home. Legal representative of the orphan can lease his or her house or apartment, which is based on the agreement. The profit of the leasing is going to the personal bank account of the orphan. Besides, there is special order of rules of preservation of housing of the orphans. First, there is the order of the housing. Second, there is establishment of the custody of the hosing. Then, there is the leasing of the housing, which belong to the orphans. The last step is the fulfillment of control of performance of the of legal representative's duties. Improper fulfillment of duties is illegal, and prosecuted by legal authorities (The Law of the of the Rights of the Child art 15). The orphan or the child who is left with out parental care cannot be removed from the registration for the provision of hosing (Law of the Republic of Kazakhstan about Housing Relationship art 70). Even though the orphan has the preemptive right to obtain the apartment, the execution of this law has a huge critism. Unlike other citizens from the list of socially vulnerable parts of the population, orphans are most vulnerable, due to they have nowhere to go and nowhere to turn to. And most often this category most often faces this problem. The main reasons are vary long lines to get the housing, slow pace of construction, lack of guarantee from the government, and high level of corruption from government officials. There is, also, problems in legislation, which include the deadlines for obtaining housing are not regulated, the age at which the orphan must receive housing is not specified, and the safety order for providing housing is not considered. Besides, inspections by prosecutors reveal numerous violations of the law related to improper work of the authorized body, violation of the constitutional rights of citizens to affordable housing and the principles of proportionality of housing. The prosecutor's office revealed that in several regions the administration of orphanages does not file documents on the allocation of living space to graduates of residential boarding schools. For example, the administration of one of the residential boarding school of Kyzylorda did not prepare documents and did not register some students, although several of them already needed housing. On the other hand, the prosecution authorities, and other bodies, may not be fully realize rights of orphan due to the lack of control over the registration of them, who are under the care of individuals. Executive bodies of childcare and protection authorities should be monitor this situation. However, there is no enough personnel. It is most likely that staff is physically unable independently ensure that child under the guardianship of individuals are registered on time. Executive bodies of childcare and protection authorities do not control activities of guardians. It is established that they violate the rights of orphans to real estate remaining from their parents. It is established that they violate the rights of real estate of orphans, which remained from their parents. There are some facts of the alienation of orphans. For example, guardian sells a child's apartment or registers it under himself. Another problem is condition of the housing. Most of these apartments require reconstructions or became inaptitude. There are no laws in the legislation securing the safety of housing belonging to orphan, or monitoring the safety of such housing. As a result living place may become unsuitable for living. Besides, there is some critique of the governmental authorities. For example, the local authorities are criticized because they of insufficient amount of free housing, Failure to comply with priority when providing housing to certain categories, and lack of control. The executive bodies of child care and protection authorities are judged because they do not take official measures to preserve the housing of a foster child in practice. There are not enough specialized juvenile justice prosecutors, as well. And international organizations are often criticized, because they act within their mandate (A Urazbayev, 'Housing Policy Analysis of Implementation of Housing Rights for Orphans in Republic of

Kazakhstan' (Corporate Foundation SOS Children's Village Kazakhstan 2011)).

Also, there is a law about education. It states that students, who want to receive educational grant in order to receive free higher education is eligible, if he or she is awarded "Altyn Belgi" (award for achieving high grades), has the documents on the formation of autonomous educational organizations, or win first, second, or third places international, national, regional intellectual competitions and scientific projects. The student is eligible for grant if he or she gain first, second, or third place in sport competition for the last three years. In the case of the same indicators when conducting a competition for educational grants, the orphan has the preemptive right to receive it (Law of Republic of Kazakhstan on Education art 25.5). Besides, the orphan has the quota for the admission for higher education. This quota is one percent (Law on On the Approval of the Size of the Admission Quota for Admission to Study at Educational Institutions Implementing Educational Programs for Technical and Vocational, Post-secondary and Higher Education). Also, student of high education are eligible for state scholarship. State scholarship is paid to the most gifted full-time student. The orphan, who is according to the results of intermediate assessments has the highest grades, has the right to receive enhanced state scholarship (Law of Republic of Kazakhstan on Education art 47.7). For the orphan the enhanced state scholarship is increased on thirty percent of state scholarship. It is about 27,000 tenge ('Sizes and types of government scholarships for students of the RK' (eGov.kz, 28 June 2019)).

Furthermore, there are non-governmental organizations like, association of legal entities, "Association of Graduates of Orphanages in Kazakhstan ", and "Jastar Uyi" (Home of Youth), which is center for adaptation and support of graduates of social institutions. These kinds of organizations help graduates. The goal of these organizations is creation of community of young, ambitious, aspiring people based on the principles of democracy, humanity, tolerance, humanity and mutual assistance. Other goals include contribution to the acceleration and improvement of the quality of social adaptation processes and the protection of graduates of orphanages, promotion the formation and regulation of a legislative platform that protects the rights and interests of graduates of orphanages, and strengthening connection and improving the quality of interaction between the public and the state. Moreover, the objectives consist of creation and development of an information database, study and control of adaptation of the graduates, and assistance of creating jobs. Other objectives are design, creation and development of a system of training programs and social products aimed at strengthening self-confidence, improvement and implementation of skills and abilities of graduates of orphanages, as well as creation of a structure for legal protection of the rights and interests. The mission is multifaceted assistance in the successful social adaptation of graduates of orphanages in Kazakhstan, help in entering an independent adult life, and cooperation in becoming citizens with an active lifestyle. And values are the community of active builders of society, aware of their role, rights, opportunities, as well as responsibility, effective equal partnership of public institutions and state bodies, and a solid legal framework protecting rights and interests of graduates of orphanages. Besides, non-governmental organizations actively work in Kazakhstan to protect citizens' housing rights. The example of these organizations include "Оставим народу жилье" (Leave Housing to People), "Гражданское право на жилье" (Civil Housing Law), "Обеспечьте народу жилье" (Provide Housing to People), and etc. However, these public organizations are created to protect the rights of their members from illegal eviction during housing demolitions or non-repayment of loans. In addition, they are mainly engaged in protecting the rights of interest holders or the rights of individuals in mortgage lending (A Urazbayev, 'Housing Policy Analysis of Implementation of Housing Rights for Orphans in Republic of Kazakhstan' (Corporate Foundation SOS Children's Village Kazakhstan 2011)).

Other Countries

Russian Federation

The law of the Russian Federation is similar to the legislation of Republic of Kazakhstan. The definition is very similar which is the child who lost their parents before they turn eighteen. There are, also, the same forms, which are guardianship and trusteeship. The same like in Kazakhstan, the in Russia, and the guardianships is up to fourteen years old, and trusteeship from fourteen to eighteen years old. There are, also, adoption, patronage and foster care. The adoption of siblings is strictly prohibited (Family Code of the Russian Federation art). The law, also says that orphans who are between eighteen and twenty–three years old and whose parents or only parent died before eighteen years old have a rights for additional warranties for social protection (Federal Law of Additional Warranties for Social Protection of Orphans and Children Remaining

without Parental Care art 1). The legislation includes the housing law and education law. The law states that orphans, who have fixed housing, save the property right to it, while they are in the educational facilities, institutions of all types of vocational education or military. It is, also, claims that graduates from the orphanages, who are not having fixed housing, have a right to obtain it out of turn. In the absence of the necessary housing, they can receive a target non-repayable grant to further obtain a housing (Federal Law of Additional Warranties for Social Protection of Orphans and Children Remaining without Parental Care art 8). Besides, the orphans, who are complete general secondary education, are enrolled in courses for preparing for admission to institutions of secondary and higher professional education without charging tuition. They have a right to obtain free second primary vocational education, and under full state support until they graduate from the higher educational or vocational facility as well. In addition, the orphans are are paid the full scholarship during the study, and salaries during the internship. The scholarship has be bigger no less than five hungered percent in comparison with the size of the scholarship established for students in educational facility, and salary has to be one hungered percent. Furthemore, they receive annual allowance till the end of graduation, which is equal to three scholarships. The scholarship is supplied for acquisition of textbooks and writing materials. When employed by enterprises, institutions and organizations of all forms of ownership, the orphans are provided with one-time cash benefit, which no less than five minimum wages, as well as clothing, shoes, soft inventory and equipment (Federal Law of Additional Warranties for Social Protection of Orphans and Children Remaining without Parental Care art 6). Last, there is a SOS Kinderdorph. It located in seven regions, which are located in Moscow region, Saint Petersburg, Murmansk, Orel, Pskov, Vologda, and Kazan. Similar to Kazakhstan, the organization has the Children Village, which is consist of ten to five families. Each family includes about seven children. The SOS Kinderdorph Russia has the three youth programs, as well. The first youth program is for the kids, who are between twelve and fourteen years old. It has psychological counseling and initial career guidance. It, also, help to develop household and communication skills. The second program includes the orphans who are between fourteen and eighteen years old. In this program the youth learn how to get used to independent life with in three or four years. The last program is for the orphans who are eighteen years old. This program is the program of accompaniment and lasts from three to five years. In this program orphans receive social philological, and financial support (Sos Kinderdorph Russia: What We are Do. (n.d.). Retrieved from sos-dd.ru.).

Conclusion

All three countries show that orphans who are over eighteen need governmental or third party assistance, where they alumni in foster care or in orphanages. Although, Kazakhstan provides some assistance for alumni of orphanages, or orphans who are over eighteen, is still need some alterations. In the future I believe that Republic of Kazakhstan, as well as the whole world will enhance it's help and reduce the challenges of those, who have lack of voice.

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3-бөлім

ТАБИҒИ РЕСУРСТАР ЖӘНЕ ЭКОЛОГИЯЛЫҚ ҚҰҚЫҚ

Section 3

NATURAL RESOURCES AND ECOLOGY LAW

Раздел 3

ПРИРОДОРЕСУРСОВОЕ И ЭКОЛОГИЧЕСКОЕ ПРАВО

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[1]A. Rzabay , [2]L.K. Yerkinbayeva , [3]N.M. Remi

[1]I. Zhansugurov Zhetysu State University,
Kazakhstan, Taldykorgan, e-mail: toty_r@mail.ru
[2]Al-Farabi Kazakh National University,
Kazakhstan, Almaty, e-mail: yerkinbayeva67@gmail.com
[3]Universidad de Cádiz is an autonomous community in southern Spain Andalusia,
Spain, Cadiz, e-mail: michei.remi@usa.es

PECULIARITIES OF INTERNATIONAL SOURCES OF ENVIRONMENTAL LAW OF THE REPUBLIC OF KAZAKHSTAN

Abstract. This article discusses the theoretical and practical aspects of the international sources of environmental law and their impact on the development of the national legislation of the Republic of Kazakhstan. These days Kazakhstan is directly involved in the process of international legal cooperation in the field of environmental protection and rational use of natural resources. In this regard, the issues of recognition and adoption at the domestic level of the norms and principles of international environmental and legal cooperation, as well as determining their place in the system of sources of national environmental law, are of particular importance. In the current interconnected and interdependent world, the special role of inter-state regulation of the most pressing problems of mankind is becoming increasingly clear; among these problems directly and indisputably are, first of all, the problems of environmental protection and its preservation for the benefit of present and future generations. The rules developed in the process of such interaction of states, united in an international agreement, cannot act in isolation without interacting with the rules of domestic law. Moreover, such interaction is demonstrated in the allocation of a special category of sources (normative legal acts) of an international character in the general system of sources of domestic law; and the constitutional and legal perception of international agreement norms can be characterized by the recognition of a separate, special preferential position of such norms over the norms of national laws. In conclusion, the author presents theoretical statements, as well as practical recommendations on improving the existing environmental legislation of the Republic of Kazakhstan.

Key words: environmental legislation, sources of law, implementation, norms of international law, national legislation.

[1]А. Рзабай, [2]Л.Қ. Еркинбаева, [3]Н.М. Реми

[1]І. Жансүгіров атындағы Жетісу мемлекеттік университеті,
Қазақстан, Талдықорған қ., e-mail: toty_r@mail.ru
[2]әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: yerkinbayeva67@gmail.com
[3]Испанияның автономдық бірлестігі Андалусиядағы Кадис университеті,
Испания, Кадис қ., e-mail: michei.remi@usa.es

Қазақстан Республикасының экологиялық құқықтың халықаралық қайнар көздерінің ерекшеліктері

Аңдатпа. Ұсынылып отырған мақалада экологиялық құқықтың халықаралық қайнар көздерінің теориялық және практикалық мәселелері және олардың Қазақстан Республикасының ұлттық заңнамасын дамытуға бағытталған әсері талқыланады. Қазіргі кезде Қазақстан қоршаған ортаны қорғау және табиғи ресурстарды ұтымды пайдалану саласында халықаралық-құқықтық ынтымақтастық процесіне қатысуға мүдделі. Осыған байланысты халықаралық деңгейдегі экологиялық құқық нормалары мен қағидалардың ұлттық деңгейде қабылдау және ұлттық құқық көздері жүйесіндегі олардың орнын анықтау мәселелері ерекше маңызға ие. Қазіргі кезде өзара байланысты және өзара тәуелді әлемде адамзаттың ең өзекті мәселелерін мемлекетаралық реттеудің ерекше рөлі айқындала түсуде, ол тікелей және сөзсіз, ең алдымен, қоршаған ортаны қорғау және оны қазіргі және болашақ ұрпақтардың игілігі үшін сақтау проблемаларын қамтиды. Халықаралық шартта біріктірілген мемлекеттер арасындағы осындай өзара іс-қимыл процесінде

құрылған нормалар ішкі құқық нормаларымен өзара әрекеттесусіз оқшау әрекет ете алмайды. Сонымен қатар, мұндай өзара іс-қимыл халықаралық сипаттағы қайнарлардың ерекше санатын (нормативтік құқықтық актілерді) ішкі құқықтың жалпы жүйесінде бөлу кезінде көрінеді, ал халықаралық шарт нормаларын конституциялық және құқықтық қабылдау ұлттық заңдардың нормаларына қарағанда мұндай нормалардың жеке, арнайы преференциялық ережелерін танумен сипатталуы мүмкін. Қорытындылай келе авторлар теориялық ережелерді, сонымен қатар Қазақстан Республикасының қолданыстағы экологиялық заңнамасын жетілдіруге арналған практикалық ұсыныстарды ұсынады.

Түйін сөздер: экологиялық заңдар, құқық қайнар көздері, имплементация, халықаралық құқық нормалары, ұлттық заңнамалары.

[1]А. Рзабай, [2]Л.Қ. Еркинбаева, [3]Н.М. Реми

[1]Жетысуский государственный университет им. И. Жансугурова,
Казахстан, г. Талдыкорган, e-mail: toty_r@mail.ru
[2]Казахский национальный университет имени аль-Фараби,
Казахстан, г. Алматы, e-mail: yerkinbayeva67@gmail.com
[3]Университет Кадиса автономного сообщество Испании Андалусия,
Испания, г. Кадис, e-mail: michei.remi@usa.es

Особенности международных источников экологического права Республики Казахстан

Аннотация. В данной статье рассматриваются теоретические и практические аспекты международных источников экологического права и их влияние на развитие национального законодательства Республики Казахстан. В настоящее время Казахстан непосредственно вовлечен в процесс международно-правового сотрудничества в области охраны окружающей среды и рационального использования природных ресурсов. В связи с этим особое значение приобретают вопросы признания и принятия на внутреннем уровне норм и принципов международного экологического права, а также определения их места в системе источников национального права. В современном взаимосвязанном и взаимозависимом мире все четче проявляется особая роль межгосударственного регулирования наиболее актуальных проблем человечества, к числу которых, непосредственно и бесспорно, можно отнести, прежде всего, проблемы охраны окружающей среды и ее сохранения на благо нынешних и будущих поколений. Создаваемые в процессе такого взаимодействия государств нормы, объединенные в международный договор, не могут действовать изолировано, не взаимодействуя с нормами внутригосударственного права. Более того, такое взаимодействие проявляется в выделении особой категории источников (нормативно-правовых актов) международного характера в общей системе источников внутригосударственного права, а конституционно-правовое восприятие международных договорных норм может характеризоваться признанием обособленного, особого преимущественного положения таких норм над нормами национальных законов. В заключении автор представляет теоретические положения, а также практические рекомендации по совершенствованию действующего экологического законодательства Республики Казахстан.

Ключевые слова: экологическое законодательство, источники права, имплементация, нормы международного права, национальное законодательство.

Introduction

In the current world, the issues of environmental protection and rational use of natural resources are really significant. And the fate of the present and future generations of people will depend on the way humanity will treat these issues, and what measures will be taken to preserve a favorable environment and prevent the predatory use of natural resources. In fact, such concepts as “conservation” and “rational use of natural resources” are sometimes deliberately pushed back in order to achieve, first of all, maximum economic performance and economic benefits. Some human activities characterized by consumer attitudes, primarily towards the environment, have already led to the fact that certain environmental problems arisen as a result of such activities are considered as insoluble or difficult to resolve.

The methodology of the study includes general and individual methods of research and materialistic dialectics, formal and logical, historic and legal, system and analytical, comparative and legal, and specific and sociological research methods. Using this methods give us the possibilities to achive main tasks of the research.

Discussion

In the context of the above-mentioned aspects of problems, the legal regulation of environmental protection and rational use of natural resources is particularly important. The legal systems of almost all countries of the world are characterized by the presence of special and essential sectors – environmental and natural resource law. This is understandable from the standpoint that, firstly, almost all states, one way or another, have faced with the need for legal regulation of relations arising in the use of natural resources, and, secondly, they recognized the special role of legal ecology as part of social ecology, aimed at studying the legal aspects of interaction between society and nature, legal problems of ecology. Today, the principle of the sovereignty of the state over its natural resources requires international environmental law to have science-based conceptualization and a "special" approach in determining the rights and obligations of the states in ensuring environmental security at the international level. On the one hand, the states have the right to pursue their own economic and environmental policies, including the conservation and use of their natural resources, as well as the free management of their natural resources; on the other, obligations and responsibilities have arisen that restrict the freedom of action of the states (Alexidze 1982: 164).

International legal norms, as a rule, impose obligations, first of all, on states, as the main creators of such norms. Such norms may work on the territory of states as well. At the same time, it cannot be stated that such obligations are imposed on the participants of interstate relations through the state. Their impact on these relations, however, is of an indirect nature and is implemented through regulation of international interstate relations (Chernichenko 1974: 44).

Customary international law is a direct source of domestic law if the state does not take explicit measures to ensure that a particular customary rule does not have the power of domestic law. In this case the customary rule may be applied by the courts in judicial proceedings between citizens. International customary law can also restrict the exercise of state power and can equally determine the parameters in which a state can lawfully enact laws. For example, it can define the limits of the jurisdiction of states over persons and territory (Chernichenko 1999: 298).

The goal of legal regulation of interstate relations can be the desire to induce their participants to a certain regulation of intra-state relations, to achieve certain results in the sphere of intra-state relations. However, in many cases, the participants in interstate relations seek to resolve the problems arising between them in the international arena, not having the purpose of specifically achieving any changes in the system of social relations that are formed within the power of each of them (Dahm 1958: 55).

In general, the "law of international treaties" reflects the tension between the requirements of stability and changes. On the one hand, as a rule, its goal is to ensure stability despite changing circumstances. On the other hand, domestic legal systems should also leave room for consideration of subsequent changes in order to ensure constructive respect for the consent of the parties and the definition of its limits. And it is very important to have mechanisms for implementing the norms of international treaties. However, they should not impede the implementation of the sovereignty of any state (Chernichenko 1999: 298).

In a broad sense, the boundaries between national and international law and order can be analyzed from three different perspectives: (i) how the national rule of law understands, accepts and opposes the international legal order; (ii) how the international rule of law understands, accepts and opposes the national supremacy of law; and (iii) how interactions can be understood and evaluated from external angles. The international community has prepared extensive research on the national recognition of international law, including the international supremacy of law (De Mestral, 2015: 298).

Nevertheless, in any case, the implementation of international law does not occur without the implementation of domestic law. This manifests a dialectical connection between the two legal systems (dialectical dualism) (Decision of the Constitutional Council…, 2000). In this case, domestic law must be consistent with international to ensure the implementation of the latter. In this sense, we can talk about the primacy of international law. In other words, the state must either adopt new norms of national law (or individual legal regulations) in order to prevent obligations arising from the norms of international law or individual international legal norms, or to exercise their rights coming from such norms or regulations, or change existing ones, or be sure that its internal law fully meets the mentioned norms and that the activities of the domestic authorities, officials, organisations and citizens will be in line with the implementation of relevant international legal norms, and will be considered

in the international arena as the activity of the state itself in the implementation of international legal norms (Emelyanova 2013: 3).

Thus, it can be concluded that states, by virtue of international law, undertake to fulfil all their international obligations. Defining implementation methods of international obligations relates to the manifestation of state sovereignty and falls within the internal competence of the states themselves. In this regard, it can be concluded that international law requires to be conducted in the domestic law, and the choice of the path and technology remains granted to national law (Hohenveldern 1962: 90). For example, Hohenveldern believes that general international law does not concern the method by which the state fulfils its international obligations. The state may even decide not to establish any general permanent procedure that ensures its internal order is consistent with international law, provided that such a necessary result will be achieved in some way. However, for practical reasons, the state is more than inclined to provide such a procedure (Kanetake 2014: 14).

A significant part in ensuring the environmental security of the country belongs to the law, both at the international and national levels. Unification of the environmental law standards of the Republic of Kazakhstan and foreign countries, recognition of the special role of international environmental agreements are the main guarantors of environmental safety provision. At the same time, in addition to the fact that the Republic has and continues to develop environmental legislation, the status of Kazakhstan as an independent state, a full member of the international community, a subject of international law, and, in this regard, the integration of the Republic into the developing system of international environmental law relations, predetermine the recognition and implementation at the domestic level of special international legal norms and principles for the protection of the environment.

That is, Kazakhstan, by virtue of these provisions, already aims to protect the environment, which is favorable not only for the life and health of man and citizen in the Republic. The case in hand is about the participation of the Republic in the global process of environmental protection for the benefit of all mankind. Thus, we should not be limited only to our own internal environmental problems and, at the same time, the latter cannot always be solved only by our own efforts. Depending on the severity and scale of an environmental problem that has arisen in the Republic of Kazakhstan, its resolution becomes possible through cooperation with other states and specialized international organizations and bodies, which once again confirms the fact that most environmental problems should be recognized as "international", universal.

On the whole, the solidarity in interests in solving many environmental problems, the "transnational" nature of the latter, the active development and refinement of international cooperation of the state on environmental issues, as well as many other related factors, cannot but affect the process of legislative registration of provisions relating to environmental and legal relations at the domestic level. In particular, the environmental law of the Republic of Kazakhstan, so as other branches of Kazakhstan's law have been affected by the expansion of inter-state legal relations of Kazakhstan as an independent entity, the impact of the process and the results of international law-making. At that, it should also be noted that the Constitution of the country, which has the highest legal force on the entire territory of Kazakhstan, recognized as a "law in force" international agreements and other obligations of the Republic (Part 1, Art. 4 of the Constitution), as well as the priority of the norms of international treaties ratified by Kazakhstan in relation to the norms of the national laws (Part 3, Art.4 of the Constitution) (Lapteva 2008: 95).

In confirming the provisions characterizing the close relationship and interdependence of Kazakhstan and international environmental law, as well as the fact that Kazakhstan's further participation in international legal relations in the field of environmental protection will only contribute to the improvement of Kazakhstan's environmental legislation, it is necessary to note the following.

Kazakhstan is an active participant in international environmental cooperation. According to some analysts, more than 30 ratified and equated to them international treaties of the Republic of Kazakhstan are related to environmental issues (Mingazov 1990: 316).

We consider it necessary to note in favor of the relevance of the chosen research topic, that the constitutional and legal recognition and perception of the norms of international treaties and, in particular, international environmental treaties of the Republic of Kazakhstan directly affect the process of transformation of international conventional rules of Kazakhstan in the field of environmental protection into the current environmental legislation. Thus, it can be argued that a special category of international legal sources of environmental law of the Republic of Kazakhstan comes into existence. On the whole, the constitutional recognition of international

obligations as a law in force and the recognition of the primacy of the ratified international legal norms over the norms of the national legislation of the Republic of Kazakhstan, the active participation of Kazakhstan in the international conventional process on environmental protection and, as a result, the impact of international environmental law on the environmental legislation of the Republic, as well as the lack of special research in the Kazakh legal science on the place and role of the international legal norms recognized by Kazakhstan in the general system of sources of environmental law of the Republic, predetermine the relevance of the proposed study.

The general system of sources of environmental law includes the Constitution of the Republic of Kazakhstan; international treaties ratified and otherwise recognized by Kazakhstan; codes, laws; regulatory decrees and orders of the President of the Republic of Kazakhstan; regulatory resolutions and orders of the Government of the Republic of Kazakhstan; regulatory legal acts of ministries and departments; regulatory legal acts of local governments; local regulatory legal acts. The specified system of sources of environmental law of the Republic of Kazakhstan does not include custom (customary norm of law), although custom, as an unwritten rule, in the historical plan of interaction of society and nature played an important role in the regulation and maintenance of environmental management. At the present stage, custom, as a source of environmental law, is also applied, but it is mediated in the established rules of law. In the long run, it may be noted that custom, as a source of national law, takes an insignificant place and acquires a legal character in modern conditions, as a rule, as a result of authorization by certain state bodies, and the level of this authorization determines the level of ordinary norms. In international law and, in particular, in international environmental law, the recognition of a rule established in the practice of inter-state relations as an international legal norm is very often expressed by participants in international communication in a variety of forms and through various bodies. In order to establish the level of a customary rule of international law, it is generally necessary not only for such parties to recognize it as a rule of law, but also for them to recognize its certain level. In fact, the first question comes down to whether this provision is in the category of rules of "jus cogens" or "jus dispositivum" and, herewith, disputes on separate customary norms as belonging to the "jus cogens" category of rules is not excluded.

Within each of these categories of norms, different levels are generally defined. For example, within the framework of jus cogens, the highest place is undoubtedly occupied by the basic principles of international law (Muillerson 1982: 58). Among the jus dispositivum, first there are customary rules of a universal character, then there are particular rules, and then there are customary rules established within specific international organizations.

In this context, we consider it necessary to investigate the features of international legal sources of environmental law of the Republic of Kazakhstan. Thus, they are presented in the form of international treaties and optional acts (decisions, programs, declarations, resolutions), which are not international treaties in their legal content, therefore, do not contain legally binding norms and are adopted by the subjects of international legal relations (states and international organizations).

By their nature, international legal sources of environmental law of the Republic of Kazakhstan could be reasonably divided into mandatory (international treaties entered into force for the Republic of Kazakhstan: for example, the CIS Agreement on cooperation in the field of ecology and environmental protection, 1992) and advisory (subsidiary) – optional declarations (UN Declaration on environmental problems, 1972), resolutions and programs of international organizations and bodies (UN environment Program – UNEP) (Swartz 2014: 34).

According to the constitutional principle that determines the place of an international treaty in the system of the current law of the Republic, the mandatory international legal sources of environmental law can be divided into treaties that take precedence over national laws and regulations and treaties equated in their legal force to the laws and regulations of the Republic of Kazakhstan. The first category includes all international treaties ratified by the Republic of Kazakhstan in the field of environmental protection, and the second – international treaties that have entered into force for the Republic of Kazakhstan in some other way (by signing, approval by the Government of Kazakhstan, accession).

By the range of the parties, the international treaties of the Republic of Kazakhstan in the field of environmental protection can be divided into bilateral (treaties in which participates, on the one hand, the Republic of Kazakhstan, and on the other – a foreign state or a group of states) and multilateral (universal and regional international treaties with the participation of more than two states).

We have previously mentioned the norm of the Constitution of the Republic of Kazakhstan, according to which by the law in force of the Republic are recognized the rules of the Constitution, corresponding laws, other regulatory legal acts, international contractual and other obligations of the Republic as well as regulatory resolutions of the Constitutional Council and the Supreme Court of the Republic (Article 4, Part 1). At that, as already noted, the international treaties ratified by the Republic have priority over its laws and are applied directly, except when it follows from an international treaty that its application requires the publication of a law (Art. 4, Part 3) (The Constitution RK …, 1995). Thus, in cases of disagreement between the current law and a ratified international treaty regulating homogeneous relations or containing similar provisions, which, at the same time, are regulated in a different way, it is such treaties that prevail; and, for example, in cases of judicial proceedings, the court or any party in such proceedings is entitled to refer to such a treaty as a valid normative act that prevails over the relevant law.

We hold that it should be noted that in the current Law of the Republic of Kazakhstan "On Legal Acts" of April 6, 2016 the international treaties of the Republic of Kazakhstan, that is, the treaties (agreements, conventions) already recognized by the Republic of Kazakhstan and, therefore, considered valid and mandatory on the whole territory of the Republic (according to the already mentioned Part 1 of Article 4 of the Constitution of Kazakhstan), are not included in the list of normative legal acts at all, and their place in the general hierarchy of normative legal acts is not defined The Constitution RK …, 1998). It is possible, therefore, to conclude, that the Law "On legal acts" adopted after the entry into force of the Constitution of the Republic of Kazakhstan contradicts the provisions of Article 4 (Parts 1, 3) of the Constitution of the Republic of Kazakhstan. To confirm this and very significant, in our opinion, the gap (discrepancy) in the current legislation, it is necessary to consider some provisions of the Law "on legal acts". To confirm this very significant, in our opinion, gap (discrepancy) in the current legislation, it is necessary to consider some provisions of the Law "On Legal Acts". Thus, according to Article 7 of the Law of the Republic of Kazakhstan "On Legal Acts" all normative legal acts are divided into basic and derivative. The Constitution of the Republic of Kazakhstan has supreme legal force throughout the country. The law stipulates that each of the normative legal acts of the lower level may not contradict the normative legal acts of the higher levels. The normative decisions of the Constitutional Council of the Republic of Kazakhstan, the Supreme Court of the Republic of Kazakhstan and the Central Election Commission of the Republic of Kazakhstan are outside this hierarchy. The hierarchy of regulatory decisions of maslikhats, regulatory legal decisions of akimats and regulatory legal decisions of akims of administrative-territorial units is determined by the Constitution of the Republic of Kazakhstan and the legislative acts on local government. The normative resolutions of the Constitutional Council of the Republic of Kazakhstan are based only on the Constitution of the Republic of Kazakhstan, and all other normative legal acts cannot contradict them. Thus, there is a discrepancy between the Law "On Legal Acts" and the Constitution of the Republic of Kazakhstan regarding the definition of international treaties of the Republic of Kazakhstan and, in particular, the norms of such treaties as valid legal acts. At the same time, as already shown above, the Constitution itself defines the primacy of international law (the primacy of the norms of international treaties ratified by Kazakhstan over the norms of national laws).

In order for the data analysis of the conflicting provisions to be complete, we feel it necessary to consider also a special Resolution of the Constitutional Council of the Republic of Kazakhstan dated October 11, 2000 (No.18/2) – "On the official interpretation of Paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan" (The Law About legal acts…., 2016).

As is known, the Constitutional Council of the Republic of Kazakhstan has the right to give official interpretation of the norms of the Constitution (Article 72, Paragraph 4 of the Constitution), and decisions of this state body shall enter into force from the date of their adoption, are binding on the entire territory of the Republic, final and not subject to appeal (Article 74, Paragraph 3 of the Constitution). Thus, the above-mentioned Decision of the Constitutional Council cannot be interpreted ambiguously, is final and official.

The official interpretation by the Constitutional Council of the provision of Article 4 (Paragraph 3) of the Constitution of the Republic of Kazakhstan is as follows. Following this constitutional norm, the Republic of Kazakhstan expresses its consent to the primacy of the signed international treaties over national legislation ratified by the Parliament of the Republic by means of the adoption of the relevant law. From the meaning of the above provision of the Constitution it follows that only international treaties ratified by Kazakhstan may have priority

over the laws of the Republic. The direct application of such international treaties, which have priority over the laws of the Republic, does not mean that they abolish the provisions of existing laws. Priority over laws and direct application of ratified international treaties in the territory of the Republic assume the situational superiority of the norms of such treaties in cases of conflicts with the norms of laws. In other words, such an advantage is possible when conditions arise that fall within the scope of ratified international treaties, unless the treaties themselves require the promulgation of laws for their application.

Following the logic of the regulated issue and in accordance with the Resolution under consideration, international treaties not ratified by Kazakhstan (that is, treaties in respect of which the Republic of Kazakhstan has expressed its consent to be bound by such treaties by signing, approving or acceding to them) do not have such priority. All international treaties concluded by Kazakhstan after the adoption of the 1995 Constitution, which are not subject to ratification, must be implemented to the extent that they do not conflict with the laws of the Republic. In case there is a conflict between them, the parties to the treaties have the possibility, in accordance with The Law on International Treaties, as well as the rules of international law, to resolve them by conciliation procedures (The Law about International Treaties…, 2005).

Some international treaties of the Republic of Kazakhstan concluded before the adoption of the 1995 Constitution took precedence over the laws of the Republic by virtue of the fact that they belonged to the category of agreements, the priority of which was provided for by the 1993 Constitution. Thus, Article 3 of the 1993 Constitution allowed international treaties on human and civil rights and freedoms recognized by the Republic of Kazakhstan to take precedence over its laws (Decision of the Constitutional Council…, 2000). Such acts, in view of the fact that they are already recognized by the Republic of Kazakhstan, have equal legal force with the international treaties of the Republic, which were ratified after the adoption of the 1995 Constitution. That is, such treaties also have priority over the laws of the Republic, as well as other treaties ratified after the adoption of the 1995 Constitution.

As has already been mentioned above, there is a constitutional provision stating that "the Constitution shall have the highest legal force and direct effect throughout the territory of the Republic". According to Paragraph 1 of this article, the international treaties and other obligations of the Republic in accordance with the norms of the Constitution are recognized as the law in force in the Republic of Kazakhstan.

The being considered Resolution of the Constitutional Council of the Republic on these constitutional provisions establishes that international treaties that are not subject to ratification as a condition of entry into force, concluded by the Republic of Kazakhstan before the adoption of the 1995 Constitution, the priority of which is stated in the above legislative acts, are in force and must be duly implemented. That is, these agreements and obligations of Kazakhstan, existing in the new constitutional and legal framework at the same time with the provisions of the Constitution of 1995, are part of the system of law in force in the country.

Conclusion

Summing up this brief study of the theoretical and practical aspects of the international sources of environmental law, the author presenting theoretical and practical recommendations for improving the current environmental legislation of the Republic of Kazakhstan.

International environmental agreements concluded by Kazakhstan in accordance with the Constitution of the Republic in accordance with the procedure established by law, and ratified by the Parliament of the Republic through the adoption of the relevant law shall prevail in the system of sources of environmental law. Yet, this does not mean that an international environmental treaty ratified by Kazakhstan replaces the existing domestic normative act or completely cancels its effect. Such a treaty shall be recognized as a priority in the event of inconsistencies or apparent discrepancies between it (the Treaty) and the relevant domestic act and shall be applicable to the extent that it directly conflicts with domestic law. International environmental treaties of the Republic of Kazakhstan that are not subject to ratification as a condition of entry into force, concluded before the adoption of the 1995 Constitution, are in force and retain priority over the legislation of the Republic, if such priority for these international treaties is directly provided for by the laws of the Republic governing the relevant areas of legal relations.

All existing international environmental agreements of the Republic of Kazakhstan, both possessing and not having priority legal force over the environmental legislation of the Republic, constitute a special category of international legal sources of environmental law of the Republic

of Kazakhstan. According to the legal force, the sources of environmental law of the Republic of Kazakhstan should be divided into:

The Constitution; 2) laws amending and supplementing the Constitution; 3) constitutional laws of the Republic of Kazakhstan;3) codes of the Republic of T; 4) consolidated laws, laws of the Republic of Kazakhstan; 5) international treaties not subject to ratification and not having priority over the laws of the Republic; 6) regulatory resolutions of the Parliament of the Republic of Kazakhstan and its Chambers; 7) regulatory legal decrees of the President of the Republic of Kazakhstan; 7) regulatory legal resolutions of the Government of the Republic of Kazakhstan; 8) subordinate acts.

The main peculiarity of the sources of environmental law of the Republic of Kazakhstan is that the laws of this branch of law do not contradict the constitutional norm on the primacy of ratified international treaties of the Republic, confirm this norm, which clearly demonstrates the close relationship between the norms of national and international environmental legislation. Thus, the inclusion in the national laws of the Republic of norms on the priority of agreements ratified by Kazakhstan in the field of environmental protection, together with the constitutional consolidation of this provision, only confirms the existence of special international legal sources in the general system of sources of environmental law of the Republic of Kazakhstan.

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[1]D.L. Baydeldynov, [2]Pierre Tifine

[1]doctor of law, Professor, Al-Farabi Kazakh National University,
Kazakhstan, Almaty, e-mail: Daulet.Baydeldynov@kaznu.kz
[2]Professor of Public Law, Vice-director of the Institute of Research of Nation and
State Evolution (IRENEE) of the University of Lorraine, Université de Lorraine,
France, Metz, e-mail: pierre.tifine@univ-lorraine.fr

EXPERIENCE OF EUROPEAN AND ASIAN STATES IN THE REGULATION OF TRANSBOUNDARY RIVERS

Abstract. This article discusses the issues of legal regulation of the rational use of transboundary rivers and reservoirs, as well as the problems of improving the water legislation of the Republic of Kazakhstan in the context of globalization and integration. The issues of water supply and pollution of water resources go beyond purely national problems and need to be addressed at the international level. Kazakhstan has many common watercourses with several countries, the management of which involves the search for compromises. Complex cross-border problems have accumulated and need to be resolved taking into account not only the interests of both States, but also the preservation of natural ecosystems capable of performing their ecological functions in the region and ensuring environmental security. The problem of small rivers, which are of great value for the preservation of river ecosystems, is raised.

The author comes to the conclusion that many years of experience in solving the problems of transboundary rivers shows that only based on the unity of legal principles, mutual respect and respect for economic and political interests, it is possible to ensure regional stability, and to solve the problems of sharing and protection from pollution of water resources of transboundary rivers. The creation of a legal basis for water resources management will allow to resolve the existing contradictions in the use of water resources in the future.

Key word: transboundary rivers, water bodies, regulation, water law, water resources, water use, water bodies.

[1]Д.Л. Байдельдинов, [2]Тифин Пьер

[1]з.ғ.д., профессор, әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: Daulet.Baydeldynov@kaznu.kz
[2]PhD, Жариякұқық профессоры, Лотарингия университетінің (IRENEE)
ұлт және мемлекет эволюциясын зерттеу институты директорының орынбасары,
Лорейн Университеті, Франция, Мец қ., e-mail: pierre.tifine@univ-lorraine.fr

Трансшекаралық өзендерді реттеудегі Еуропа және Азия мемлекеттерінің тәжірибесі

Аңдатпа. Бұл мақалада трансшекаралық өзендер мен су айдындарын ұтымды пайдалануды құқықтық реттеу мәселелері, сондай-ақ жаһандану және интеграция жағдайында Қазақстан Республикасының су заңнамасын жетілдіру мәселелері қарастырылады. Сумен қамтамасыз ету және су ресурстарын ластау мәселелері ұлттық проблемалардың шеңберінен шығып, оларды халықаралық деңгейде шешу қажет. Қазақстан бірнеше елдермен ортақ ағындарға ие, оларды басқару ымыраға келуді болжайды. Тек екі мемлекеттің мүдделерін ескере отырып шешуді талап ететін күрделі трансшекаралық проблемалар ғана емес, сондай-ақ өңірде өзінің экологиялық функцияларын орындауға және экологиялық қауіпсіздікті қамтамасыз етуге қабілетті табиғи экожүйелерді сақтауды да жинақталды. Өзен экожүйелерін сақтау үшін үлкен құндылықты білдіретін шағын өзендердің проблемасы көтерілуде.

Авторлар бұл мақалада трансшекаралық өзендердің проблемаларын шешудегі көпжылдық тәжірибе тек Нормативтік-құқықтық принциптердің бірлігіне, экономикалық және саяси мүдделерді өзара сақтау мен құрметтеуге негізделген өңірлік тұрақтылықты қамтамасыз етуге және трансшекаралық өзендердің су ресурстарын ластанудан бірлесіп пайдалану мен қорғау мәселелерін шешуге болатынын көрсетеді. Су ресурстарын басқарудың заңды негізін құру Су ресурстарын пайдаланудағы қайшылықтарды одан әрі шешуге мүмкіндік береді.

Түйін сөздер: трансшекаралық өзендер, су объектілері, реттеу, су құқығы, су ресурстары, су пайдалану, су объектілері.

[1]Д.Л. Байдельдинов, [2]Тифин Пьер
[1]д.ю.н., профессор, Казахский национальный университет имени аль-Фараби,
Казахстан, г. Алматы, e-mail: Daulet.Baydeldynov@kaznu.kz
[2]PhD, профессор публичного права, заместитель директора
Института исследований эволюции нации и государства (IRENEE) университета Лотарингии,
Университет Лорейн, Франция, г. Мец, e-mail: pierre.tifine@univ-lorraine.fr

Опыт европейских и азиатских государств в регулировании трансграничных рек

Аннотация. В данной статье рассматриваются вопросы правового регулирования рационального использования трансграничных рек и водоемов, а также проблемы совершенствования водного законодательства Республики Казахстан в условиях глобализации и интеграции. Вопросы водообеспечения и загрязнения водных ресурсов выходят за рамки сугубо национальных проблем и решать их необходимо на международном уровне. Казахстан имеет много общих водотоков с несколькими странами, управление которыми предполагает поиск компромиссов. Накопились сложные трансграничные проблемы, требующие разрешения с учетом интересов не только обоих государств, но и сохранения природных экосистем, способных выполнять свои экологические функции в регионе и обеспечивать экологическую безопасность. Поднимается проблема малых рек, представляющих огромную ценность для сохранения речных экосистем.

Автор приходит к выводу о том, что многолетний опыт в решении проблем трансграничных рек показывает, что, только базируясь на единстве нормативно-правовых принципов, взаимном соблюдении и уважении экономических и политических интересов, можно обеспечить региональную стабильность, и решить проблемы совместного использования и охраны от загрязнений водных ресурсов трансграничных рек. Создание юридической основы управления водными ресурсами позволит в дальнейшем разрешать имеющиеся противоречия в использовании водных ресурсов.

Ключевые слова: трансграничные реки, водные объекты, регулирование, водное право, водные ресурсы, водопользование, водные объекты

Introduction

Water resources of any state at all times have had and are having a significant impact on their economic activities, political orientation and social protection, especially if the reserves of this strategic natural resource are limited. This is even more important when it comes to the transboundary nature of water resources.

The main element of transboundary water resources is the transboundary waters of such rivers, which cross the territories of two or more States or pass through their borders. It should be noted that the transboundary natural resource, in our opinion, is of international importance. In this case, the geographical location of water resources should be associated with the crossing of the border: interstate; between the territories of different international spaces; between the territory of the state and the territory of international space.

All transboundary water basins provide hydrological, social and economic linkages between societies. They are vital for economic development, reduce poverty and contribute to the achievement of the Millennium development goals. While transboundary water basins have the potential to cause disputes and conflicts, they provide an opportunity for cooperation and strengthen regional peace and security, as well as contribute to economic growth. Recognizing these potential opportunities, UN — water participants, through various initiatives, are making efforts to outweigh the potential for conflict in favour of cooperation, supporting countries in their efforts to improve the management of transboundary water resources (UN General Assembly on Water, peace and security: cooperation in transboundary waters).

Water is seen as a potential source of conflict in this century. “Fierce competition for fresh water may well be a source of conflict and war in the future.” However, “Water problems in our world may not necessarily be the only cause of tension, they can also be a catalyst for cooperation.... If we work together, we can achieve a safe and sustainable water supply in the future.” However, it must be understood that cooperation is a process that requires the active participation of all stakeholders (Kofi Annan, February 2002, cited in Carius et al., 2007).

Approximately 40 per cent of the world's population lives in river and lake basins covering two or more countries, and — perhaps even more impressive — more than 90 per cent live in countries with shared basins. The existing 263 transboundary lake or river basins cover almost half of the world's land surface and are estimated to account for 60 per cent of the world's freshwater resources. The territory of 145 States is partially, and the territory of 30 countries is completely within the boundaries of international basins. In addition, approximately 2 billion people in the world depend on groundwater covered by 300 transboundary aquifer systems (http://www.unwater.org/ downloads/UNW_ TRANSBOUNDARY.pdf.).

Main part

Kazakhstan, as a state with 46% of its available water resources coming from neighboring countries – Russia, China, the countries of the Central Asian region, is also dependent on these objective circumstances.

The guaranteed provision of water of normative quality largely determines the quality of life and future development. In this regard, the need for a modern joint water resources management system is caused by life itself and requires the creation and development of a mechanism of inter-state cooperation based on an integrated approach. Any changes in the water use of one of the countries, which are United by common water ecosystems, or the impact on the state of water bodies, inevitably affect the interests of others.

The main rivers of the country – Irtysh, Ili, Ishim, Tobol, Ural, Syr Darya, Shu, Talas are transboundary. As noted above, about half of the volume of water resources comes from the territory of neighboring countries – China, Kyrgyzstan, Russia and Uzbekistan, which significantly affects the water supply conditions of the country. The existing water supply is one of the main constraints to the development of rich mineral, fuel, energy and land resources of Kazakhstan. The intensity of use of large areas of arable land and rangelands is determined by the degree of water availability.

The special role of water resources in the economy of the country, their extreme limitation dictate the need for their rational use, preservation of the quality of water sources, development of water-saving technologies. The improvement of interstate water relations should be considered as one of the important conditions for ensuring the national security of the country.

Considering the relations with neighboring countries in the field of joint management of transboundary water resources in the basins of the main rivers, it is necessary to note the following main points.

On cooperation with the Central Asian States in the field of water relations in the Syr Darya river basin, Amu Darya. On cooperation with the people's Republic of China on the use and protection of transboundary rivers. On cooperation with the Russian Federation on the use and protection of transboundary rivers.

For many years, Kazakhstan has been actively cooperating with all neighboring countries within the framework of multilateral cooperation mechanisms, as well as bilateral commissions and working groups. Kazakh delegations regularly participate in major international conferences, seminars and forums. Astana is also a party to a number of international environmental conventions and agreements affecting transboundary water issues.

In particular, Kazakhstan has acceded to the Convention on environmental impact assessment in a transboundary context, the Convention on the protection and use of transboundary watercourses and international lakes, the Convention on wetlands of international importance, mainly as waterfowl habitats.

Close working cooperation on transboundary water resources issues has been established with such international organizations as the UN economic Commission for Europe, the UN Regional centre for preventive diplomacy for Central Asia, OSCE, the world Bank, the Eurasian development Bank, ESCAP. Despite the absence of common borders, Kazakhstan carries out active water cooperation with the EU, the USA and other States.

The German society for international cooperation (GIZ), Swiss Agency for development and cooperation (SDC), the International office for water (IOW), United States Agency for international development (USAID) and other government and non-governmental organizations of foreign countries provide Advisory and donor assistance in the implementation of joint projects on the territory of Central Asia.

Transboundary natural resources appear to be a variety of international natural resources. They are not subject to the jurisdiction of only one state (without the consent of the other States concerned) (Kosareva 2007). The legal regime for such resources should be established primarily by international law, in particular by treaties of the States concerned. The rights and duties of individual States are exer-

cised by them to the extent determined by international law.

Issues of legal regulation of protection and use of transboundary watercourses have a pronounced belonging to the international water law and at the same time are fixed in the national water legislation of the Republic of Kazakhstan.

Thus, the water code of the Republic of Kazakhstan contains article 123. "International agreements in the field of water relations regulation".

It stipulates that If an international Treaty ratified by the Republic of Kazakhstan establishes other rules for the use and protection of water than those contained in this Code, the rules of the international Treaty shall apply.

As we can see the content of the article does not contain any specification, and represent a blanket rule. Therefore, international agreements and conventions should be used to regulate specific water relations on transboundary watercourses.

Thus, in accordance with these articles, the legal regime of transboundary waters is governed, as a rule, by international conventions and treaties, the effect of which applies to the States that have signed them (or to the States that have acceded to them). The main documents of this kind are two international conventions – the Convention on environmental impact assessment in a transboundary context (1991) and the Convention on the protection and use of transboundary watercourses and international lakes (Helsinki, 17 March 1992). This is the first document aimed at creating a legal framework for cooperation on the protection and rational use of transboundary waters from a regional perspective. This document is an existing agreement that contributed to the emergence of two Protocols – on water and health and on civil liability, and became the basis for most agreements on transboundary waters. The parties to the Convention (1992) are the Republic of Kazakhstan, the Russian Federation, great Britain, Germany, the Republic of Uzbekistan and other countries, while the Republic of Tajikistan, Turkmenistan, the Kyrgyz Republic have not signed the Convention (Sidorova 2008).

And also, the existing agreements of international and transboundary scale include the Helsinki rules for the use of waters of international importance (1966), the UN Convention on the non-navigational use of international watercourses (1997), the Berlin rules on water resources (2004).

It is difficult to overestimate the international political significance of the above-mentioned documents, but they are rather General (Advisory) in nature, affecting mainly environmental problems. To a lesser extent, they relate to the problems of river water resources management. There are practically no mechanisms for resolving international disputes, the legislative and regulatory framework is rather poorly developed (Goncharenko 2002).

After the collapse of the Soviet Union in 1992, the leaders of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan signed an interstate Agreement "On the use of water resources of the Amu Darya and Syr Darya river basins"in order to restore the broken ties. On the basis of this agreement, the parties established an Interstate water coordination Commission, which is designed to coordinate the management, rational use and protection of water resources of transboundary rivers in the region. In addition, the parties concluded a number of bilateral agreements, including the Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic "On cooperation in the field of environmental protection" (Almaty, April 8, 1997); the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Uzbekistan "On cooperation in the field of environmental protection and environmental management" (Almaty, June 2, 1997).); Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan "On the use of water and energy resources of the Naryn-Syrdarya cascade of reservoirs in 2002 and 1 quarter 2003" (Bishkek. March 14, 2002) (Salimgerey2006).

The Syr Darya flows from Kyrgyzstan through Tajikistan to Uzbekistan and Kazakhstan, the Amu Darya from Tajikistan to Turkmenistan and Uzbekistan. At present, the transboundary riversSyr-Darya and Amu-Darya unite and divide the interests of the five sovereign States of Central Asia: the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, the Republic of Turkmenistan and the Republic of Uzbekistan. Thus, the location of a transboundary resource covers territories with different legal regimes, international or national.

The water dependence of the States located in the basins of the Syr Darya and Amu Darya rivers is so strong that it simply condemns these States to the need for joint management of all the waters that are forming here, which are truly common to all the peoples living in the region. In addition, it should be taken into account that in addition to the difficulties in regulating water distribution in the territories of individual water management and irrigation systems, there are also difficulties in regulating water supply over time, as different water users

and water consumers have their own specific time requirements for water, and this also predetermines the need for mutually agreed actions.

The next group of regional instruments defining the General principles and directions of water cooperation in Central Asia consists of the acts of recommendatory nature adopted from time to time – declarations and statements of the Central Asian States. This category of documents of the so-called "soft law" includes the Nukus Declaration of the Central Asian States and international organizations on the problem of sustainable development of the Aral sea basin in 1995, the Ashgabat Declaration in 1999, the Tashkent Declaration in 2001, the Dushanbe Declaration in 2002, the Joint statement of the heads of state-founders of the International Fund for saving the Aral sea (IFAS) in 2009. Their importance in the context of regional water policy is very high. As a rule, they are signed by the presidents of the Central Asian countries, and thus they reflect the agreements reached at the highest political level. These declarations and statements often contain provisions of a political and legal nature or indicate the principles by which the countries of Central Asia should be guided in their relations in the field of water and energy (see, for example, paragraph 3 of the Tashkent Declaration of 28 December 2001). on the importance of coordinated and coordinated actions in the field of rational and mutually beneficial use of water bodies, water and energy resources and water facilities in Central Asia on the basis of universally recognized principles and norms of international law) (Ibatullin 2011).

The leaders of the Central Asian republics declared their commitment to the ideas of equality and interstate interaction on water issues; in the adopted Declaration they confirmed their "obligations for full cooperation at the regional level on the basis of mutual respect, good-neighborliness and determination" on the hydropower problem of Central Asia.

Probably, today the situation would not have taken such negative forms if the water user States had a highly efficient economy, created competitive products and, therefore, could allocate sufficient funds to maintain water bodies and hydroelectric facilities located in their territories in proper condition. In view of this, the task of convergence in the use of water reserves cannot be considered in isolation from the efforts to develop effective models for the development of the economy of each country. In fact, it is a question of ensuring sustainable progress in the region, in which "water" policy is an important part of it.

At the same time, the problems of coordinated exploitation of water reserves of Central Asia are not only technical, but also of international legal nature in the first place. However, the process of rapprochement of the States of the region in solving the problems of joint use of water resources of the Syr Darya and Amu Darya basin is slow, characterized by low economic efficiency of decisions, since most of the concluded treaties and agreements are of a framework nature (Sidorova 2008).

However, it should be noted that most treaties and agreements contain only the environmental aspect of the problem of transboundary rivers. The mechanism of regulation and management of watercourses is rather poorly developed, but at the same time the principle of international law "Who causes damage, he pays".

That is why it is necessary to emphasize the importance of concluding bilateral and multilateral treaties between coastal States in the regional aspect, which should take into account all the parties to the problem and features of the river basin. There are a number of positive examples of transboundary water cooperation in history. These include the United States Joint Commission Canada, which has 100 years of experience in the equitable use of transboundary water resources; The Rhine Commission, which determined the order and has made the restoration of water quality and ecological health in the river Rhine; in some part of the experience of the use of Indus waters by India and Pakistan; South African agreement for use of the waters of the rivers Incomati and Mobutu between Mozambique, South Africa and Swaziland.

However, along with international conventions, it is worth emphasizing the activities of international organizations that contribute to the regulation of the regime of transboundary rivers. First of all, they include the international water Association. Its main goal is to improve the state of freshwater basins. The international water Association also deals with the issues of water supply, wastewater, as well as General issues of water quality management, including drinking water. An important role on a global scale is played by the international water Research Association, which pays attention to the management of water resources, as well as all aspects of this management from biological and chemical to institutional and socio-economic. The European water Association is responsible for the management and improvement of the water environment and the use of water resources. It involves representatives of almost all Central and Eastern European States, including the EU,

Norway and Switzerland, as well as most countries of the former USSR.

The purpose of the Association is to provide information on the latest technical and management developments related to water management issues through the organization of conferences, meetings and working groups. The international Institute for water resources management is a research organization concerned with the use of water resources in agriculture and water management in developing countries. Other organizations, including such well-known and influential as UNESCO, the world Bank, who, various institutions, funds, etc., are also engaged in the issues of transboundary water resources of rivers.

Conclusion

Today, there are political decisions aimed at reducing water losses, improving water management and reducing the need for them. Many countries have already adopted laws on the conservation and efficient use of water, but these reforms have not yet yielded tangible results. And even despite the high development of technologies of the XXI century, the problem of lack of fresh water still remains, though not the only one, but one of the most acute problems for the world market and for all mankind.

Over the past 70 years, more than 290 international agreements on water resources have been signed. There is a need to continue to develop the opportunities for strengthening peace and security that cooperation in the field of transboundary waters can provide. Countries have a shared responsibility to present and future generations for the management of the world's transboundary waters.

In our view, in order to address the causes that affect the fulfilment of obligations under future agreements, each state in the region should have a clear understanding of the benefits and losses in the fulfilment of its obligations, both economically and, importantly, socially. So far, no state in the basin has carried out such technical and economic calculations, as well as social studies. Naturally, the implementation of such calculations is very difficult. They should cover not only the water and energy sectors of the economies of States, but also other areas that may be indirectly affected by a particular decision. Meanwhile, a clear understanding of the benefits and losses is one of the possible ways of convergence and cooperation between States on joint management of water and energy resources of the basins.

Many years of experience in solving the problems of transboundary rivers shows that only based on the unity of legal and regulatory principles, mutual respect and respect for economic and political interests, it is possible to ensure regional stability, and to solve the problems of joint use and protection from pollution of water resources of transboundary rivers. The creation of a legal basis for water resources management will allow to resolve the existing contradictions in the use of water resources in the future.

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4-бөлім

ҚЫЛМЫСТЫҚ ҚҰҚЫҚ ЖӘНЕ КРИМИНАЛИСТИКА

Section 4

CRIMINAL LAW AND CRIMINALISTICS

Раздел 4

УГОЛОВНОЕ ПРАВО И КРИМИНАЛИСТИКА

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[1]А.К. Бекишев, [2]А.Г. Кан, [3]С.С. Дуйсебалиева

[1]PhD, капитан полиции, Алматинская академия МВД Республики Казахстан им. М. Есбулатова, старший научный сотрудник, Юридический институт Южно-Уральского государственного университета РФ, Казахстан, г. Алматы, e-mail: askhatello@mail.ru
[2]к.ю.н., подполковник полиции, Алматинская академия МВД Республики Казахстан им. М. Есбулатова, Казахстан, г. Алматы, e-mail: kan_torsan@mail.ru
[3]к.ю.н., ассоциированный профессор, профессор, Атырауский государственный университет имени Х. Досмухамедова, Казахстан, г. Атырау, e-mail: bakha2001@mail.ru

РЕТРОСПЕКТИВНЫЙ АНАЛИЗ СОБЛЮДЕНИЯ ДОЛЖНОСТНЫМИ ЛИЦАМИ УЧЕТНО-РЕГИСТРАЦИОННОЙ ДИСЦИПЛИНЫ И ПРОТИВОДЕЙСТВИЯ УКРЫТИЮ УГОЛОВНЫХ ПРАВОНАРУШЕНИЙ

Аннотация. В настоящей статье проведен ретроспективный анализ соблюдения должностными лицами органов уголовного преследования учетно-регистрационной дисциплины, а также противодействия укрытию уголовных правонарушений. Целью данной работы является изучение вопросов приема, регистрации, учета информации об уголовных правонарушениях на различных этапах истории (эпоха рабовладенья, средневековый период, эпоха буржуазии, советский период времени, современный Казахстан). Кроме того, исследованы аспекты соблюдения учетно-регистрационной дисциплины в период казахского обычного права. Также затронуты и вопросы квалификации ответственности должностных лиц за нарушение порядка рассмотрения информации об уголовных правонарушениях. Актуальность исследования обуславливается тем, что в юридической литературе проведением ретроспективного анализа вопросов соблюдения учетно-регистрационной дисциплины и противодействия укрытию уголовных правонарушений недостаточно уделено внимания. Практическое значение статьи заключается в том, что изучение исторических аспектов позволило изучить проблемы прошлых лет, подытожить положительный опыт соблюдения должностными лицами учетно-регистрационной дисциплины, а также определить перспективные направления противодействия укрытию уголовных правонарушений. При подготовке научной статьи использовались общенаучные и частнонаучные методы исследования (исторический, диалектический, сравнительно-правовой, логический). Авторами приведен широкий круг практических примеров.

Ключевые слова: учетно-регистрационная дисциплина, прием, регистрация, учет, укрытие, уголовное правонарушение.

[1]A.K. Bekishev, [2]A.G. Kan, [3]S.S. Dyussebaliyeva

[1]PhD, police captain, Law Institute of South Ural state University of the Russian Federation, Kazakhstan, Almaty, e-mail: askhatello@mail.ru
[2]candidate's degree in jurisprudence, police lieutenant colonel, M. Esbulatov Almaty academy, Ministry of internal affairs of the Republic of Kazakhstan, Kazakhstan, Almaty, e-mail: kan_torsan@mail.ru
[3]candidate's degree in jurisprudence, associate professor in jurisprudence, Professor of K. Dosmukhamedov Atyrau State University, Kazakhstan, Atyrau, e-mail: bakha2001@mail.ru

Retrospective analysis of the compliance officers of accounting and registration discipline and counter concealment of crimes

Abstract. This article provides a retrospective analysis of compliance by officials of criminal prosecution accounting and registration discipline, as well as counteraction to the shelter of criminal offenses. The purpose of this work is to study the issues of reception, registration, accounting of information about criminal offenses at various stages of history (the era of slavery, the medieval period, the era of the bourgeoisie, the Soviet period, modern Kazakhstan). In addition, the aspects of compliance with accounting and registration discipline in the period of the Kazakh customary law. Also the questions of qualification of responsibility of officials for violation of the order of consideration of information on criminal offenses are touched upon. The relevance of the study is due to the fact that in the legal literature, the retrospec-

tive analysis of the issues of compliance with accounting and registration discipline and counteraction to the concealment of criminal offenses is not given enough attention. The practical significance of the article lies in the fact that the study of historical aspects allowed to study the problems of past years, to summarize the positive experience of compliance with accounting and registration discipline by officials, as well as to identify promising areas for countering the concealment of criminal offenses. General scientific and private scientific research methods (historical, dialectical, comparative legal, logical) were used in the preparation of the scientific article. The authors provides a wide range of practical examples.

Key words: accounting and registration discipline, reception, registration, accounting, concealment, criminal offense.

[1]А.К. Бекишев, [2]А.Г. Кан, [3]С.С. Дуйсебалиева

[1]PhD, полиция капитаны, Қазақстан Республикасы ІІМ М. Есболатов атындағы Алматы академиясы, аға ғылыми қызметкер, РФ Оңтүстік Орал мемлекеттік университетінің заң институты, Қазақстан, Алматы қ., e-mail: askhatello@mail.ru
[2]з.ғ.к., полиция подполковнигі, Қазақстан Республикасы ІІМ М. Есболатов атындағы Алматы академиясы, Қазақстан, Алматы қ., e-mail: kan_torsan@mail.ru
[3]з.ғ.к., қауымдастырылған профессор, профессор, Х. Досмұхамедов атындағы Атырау мемлекеттік университеті, Қазақстан, Атырау қ., e-mail: bakha2001@mail.ru

Қылмыстық құқық бұзушылықтарды жасыруына қарсы және лауазымды тұлғалармен есепке алу-тіркеу тәртібін сақтауы туралы ретроспективті талдау

Аңдатпа. Осы мақалада қылмыстық құқық бұзушылықтарға қарсы және қылмыстық қудалау органдарының лауазымды тұлғалармен есепке алу-тіркеу тәртібін сақтауы туралы ретроспективті талдау жүргізілді. Бұл жұмыстың мақсаты тарихтың әр түрлі кезеңдеріндегі (құл иелену дәуірі, орта ғасырлық кезең, буржуазия дәуірі, кеңестік уақыт кезеңі, қазіргі Қазақстан) қылмыстық құқық бұзушылықтар туралы ақпаратты қабылдау, тіркеу, есепке алу мәселелерін зерттеу болып табылады. Сонымен қатар, қазақ кәдімгі құқық кезеңінде есепке алу-тіркеу тәртібін сақтау аспектілері зерттелді. Сондай-ақ, қылмыстық құқық бұзушылықтар туралы ақпаратты қарау тәртібін бұзғаны үшін лауазымды тұлғалардың жауапкершілігін саралау мәселелері де қозғалды. Зерттеудің өзектілігі заң әдебиетінде есепке алу-тіркеу тәртібін сақтау және қылмыстық құқық бұзушылықтарды жасыруға қарсы іс-қимыл мәселелеріне ретроспективті талдау жүргізумен байланысты емес. Мақаланың практикалық мәні Тарихи аспектілерді зерделеу өткен жылдардағы проблемаларды зерттеуге, лауазымды тұлғалардың есепке алу-тіркеу тәртібін сақтауының оң тәжірибесін қорытындылауға, сондай-ақ қылмыстық құқық бұзушылықтарды жасыруға қарсы іс-қимылдың перспективалық бағыттарын анықтауға мүмкіндік берді. Ғылыми мақаланы дайындау барысында зерттеудің жалпы ғылыми және жеке ғылыми әдістері (тарихи, диалектикалық, салыстырмалы-құқықтық, логикалық) пайдаланылды. Авторлар практикалық мысалдардың кең шеңберін келтірген.

Түйін сөздер: есепке алу-тіркеу тәртібі, қабылдау, тіркеу, есепке алу, жасыру, қылмыстық құқық бұзушылық.

Введение

Полноценное исследование любого вида уголовного правонарушения предусматривает проведение ретроспективного анализа. Обращение к историческим фактам позволяет изучить не только время и причины возникновения уголовного правонарушения, но и проанализировать действующие, а также определить новые меры по его противодействию.

Основываясь на вышеуказанном, в настоящей статье проведем ретроспективный анализ противодействия укрытию уголовных правонарушений и соблюдения должностными лицами учетно-регистрационной дисциплины в целом. Следует отметить, что данные аспекты непосредственно затрагивают институт порядка рассмотрения информации об уголовных правонарушениях, история которого имеет свои глубокие исторические корни.

Справедливо указано Л.А. Сиверской: «исследование института рассмотрения сообщений о преступлении как начальной стадии досудебного производства было бы неполным без изучения его генезиса, выявления исторических причин возникновения и закономерностей процесса развития» (Сиверская 2014: 46).

Нарушение порядка рассмотрения информации об уголовных правонарушениях, в том числе их укрытие, является проблемой не только постсоветских стран, но и практически всех государств мира. Об этом ранее подчеркивал и

американский ученый-юрист John Gramlich при исследовании уголовных правонарушений против собственности, что большинство заявлений не регистрируются (https://www.pewresearch.org/fact-tank/2019/01/03/5-facts-about-crime-in-the-u-s/).

Основная часть

Обращаясь к эпохе рабовладения, в частности, к истории суда ареопага в Афинах, рассматривавшего предумышленные убийства, предумышленные нанесения ран или увечья с целью лишения жизни, отравления, кончавшихся смертью и поджоги, известно, что в случае совершения убийства, ближайший родственник убитого подавал жалобу архонту-басилею (царю), у которого возбуждались все дела об убийстве. Затем архонт производил предварительную подготовку дела (опрашивал свидетелей, собирал иные доказательства) (Чельцов-Бебутов 1995: 84-85). В данной ситуации должностным лицом, уполномоченным рассматривать информацию о преступлениях, в частности сведений об убийствах, являлся сам царь.

Также, из истории Древней Греции можно заметить наличие установленной формы процессуального оформления обращений граждан. Обвинение по политическим делам возбуждалось в форме исангелии. Так назывался донос, сделанный гражданином в народном собрании по особо важному делу: если кто стремился к ниспровержению афинской демократии, составлял с этой целью заговор или преступное сообщество, выдавал врагам какой-либо город, флот или войско; если оратор, будучи подкуплен, говорил во вред народу. Гражданин, прибегавший к исангелии после устного обращения в народном собрании, тут же писал его и подавал архонту в письменном виде (Чельцов-Бебутов 1995: 111-112).

В отличие от предыдущего периода времени, в уголовном процессе феодальных государств можно проследить функционирование таких элементов процедуры рассмотрения информации о преступлениях, как регистрация и учет. Ярким примером является феодальная Франция, где сохранился регистр уголовных дел Парижского суда (шатлэ), содержащий сведения за 1389-1392 года (Чельцов-Бебутов 1995: 234).

Процедура применения регистрации и ведения учета информации о преступлениях нашла свое отражение и в Статуте Великого княжества Литовского (1588 г.). Согласно артикулу 2 раздела 11 данного Статута, предусматривалось введение записи в судовой замковой книге информации о заявлениях по факту убийств (Тарзиманов 2014: 22). Стоит отметить, что современным аналогом данной книги является книга учета информации, имеющаяся в каждом органе уголовного преследования Республики Казахстан.

Изучение древнерусского права рассматриваемого периода времени показало наличие и правовой регламентации ответственности уполномоченного должностного лица за нарушение порядка рассмотрения обращений граждан о преступлениях. Речь идет о Судебнике Великого Князя Руси Ивана IV 1550 года, где в статье 7 указано, что «Боярин, дворецкий, казначей или дьяк обязаны принять всех обратившихся к ним истцов и разобрать дело, если оно не превышает компетенцию данного судьи. Если дело не подсудно указанным судьям, то они должны доложить об этом Великому князю или отослать истца к тому судье, в компетенцию которого входит разбор данного дела. Если же судьи не возьмут у него иск, не доложат Государю, не отошлют его к другому судье и истец доложит об этом Государю, быть этим судьям в опале от Царя. Если жалобщик обращается с иском не по делу и бояре откажут ему в судопроизводстве, а он будет жаловаться Государю, подвергнуть его тюремному заключению» (file:///C:/Users/Windows%207/Downloads/sudebnik_1550.pdf.). Заметим, что данная норма регламентировала не только ответственность за отказ в приеме жалоб, т.е. укрытии преступления, но и процессуальные вопросы обжалования Царю неправомерных действий со стороны должностных лиц.

В этой связи, утверждение Е.М. Головащук о том, что укрытие преступлений «является детищем исключительно советского производства» (Головащук 2003: 17), является достаточно спорным, о чем свидетельствует анализ рассмотренных выше исторических документов.

Рассматривая следующий период времени – буржуазию, стоит отметить, что ведущая роль в уголовном преследовании отводилась органам прокуратуры. В частности, во Франции того периода прокуратура в случаях отсутствия оснований к началу досудебного расследования выдавала заключение об отсутствии оснований для возбуждения уголовного дела (Чельцов-Бебутов 1995: 480). Указанное свидетельствует о том, что не по всем жалобам начинались досудебные расследования, и особое внимание уделялось этапу проверки информации. При этом, заключение, сделанное прокурором по результатам таких

проверок, по своей сущности являлось аналогом постановления об отказе в возбуждении уголовного дела.

Институт рассмотрения информации о преступлениях нашел свое отражение и в обычном праве казахов. Судебные функции, а значит и рассмотрение обращений граждан о преступлениях, находились в компетенции ханов и биев.

Академик С.З. Зиманов, рассматривая судебные функции биев, писал, что «за разрешением конфликта обращаются к бию одноаульцы, ближайшие однородичи или когда сами стороны – истец и ответчик – добровольно передают свои споры бию и просят его решения. Нередко проявляет инициативу сам судья, если жалоба обиженного или потерпевшего обращена к лицам, имеющим близкие и родственные связи с судьей. В последнем случае би сам вызывает ответчика в суд, который не может проигнорировать это приглашение. Его неявка считалась бы позором в межродственных отношениях. Если би известный, мудрый и неподкупный, то обращения к нему за его единоличными решениями бывают довольно частыми, причем приезжают к нему обе стороны из самых дальних кочевых объединений» (Зиманов 2010: 11). Анализ приведенных данных позволяет выделить такой элемент рассмотрения информации о преступлениях как «прием информации», который имел важное значение не только для обращающихся, но и для биев, поскольку их авторитет напрямую зависел от проведения данной процедуры.

Характеризуя казахское обычное право до второй половины XIX века, Т.М. Культелеев отмечал: «…судебные следствия велись сначала и до конца в устной форме без применения каких-либо записей», что свидетельствует об отсутствии процессуальных норм, регламентирующих применение регистрации и ведения учета преступлений. А уже со второй половины XIX века были введены бийские книги, в которые записывались краткие содержания приговоров и решения биев (Культелеев 2004: 66, 97). Это было требованием царского правительства, которое таким образом пыталось контролировать судебную деятельность биев.

Осуществляя контроль над правосудием, царское правительство требовало от лиц, уполномоченных рассматривать информацию о преступлениях, неукоснительно соблюдать прием жалоб и принимать по ним обоснованные процессуальные решения. Об этом факте свидетельствует пункт 7 Правил для ханского совета, утвержденных Александром I от 31 мая 1806 года, где отмечалось, что «Хану, совету его, главным и частным правителям родов и отделений наблюдать повсюду правосудие; а по сему принимать от всякого киргизца жалобу в обидах ли ему нанесенных или спор, или иска в имении или другом чем по обстоятельствам и роду дела, входить по оной в разбирательство и исследование и доставлять правой стороне полномерное удовлетворение». А в случаях неисполнения биями своих обязанностей и совершения каких-нибудь злоупотреблений последние должны были быть преданы суду на основании общих законов империи за злоупотребления должностных лиц (Кенжалиев 1996: 11, 27).

Ужесточая контроль над деятельностью биев, в 1844 году было утверждено «Положение об управлении Оренбургскими киргизами», согласно которому все основные категории уголовных дел казахов Оренбургского ведомства были изъяты из подсудности суда биев и отнесены к подсудности общеимперских судов. В компетенции суда биев остались лишь незначительные категории дел, которые были связаны с совершением маловажных преступлений, в том числе кражи на сумму не свыше 30 рублей серебром. Но, несмотря на это, суды биев фактически продолжали рассматривать большинство категорий общеуголовных преступлений, совершенных казахами. Дела от казахов в общеимперские судебные органы поступали в очень незначительном количестве, что свидетельствует об их возможном укрытии. Причиной данных фактов, по мнению Т.М. Культелеева, являлось то, что представители казахской феодально-родовой знати, решая все судебные дела, извлекали для себя большие материальные выгоды и поэтому стремились не передавать уголовные дела казахов в царские суды. Вместе с тем, в своей работе Т.М. Культелеев приводит мнение Л. Мейера, который отмечал, что «много преступлений скрывается умышленно от русского управления местным киргизским начальством, потому что оно находит верный расчет судить, их домашним образом» (Культелеев 2004: 70). По нашему мнению, вышеуказанное было обусловлено не сколько извлечением материальных выгод биями, а нежеланием передавать своих соотечественников правосудию Российской Империи.

Проанализировав вышеуказанное, полагаем, что, несмотря на отсутствие влияния статистики раскрытых и нераскрытых преступлений на эффективность деятельности должностных лиц, уполномоченных рассматривать информацию о преступлениях, совершение укрытия

информации о преступлениях диктовалось в большей степени личными интересами, нежели служебными.

Е.А. Брайцева пишет, что в царской России, в целях контроля, в том числе и недопущения фактов укрытия преступлений, подвергались проверке и органы полиции. Согласно Указу Павла I, в губернских палатах проводились ревизии всех уголовных дел, оставшихся нераскрытыми. В случае выявления сокрытия преступлений полицейскими последние подвергались наказанию за укрывательство по ст. 130 Уложения (Брайцева 2002: 98, 114). Таким образом, в рассматриваемый период отсутствовала специальная норма, предусматривающая уголовную ответственность исключительно за укрытие преступления от учета, вследствие чего к должностным лицам, совершившим данное должностное преступление, применялась уголовная ответственность лишь за укрывательство преступления. Тогда как современное уголовное законодательство разделяет вышеуказанные деяния на два самостоятельных состава преступлений («укрытие уголовного правонарушения» и «укрывательство преступления).

Еще одним документом, представляющим научный интерес, является Циркулярный ордер Министра юстиции Г.Р. Державина от 22 сентября 1802 года. Согласно данного Ордера Г.Р. Державин, обращаясь ко всем губернским прокурорам империи, требовал соблюдать учетно-регистрационную дисциплину, в частности наблюдать «не происходит ли где кому пристрастных допросов, бесчеловечных истязаний и притеснений всякого рода на обвинение невинности, упущения и послабления преступлениям, а наипаче сокрытие нестерпимых» (т.е. тяжких и опасных злодеяний)) (Исламова Э.Р., 2009: 18). Стоит отметить, что Циркулярный ордер стал одним из первых нормативных правовых актов, где использовался термин «сокрытие преступления».

Рассматривая вопросы приема информации о преступлениях, необходимо обратить внимание и на «Устав уголовного судопроизводства 1864 года», где в ст. 303 было указано, что «ни судебный следователь, ни прокурор не могут отказать в том лицу, потерпевшему от преступления или проступка». Данная норма регулировала не только прием обращений, но и такой повод к началу досудебного расследования, как жалобы, которые «почитаются достаточным поводом к начатию следствия». Представляется, что нормы данной статьи являются прототипом положений действующего УПК Республики Казахстан, регламентирующих поводы к началу досудебного расследования.

Следует согласиться с И.Н. Зиновкиной, что «Устав уголовного судопроизводства России 1864 года вообще не предусматривал доследственной проверки. Производство по уголовному делу начиналось сразу же после получения сообщения о совершенном преступлении, а расследование в форме дознания носило административно-процессуальный характер» (Зиновкина 2015: 21).

Кроме того, Устав уголовного судопроизводства предусматривал и обязанность следователей выделять из уголовных дел в отдельное производство материалы, имеющие признаки другого преступления. Так, согласно ст. 314, «если при производстве следствия об одном преступлении, будут обнаружены признаки другого, не имеющего существенной связи с производимым делом, то следователь, приняв меры к сохранению сих признаков, а в случаях, законом указанных, и к пресечению подозреваемому способов уклоняться от следствия, должен был доводить о том до сведения Прокурора или его Товарища и приступать к исследованию вновь открытого преступления не иначе, как по предложению от лица прокурорского надзора».

Изучение исторических фактов данного периода времени показало, что еще в царской России в течение четырех десятков лет (1872-1909 гг.) существовала так называемая «купонная система», дававшая возможность Министерству юстиции следить за движением уголовных дел, рассматриваемых в судах. Сущность «купонной системы» заключалась в следующем: к уголовному делу подшивалась особая тетрадь («ведомость о производстве дела»), состоящая из двенадцати «купонов», каждый из которых отражал соответствующую стадию уголовного процесса, начиная от производства дела у судебного следователя и заканчивая исполнением приговора. Соответствующий купон заполнялся по окончании производства в определенной стадии уголовного процесса и немедленно отсылался в Министерство юстиции, которое таким образом могло точно знать стадию нахождения уголовного дела и принятых по нему решений. Заполнение «ведомости о производстве дела» приравнивалось законом к заполнению основных процессуальных документов и возлагалось на следователей, судей и прокуроров, которые несли уголовную ответственность за правильность указанных сведений и их своевременное

представление (Остроумов С.С., 1976: 392-393). Стоит отметить, что основы данной формы контроля за учетно-регистрационной дисциплиной применяются и в настоящее время. Они реализуется посредством ежедневного изучения заполнения должностными лицами, уполномоченными рассматривать информацию об уголовных правонарушениях, реквизитов информационно-учетных форм базы ЕРДР.

Анализ нормативных правовых актов свидетельствует о том, что до 1885 года сотрудников полиции Российской Империи, совершавших укрытие преступлений, привлекали к уголовной ответственности за укрывательство преступления. С 1885 года с введением «Уложения о наказаниях уголовных и исправительных», включавшего отдельную главу, посвященную преступлениям и проступкам чиновников полиции, должностных лиц, совершавших укрытие преступлений, стали привлекать по ст. 459 «Невозбуждение уголовного дела при наличии к тому законных оснований».

Следуя хронологии времени, следующим периодом исследования вопросов, связанных с процедурой рассмотрения информации о преступлениях и противодействия их укрытию, является период советской власти. Данный период времени в отличие от предыдущего предусматривал иной порядок рассмотрения информации об уголовных правонарушениях. Речь идет об институте возбуждения уголовного дела, появление которого предусматривало «фильтрацию» информации о преступлениях, т.е. акцент ставился на проведении доследственной проверки в целях отделения информации о преступлениях от сведений иного характера.

По мнению Н.В. Жогина и Ф.Н. Фаткуллина, первые контуры института возбуждения уголовного дела стали появляться в нормах декрета СНК РСФСР о суде, опубликованного 24 ноября 1917 года. Нормы, относящиеся к институту возбуждения уголовного дела, содержались и в Инструкции «Об организации советской рабоче-крестьянской милиции», утвержденной Постановлением НКЮ и НКВД РСФСР от 13 октября 1918 года. По мнению указанных ученых, с введением данной Инструкции, у органов милиции появились процессуальные полномочия по принятию заявлений и сообщений о совершенных преступлениях, по возбуждению уголовных дел и их расследованию, которые имелись у местных народных судей либо у следственных комиссий (Жогин 1961: 8, 11).

С введением вышеуказанного нормативного правового акта, регламентирующего процедуру рассмотрения информации о преступлениях, спустя два года возникла необходимость в нормативном закреплении и ведомственного контроля за учетно-регистрационной дисциплиной. Так, 1 июня 1920 года Главным управлением советской рабоче-крестьянской милиции был издан приказ № 1 «О контроле за учетом преступлений» (Гусев 1968: 51). Следует отметить, что данный приказ стал одним из первых ведомственных нормативных правовых актов советской милиции, регламентировавшим ведомственный контроль за учетно-регистрационной дисциплиной.

Следующим нормативным правовым актом, регламентирующим уголовное судопроизводство, стал УПК РСФСР 1922 г. В данном нормативном правовом акте, в отличие от Устава уголовного судопроизводства 1864 года, норма, регулирующая вопросы приема информации об уголовных правонарушениях, стала императивной. Так: «Судья, следователь, прокурор и органы дознания обязаны принимать все заявления по поводу совершенных кем-либо или готовящихся к совершению преступлений, причем судья и следователь обязаны принимать таковые также и по делам им не подсудным, в каком случае дело направляется ими по надлежащей подсудности» (ст. 99). Тогда как, ранее, ст. 306 Устава уголовного судопроизводства 1864 года отмечала, что: «Объявления и жалобы могут быть письменными или словесными и принимаются во всякое время как полицейскими чинами, так и судебными следователями, прокурорами и их товарищами…».

Спустя год был принят другой УПК РСФСР. В данном уголовно-процессуальном законе вызывает интерес ст. 95 нормы, которой регулировали вопросы отказа в производстве дознания или предварительного следствия. Именно такое название предшествовало процессуальному действию как отказ в возбуждении уголовного дела, которое применялось до 2014 года. Стоит отметить, что срок обжалования решения об отказе в производстве дознания или предварительного следствия составлял 7 дней. Указанное, по нашему мнению, являлось временным «препятствием» для граждан, ограничивающим доступ к правосудию, поскольку в случаях совершения должностными лицами укрытия преступления в виде отказа в производстве дознания либо предварительного следствия, заявитель мог быть не

уведомлен о принятом процессуальном решении либо уведомлен в поздние сроки.

Анализ литературных источников показал, что сама проблема укрытия преступления стала активно освещаться лишь в послевоенный период времени. В 1954 году Генеральный Прокурор СССР Р.А. Руденко в одном из своих распоряжений, потребовал от нижестоящих прокуроров «рассматривать как грубые нарушения закона, приводящие к ослаблению борьбы с преступностью, случаи, когда … вопрос о возбуждении уголовного дела разрешается с большим запозданием. Такая практика нередко объясняется стремлением отдельных работников … создать видимость благополучия в работе» (Васильев 1954: 19).

Анализ текста данного распоряжения позволил заметить осторожность в высказывании термина «укрытие преступления». По мнению Е.М. Головащук, это было связано с тем, что: «в то время не принято было говорить о существовании порочной практики с ее разнообразными способами, но по сути именно об укрытии преступлений упоминалось тогда…». Важным толчком в активном освещении проблемы укрытия преступлений стал XX съезд КПСС (1956 г.), на котором была принята резолюция «О борьбе с произволом отдельных должностных лиц» (Головащук 2003: 20).

Во исполнение данной резолюции в этом же году правительственная комиссия в составе секретаря ЦК КПСС А. Аристова, министра государственного контроля В. Жаворонкова, министра юстиции К. Горшенина, заместителя министра финансов А. Посконова, заместителя заведующего отделом административных органов ЦК В. Золотухина провела тотальную проверку деятельности органов внутренних дел (http://www.aferizm.ru/histiry/his_mvd-1956.htm).

По результатам данной проверки была составлена справка, в которой комиссия отмечала, что «в органах милиции установилась порочная практика, когда работа начальников периферийных органов оценивается только по количеству зарегистрированных преступных проявлений… Такая практика приводит к тому, что начальники органов милиции, боясь ответственности за увеличение количества совершаемых на их участках преступлений, скрывают многие преступления от учета» (Широкобородов 2011: с. 4).

Комиссией также было установлено, что «оперативная работа по предупреждению и раскрытию преступлений поставлена плохо... Работа уголовного розыска находится в запущенном состоянии. Министерство внутренних дел СССР и Министерства внутренних дел союзных республик не ведут должной борьбы с установившейся антигосударственной практикой, когда местные учреждения внутренних дел в ряде случаев укрывают от учета совершенные преступления и часто необоснованно отказывают в возбуждении уголовных дел по заявлениям граждан» (http://www.aferizm.ru/histiry/his_mvd-1956.htm). Стоит отметить, что впервые в оборот термин «укрытие преступления от учета» был введен в этот период времени и начал активно использоваться наряду с термином «сокрытие преступления», который применялся ранее. Начиная с 50-х годов XX века термин «укрытие» преступления стал доминировать над термином «сокрытие» преступления.

В 1958 году министр МВД СССР Н.П. Дудоров подписал приказ «Об устранении в органах милиции нарушений в учете поступающих жалоб, заявлений и сообщений о преступлениях и усилении контроля за правильностью их разрешения». Усиление нормативного закрепления единого порядка рассмотрения информации о преступлениях и ведомственного контроля за учетно-регистрационной дисциплиной в тот период времени было связано и с введением в действие приказа МВД СССР № 926 от 1959 года, согласно которому все заявления и сообщения о преступлениях, поступающие в органы милиции, независимо от кого и кому из работников они адресованы, подлежали регистрации в единой книге учета происшествий (Гаврилов 1964: 187). Если заявление о преступлении было принято участковым уполномоченным, который находился вне расположения учреждения милиции, он обязан был зарегистрировать заявление в вышеуказанной книге не позднее суток с момента его получения (лично или по телефону) (Ремнев 1964: 36).

Противодействию укрытию уголовного правонарушения и повышению учетно-регистрационной дисциплины способствовало и принятие УПК РСФСР 1960 г. В данном нормативном правовом акте, по сравнению с прежним, был установлен конкретный срок разрешения заявлений и сообщений, как не более трех суток со дня их получения, а в исключительных случаях – не более десяти суток. К сведению, срок рассмотрения материалов доследственной проверки с 1923 по 1960 года составлял 15 суток.

Следующим нормативным правовым актом того времени, направленным на укрепление учетно-регистрационной дисциплины, стала

Инструкция «О едином учете преступлений». Данный документ был разработан в 1965 году Генеральной Прокуратурой СССР и представлял собой первый нормативный правовой акт, регулировавший вопросы соблюдения учетно-регистрационной дисциплины на межведомственном уровне.

В этом же году, т.е. 30 декабря 1965 года был подписан приказ Генерального Прокурора СССР № 125 «Об улучшении работы следственного аппарата органов прокуратуры и усилении прокурорского надзора за следствием и дознанием». В данном приказе обращалось особое внимание на необходимость систематической проверки соблюдения законности органами охраны общественного порядка при регистрации преступлений, разрешения заявлений и сообщений о совершенных преступлениях. Кроме того, в данном нормативном правовом акте был впервые поставлен вопрос о необходимости привлечения к уголовной ответственности должностных лиц за укрытие преступления от учета.

Стоит отметить, что факты укрытия преступлений совершались в тот период различными способами. Так, например, проверкой Сальского линейного отделения милиции было установлено, что за три месяца 1962 года было укрыто от учета 10 заявлений и сообщений о преступлениях. Делалось это путем ведения «черновой» книги учета заявлений, в которой отмечались все поступающие заявления и сообщения, а в книгу учета происшествий заносились те из них, которые признавались «перспективными» с точки зрения легкости раскрытия преступления (Гаврилов 1964: 188).

Приведем примеры. Так, 9 января 1970 года в пос. Мясново г. Тулы было совершено ограбление гр. Т., о чем последний заявил в Мясновское отделение милиции. 13 января инспектором уголовного розыска Привокзального РОВД был произведен выход на место, о чем был составлен протокол, а участковый инспектор отобрал у заявителя объяснения. Несмотря на то, что факт ограбления Т. был очевидным и имелись достаточные основания для возбуждения уголовного дела, преступление нигде не было зарегистрировано. Применялись и иные, завуалированные способы укрытия преступлений от учета. Так, 20 января 1970 года в Привокзальный РОВД поступило заявление об ограблении гр. А. Оно было зарегистрировано под номером 391. В журнале учета происшествий в качестве принятых мер против номера 391 имелась запись о том, что по заявлению возбуждено уголовное дело № 1028. Однако, как было установлено прокуратурой, это дело никакого отношения к факту ограбления заявителя не имело (Степанов 1972: 126).

В качестве примера укрытия преступления могут служить и деяния инспектора ОУР Фрунзенского РОВД. Так, 12 января 1971 г. в одном из скверов г. Саратова примерно в 6 часов утра неизвестный мужчина пытался изнасиловать гр. С. Преступник не осуществил свои намерения потому, что появился прохожий. В этот день о совершенном преступлении потерпевшая сделала устное заявление, которое принят инспектор ОУР Фрунзенского РОВД, однако он, вопреки требованиям устного заявления не составил, а ограничился получением письменного объяснения, которое впоследствии уничтожил. Поступившее заявление о преступлении зарегистрировано не было. Уголовное дело возбуждено лишь после того, как спустя более полутора месяцев гр. С. обратилась в прокуратуру района, однако преступление осталось нераскрытым, так как следы преступления за это время были уничтожены. Во время первого обращения с устным заявлением о преступлении потерпевшая сообщила, что на пальто и других вещах остались следы борьбы с преступником. Обстановка на месте преступления зафиксирована не была. Так как уголовное дело немедленно не было возбуждено, потерпевшая на судебно-медицинскую экспертизу не была направлена (Степанов 1972: 13-14).

В этом же году за ненадлежащее реагирование на заявления и сообщения о преступлении, выразившемся в укрытии преступления от учета, Саратовским областным судом были осуждены начальник Балашовского РОВД, его заместитель и начальник ОУР, а также участковый инспектор (Михайленко 1974: 24).

Примером укрытия преступления, совершенного на территории КазССР является факт, связанный со следователем Чарского РОВД УВД администрации Семипалатинска. Получив заявление о краже государственного имущества, последний приобщил его к имеющемуся уголовному делу, тем самым не принял мер к его регистрации в книге учета заявлений и сообщений о преступлениях (Ольков 1994: 188).

В данный период времени руководство МВД СССР возглавлял Н.А. Щелоков. Стоит отметить, что в период службы Н.А. Щелокова (1966-1982) в органах внутренних дел проводилась тотальная реформа, направленная на совершенствование оперативно-служебной деятельности,

в том числе и в наведении порядка в учетно-регистрационной дисциплине.

Отмечая негативную порочную практику укрытия преступлений, министр внутренних дел СССР Н.А. Щелоков писал: «укрытие преступлений от учета, несвоевременное реагирование на заявления граждан, подрывает авторитет органов внутренних дел в глазах народа, разлагает работников милиции, затрудняет совершенствование их деятельности. «Благоприятные» показатели создают настроение самоуспокоенности у работников органов внутренних дел, приводят к снижению их активности в деле организации борьбы с преступностью. В результате опасные преступления остаются безнаказанными» (Головащук 2003: 41).

Об этом, в частности, также указывал и Генеральный Прокурор СССР Н.С. Трубин: «отдельные должностные лица, ответственные за раскрытие преступлений, выискивают легкие пути к повышению процента раскрываемости. По их мнению, лучше скрыть имеющуюся информацию о преступлении или внести в нее желательные им изменения, чем заниматься сложным поиском. Они нередко допускают неправильное изложение обстоятельств произошедшего, занижают в документах стоимость похищенного имущества, отказывают в возбуждении уголовного дела, ссылаясь на незначительный материальный ущерб, причиненный преступлением, и другие обстоятельства, которые не предусмотрены законом и не освобождают их от обязанности устанавливать преступника» (Трубин 1976: 199).

Следует отметить, что в 60-е годы XX века в отличие от прошлого десятилетия проблемы, связанные с укрытием преступлений, освещались не только в ведомственных документах, но и в открытой печати. «Сокрытие преступлений от учета – грубейшее нарушение законности, – справедливо отмечалось в журнале «Социалистическая законность», – оно создает неправильное представление о состоянии преступности и затрудняет разоблачение преступников. Вследствие несвоевременной регистрации преступлений и непринятия по сообщениям необходимых мер преступник остается неразоблаченным и нередко продолжает совершать преступления (Трубин 1965: 57).

Так как, в основном укрывались факты получения телесных повреждений криминального характера, то 18 марта 1969 года МВД СССР, Министерство здравоохранения СССР и Министерство путей сообщения СССР впервые подписали совместное указание об обязательном порядке передачи в органы внутренних дел сообщений о травмах криминального характера. Кроме того, в целях совершенствования порядка рассмотрения информации о преступлениях, Н.А. Щелоков 8 августа 1978 года подписал приказ № 478 «О введении в действие Инструкции о порядке приема, регистрации, учета и рассмотрения органами внутренних дел (милиции) заявлений и сообщений о преступлениях». Согласно данному нормативному правовому акту, информация, поступавшая в дежурные части органов внутренних дел, регистрировалась дифференцированно, то есть в Книге учета заявлений и сообщений о преступлениях (Книга № 1) и Журнале учета другой информации (Журнал № 2). В Книге № 1 предписывалось регистрировать поступающие в органы внутренних дел заявления и сообщения, отвечающие требованиям уголовно-процессуального закона, предъявляемым к поводам для возбуждения уголовного дела. В Журнале № 2 регистрировались сигналы о преступлениях, поступившие по телефону, телеграфу, радио, срабатывание приборов охранной сигнализации, а также анонимные письма с сообщениями о совершенных преступлениях или их признаках (Буторин 1990: 34, 41). Подобная дифференцированная регистрация применялась долгие годы, в том числе и в постсоветское время, однако, как показала правоприменительная практика, данный метод регистрации не достиг желаемого результата, а, наоборот, способствовал росту укрытия преступлений. Это было связано с тем, что заявления и сообщения о преступлениях должностные лица органов внутренних дел могли регистрировать в Журнале № 2, как иную информацию, не содержащую информацию о преступлениях.

Во исполнение Постановления Президиума Верховного Совета СССР «О практике применения и соблюдения органами прокуратуры и внутренних дел законодательства об охране правопорядка и борьбе с правонарушениями» в 1979 году Н.А. Щелоков подписал еще один приказ, согласно которому руководителям органов внутренних дел было предписано установить систематический контроль за своевременным и правильным реагированием на каждое заявление и сообщение о преступлениях, полнотой их регистрации, решительно устранить факты укрытия преступлений от учета. Кроме того, в деятельности органов внутренних дел была введена карточная система ведомственного контроля за учетно-регистрационной дисциплиной. Ее суть

заключалась в том, что на каждое поступившее в течение дежурных суток заявление и сообщение о преступлении сотрудником дежурной части заполнялась контрольная карточка с указанием времени и даты поступления заявления и сообщения о преступлении, а также его краткого содержания. В последующем ход работы по разрешению материала отражался руководителем той службы, в которую этот материал поступал. Ежедневно картотека неразрешенных материалов представлялась начальнику ОВД для ознакомления и контроля. В случае нарушения установленного законом срока рассмотрения заявления или сообщения о преступлении руководителем службы на соответствующий материал заполнялась красная сигнальная карточка с обязательным указанием причины допущенного нарушения и фамилии исполнителя, виновного в этом (Щерба 1987: 54, 61). Стоит отметить, что основы данной системы заложены и в действующей базе ЕРДР, а именно в части указания времени и даты регистрации информации об уголовных правонарушениях, характера сведений и сигнала о нарушенных процессуальных сроках их рассмотрения.

Активные усилия в наведении порядка в учетно-регистрационной дисциплине предпринимал и министр внутренних дел СССР В.В. Федорчук (1982-1986). Это выражалось как в «… увольнении из органов внутренних дел нескольких тысяч сотрудников, часть из которых была осуждена за должностные преступления, выразившиеся в укрытии преступлений от учета…» (Гаврилов 2012: 86), так и в проведении ряда следующих мероприятий.

Во-первых, издание приказа МВД СССР № 50 от 1983 года «О введении в действие Инструкции о порядке приема, регистрации, учета и разрешения в органах внутренних дел заявлений и сообщений о преступлениях» обязывало начальников ОВД или других работников по их поручениям регулярно прослушивать запись магнитной ленты «02», сверяя полноту регистрации записей на ленте с книгой учета заявлений и сообщений о преступлениях и журналом о другой информации (Щерба 1987: 60). Сами телефонные сообщения о преступлениях начали фиксироваться на специальных бланках, после того как был издан приказ Генерального Прокурора СССР № 30 от 8 августа 1977 года (Буторин 1990: 32). Такая процедура приема информации о происшествиях существует и в настоящее время. Операторы канала «102» ЦОУ при приеме телефонных обращений заполняют информационно-поисковые карточки, которые в дальнейшем перенаправляют в дежурные части подразделений органов внутренних дел.

Во-вторых, Оргинспекторским управлением совместно с ГИЦ МВД СССР были изданы первые методические рекомендации об организации ведомственного контроля за учетно-регистрационной дисциплиной на всех уровнях Министерства.

В-третьих, с 1984 года в подразделениях ГОРОВД стала функционировать автоматизированная информационная система «Факт», которая предшествовала «карточному» контролю и позволяла контролировать сроки разрешения заявлений и сообщений о преступлениях с использованием электронно-вычислительных машин (Щерба 1987: 11, 61-62).

После В.В. Федорчука, в период службы министра внутренних дел СССР А.В. Власова (1986-1988), при приеме заявлений и сообщений граждан впервые стали выдаваться талоны-уведомления (Буторин 1990: 42). Кроме того, при рассмотрении информации о происшествиях особое внимание стало уделяться и к сведениям о безвести пропавших лицах.

Так, 3 ноября 1986 года МВД совместно с Генеральной Прокуратурой подписали совместное указание, которое обязывало прокуроров и сотрудников милиции усилить надзор и контроль за соблюдением законности при рассмотрении заявлений и сообщений о безвести пропавших лицах, своевременным возбуждением уголовных дел. Не реже одного раза в месяц проверять исполнение требований закона о приеме, регистрации и разрешении таких заявлений и сообщений. Заводить наблюдательные производства по каждому розыскному делу и безвести пропавших. По каждому случаю нарушения законности, сокрытия заявлений и сообщений о безвестном исчезновении граждан, непринятия мер по своевременному их розыску, необоснованного отказа в возбуждении уголовных дел принимать строгие меры в отношении виновных (Белозеров 1988: 43-44).

Кроме того, были пересмотрены и критерии оценки деятельности органов внутренних дел. Так, 19 ноября 1987 года Генеральной Прокуратурой и МВД было разработано еще одно совместное указание за № 91/11 «О введении нового критерия оценки раскрытия преступления», согласно которому основным критерием оценки раскрываемости преступлений являлось количество преступлений, оставшихся нераскрытыми (Буторин 1990: 44).

Несмотря на проведение различных реформ в органах внутренних дел, направленных на укрепление учетно-регистрационной дисциплины, укрытие преступлений продолжало совершаться. Об этом свидетельствуют следующие статистические данные.

Так, в 1988 году было выявлено и поставлено на учет 52260 преступлений, не зарегистрированных органами внутренних дел, а в 1989 – 59626, из них только следственным аппаратом МВД СССР (РСФСР – 28, УССР – 3, Узбекистан – 5; Казахстан – 4; Грузия – 3; Азербайджан – 1; Таджикистан – 1; Киргизия – 5) допущено на 9 фактов сокрытия преступлений от учета больше по сравнению 1988 годом (Ольков 1994: 186).

Исходя из вышеизложенного, нельзя не согласиться с В.В. Лунеевым, который отмечал, что борьба с укрытием преступлений была обусловлена главным образом карьеристскими мотивами руководителей и носила характер кратковременных кампаний, несмотря на то, что МВД СССР и союзных республик издавало множество приказов о наказании работников, нередко высокопоставленных, за выявленные злоупотребления, не регистрацию преступлений, неправомерный отказ в возбуждении уголовных дел, незаконное их прекращение (Лунеев 1973: 126).

Обобщив состояние учетно-регистрационной дисциплины и организацию противодействия укрытию преступлений в советский период времени, перейдем к современному Казахстану. Следует подчеркнуть, что после распада СССР проблема, связанная с укрытием преступлений продолжала оставаться и во всех постсоветских странах.

Об этом, в частности, справедливо указывал и экс-Генеральный Прокурор Республики Казахстан А.К. Даулбаев: «…укрытие преступлений – это проблема всех постсоветских стран» (Даулбаев 2011: 3).

Ю.Д. Лившиц, А.А. Рзаев, Н.И. Сотников и К.У. Ташибаев исследуя в начале 90-х годов работу дознания органов внутренних дел Республики Казахстан, охарактеризовали состояние учетно-регистрационной дисциплины как низкую, отмечая, что «… заявление или сообщение регистрируется только через несколько дней после их поступления. Нередко регистрация и учет преступлений ставятся в прямую зависимость от их раскрытия» (Лившиц 1990: 23). Об этом свидетельствуют и статистические данные.

Так, в 1995 году было выявлено и поставлено на учет 3333 незарегистрированных преступления, в 1996 г. – 4145, в 1997 г. – 5187, в 1998 г. – 3763, в 1999 г. – 3106, в 2000 г. – 2704.

В 2006 году выявлено и поставлено на учет 3279 укрытых преступлений, в 2007 году – 3445, в 2008 году – 3839, в 2009 году – 4949, в 2010 году – 5561, в 2011 году – 6666 (Исаев Н.М., 2016: 9). На наш взгляд, одной из причин роста фактов укрытия преступлений и нестабильной ситуации в учетно-регистрационной дисциплине в органах внутренних дел явилось то, что до 2011 года в отношении должностных лиц, совершавших укрытие преступлений, применялись не уголовно-правовые, а дисциплинарные меры воздействия.

В последующие годы происходит резкое снижение количества укрытых преступлений. Представляется, что этому способствовало слияние двух журналов (Книга учета заявлений (КУЗ) и Журнал учета информации (ЖУИ)) в один общий с названием – Книга учета заявлений и информации (КУЗИ), в котором регистрировалась информация о всех происшествиях, а также введение его электронной версии, что во многом упрощало ведомственный контроль и прокурорский надзор за соблюдением учетно-регистрационной дисциплины. Более того, была внедрена практика общественного контроля за учетно-регистрационной дисциплиной в форме предоставления возможности гражданам посредством Интернета (сайт КПС и СУ ГП Республики Казахстан) и мобильной связи (sms-сообщений) получать информацию о ходе рассмотрения их обращений и принятие по ним процессуальных решений.

Также, минимизации фактов укрытия преступлений способствовало введение в 2011 году в УК Республики Казахстан (в ред. 1997 г.) специального состава (ст. 363-1 «Укрытие преступлений»), предусматривающего уголовную ответственность должностных лиц за укрытие преступления. Таким образом, Республика Казахстан стала вторым государством на постсоветском пространстве (после Республики Узбекистан (2008 г.), которое ввело в уголовное законодательство специальную норму за укрытие преступления.

В последующем принятая в 2014 году новая редакция Уголовного кодекса Республики Казахстан сохранила уголовную ответственность за укрытие уголовного правонарушения (ст. 433 «Укрытие уголовного правонарушения» УК РК).

Стоит отметить, что реформирование в 2014 году уголовно-процессуального законодатель-

ства, направленного, в частности, на исключение доследственной проверки и стадии возбуждения уголовного дела, а также разработка и внедрение информационной базы «Единый реестр досудебных расследований» позволили еще более существенно улучшить состояние учетно-регистрационной дисциплины. Вместе с тем, несмотря на вышеперечисленные беспрецедентные меры, в настоящее время органами уголовного преследования продолжается укрытие уголовных правонарушений, о чем свидетельствуют факты, подтвержденные официальной правовой статистикой и материалами уголовных дел.

Заключение

Таким образом, на основании вышеизложенного можно сделать следующие выводы:

1. Соблюдению учетно-регистрационной дисциплины уделялось внимание с древнейших времен, о чем свидетельствует наличие специальных документов (регистр уголовных дел, судовая замковая книга, бийские книги и др.), в которых отражалась информация о преступлениях и принятые по ним процессуальные решения. Регистрацию и учет информации о преступлениях осуществляли специальные уполномоченные должностные лица (архонты (цари), бояре, князья, бии, судьи, судебные следователи, прокуроры и др.). Наряду с этим, была предусмотрена и ответственность, в том числе и уголовная, за укрытие преступлений должностными лицами, уполномоченными рассматривать информацию о преступлениях.

2. Изучение литературных источников и нормативных правовых актов показало, что термин «сокрытие преступления» предшествовал термину «укрытие преступления», о чем свидетельствует такой нормативный правовой акт, как Циркулярный ордер 1802 года и др. С 50-х годов XX века наряду с термином «сокрытие преступления» стал использоваться термин «укрытие преступления», который в последующем стал доминирующим.

3. Анализ становления и развития института рассмотрения информации об уголовных правонарушениях показал, что законодателем регулярно проводилась работа по совершенствованию процедуры рассмотрения информации об уголовных правонарушениях и противодействия их укрытию. Реформирование уголовно-процессуального законодательства позволило существенно снизить количество фактов укрытия уголовных правонарушений, но вместе с тем, несмотря на все предпринимаемые меры, практика укрытия уголовных правонарушений органами уголовного преследования продолжает сохраняться.

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М.Е. Берлыбекова

кандидат юридических наук, полковник полиции, доцент,
Алматинская академия МВД Республики Казахстан имени Макана Есбулатова,
Казахстан, г. Алматы, e-mail: 2050nugumanova@mail.ru

КОРРУПЦИОННЫЕ ПРАВОНАРУШЕНИЯ И МЕРЫ ПРОТИВОДЕЙСТВИЯ ИМ В РЕСПУБЛИКЕ КАЗАХСТАН

Аннотация. В предлагаемой статье на основе статистических сведений за последние годы исследуется структура, состояние и общая динамика коррупционных правонарушений в нашей стране и в странах ближнего зарубежья (Российской Федерации и Кыргызской Республики).

Общее количество зарегистрированных уголовных правонарушений в нашей стране и в соседней Российской федерации сократилось (так, в Республике Казахстан – с 361689, зарегистрированных в 2016 году, до 292286, зарегистрированных в 2018 году; в Российской Федерации – с 2 160 063, зарегистрированных в 2016 году, до 1 991 532, зарегистрированных в 2018 году), в то время как в Кыргызской Республике – увеличилось (с 27481, зарегистрированных в 2016 году, до 29718, зарегистрированных в 2018 году). Однако, при этом доля коррупционных преступлений в первых двух странах держится примерно на одном уровне, в то время как в Кыргызской Республике происходит ее снижение (с 4,1% в 2016 году, до 3,3 % в 2018 году).

В структуре коррупционной преступности, по данным Комитета по правовой статистике и специальным учетам Генеральной прокуратуры Республики Казахстан, доминируют такие преступления как, получение и дача взятки, служебный подлог, злоупотребление должностными полномочиями, мошенничество, присвоение или растрата вверенного чужого имущества. В странах ближнего зарубежья (Российской Федерации и Кыргызской Республики) ситуация не отличается кардинальным образом – в обоих государствах доминирует взяточничество. Практически все исследуемые страны по индексу восприятия коррупции находятся примерно на одинаковом уровне (28-31). Однако, при этом по итогам 2018 года Казахстан набрал 31 балл и занял 124 строчку, опередив Российскую Федерацию и заняв лидирующую позицию среди стран Центральной Азии. То есть, несмотря на то, что доля коррупционных правонарушений по республике остается на прежнем уровне, появились и определённые позитивные тенденции. Иначе говоря, комплекс мер, принимаемых нашим государством по противодействию коррупции, приносит желаемые результаты.

Ключевые слова: коррупция, правонарушения, преступность, взятка, государство.

M.Y. Berlybekova

candidate of law, police colonel, assistant professor, Makan Yesbulatov Almaty academy
of the Ministry of Internal Affairs of the Republic of Kazakhstan,
Kazakhstan, Almaty, e-mail: 2050nugumanova@mail.ru

Corruption offenses and measures to counteract them in the Republic of Kazakhstan

Abstract. In this article on the basis of statistical information within recent years the structure, condition and general dynamics of corruption offenses in Kazakhstan and its neighboring countries (Russian Federation and Kyrgyz Republic) are studied.

The total number of registered criminal offenses in Kazakhstan and Russian Federation has decreased (from 361689 registered in 2016 to 292286 registered in 2018 in Kazakhstan and from 2 160 063 registered in 2016 to 1 991 532 registered in 2018 in Russian Federation) while in Kyrgyz Republic it on the contrary has increased (from 27481 registered in 2016 году to 29718 registered in 2018). However the share of corruption crimes in Kazakhstan and Russian Federation remains at approximately the same level while in Kyrgyz Republic it is decreasing (from 4,1% 2\in 2016 to 3,3% in 2018).

According to the Committee on Legal Statistics and Special Accounts of the State Office of Public Prosecutor of the Republic of Kazakhstan, the corruption crime structure is mostly consist of such crimes as receiving and giving a bribe, forgery committed by official, abuse of authority, fraud, misappropriation

or embezzlement of entrusted property. In neighboring countries (Russian Federation and Kyrgyz Republic), the situation doesn't differ dramatically – bribery dominates in both states. Almost all surveyed countries are at approximately the same level (28-31) in terms of corruption perception index. However, at the end of 2018 Kazakhstan scored 31 points and took 124th place, ahead of the Russian Federation and took leading position among the countries of Central Asia. This means that despite the fact that the share of corruption offenses in the republic remains at the same level, certain positive trends have also appeared. In other words, the complex of measures taking by our government to counteract corruption brings the desired results.

Key words: corruption, offenses, crime, bribe, state.

М.Е. Берлыбекова

доцент, заң ғылымдарының кандидаты, полиция полковнигі,
Қазақстан Республикасы Ішкі істер министрлігі Мақан Есболатов атындағы Алматы академиясы,
Қазақстан, Алматы қ., e-mail: 2050nugumanova@mail.ru

Қазақстан Республикасындағы сыбайлас жемқорлыққа және оған қарсы іс-қимыл шаралары

Аңдатпа. Ұсынылған мақалада соңғы жылдардағы статистикалық мәліметтер негізінде еліміздегі және жақын шетелдердегі (Ресей Федерациясы мен Қырғыз Республикасы) сыбайлас жемқорлық құқық бұзушылықтарының құрылымы, жағдайы және жалпы динамикасы зерттелген.

Еліміздегі және көршіле Ресей Федерациясында тіркелген қылмыстық құқық бұзушылықтардың жалпы саны төмендеді (мысалы, Қазақстан Республикасында – 2016 жылы тіркелген 361689-дан 2018 жылы 292286-ға дейін; Ресей Федерациясында – 2016 жылы тіркелген 2 160 063-тен 2018 жылы тіркелген 1 991 532-ге дейін), ал Қырғыз Республикасында осы көрсеткіш өсті (2016 жылы тіркелген 27481-ден 2018 жылы тіркелген 29718-ге дейін). Алайда Қазақстан Республикасында мен Ресей Федерациясында сыбайлас жемқорлық қылмыстардың үлесі шамамен бірдей деңгейде, ал Қырғыз Республикасында ол төмендейді (2016 жылғы 4,1%-дан 2018 жылы 3,3%-ға дейін).

Қазақстан Республикасы Бас Прокуратурасының Құқықтық статистика және арнайы есепке алу жөніндегі комитетінің мәліметтері бойынша сыбайлас жемқорлық қылмысының құрылымында пара алу және беру, қызмет бабында жалған құжат жасау, лауазымдық өкілеттіктерді теріс пайдалану, алаяқтық, немесе бөтеннің сеніп тапсырылған мүлікті заңсыз пайдалану және ысырап ету сияқты қылмыстар басым болды. Жақын шетелдерде (Ресей Федерациясы және Қырғыз Республикасы) жағдай түбегейлі айырмашылығы жоқ – екі мемлекетте де парақорлық басым. Зерттелген барлыққа жуық елдерде сыбайлас жемқорлықты қабылдау индексінің деңгейі бірдей (28-31). Алайда, 2018 жылдың соңында Қазақстан 31 ұпай жинап, Ресей Федерациясынан озып кетіп, 124-ші орынға ие болды және Орталық Азия елдері арасында көшбасшылық орынға ие болды. Яғни, республика бойынша сыбайлас жемқорлық құқық бұзушылықтардың үлесі бұрынғы деңгейде болғанына қарамастан, белгілі бір оң үрдістер байқалды. Басқаша айтқанда, мемлекетіміздің сыбайлас жемқорлыққа қарсы қабылдаған іс-қимыл шаралардың кешені өз нәтижесін беруде.

Түйін сөздер: сыбайлас жемқорлық, құқық бұзушылықтар, қылмыс, пара, мемлекет.

Введение

Одной из отрицательных примет нынешнего казахстанского социума является коррупция. За последние годы все чаще коррупционные правонарушения совершаются государственными служащими разных уровней в различных государственных органах. Практически нет ни одного государственного органа, в котором бы отсутствовало данное явление. Иными словами коррупция, подобна спруту, который охватила своими щупальцами все сферы жизни и деятельности нашего государства и стала практически одним из безусловных признаков современного Казахстана, что свидетельствует об актуальности выбранной темы. Актуальность и значимость заявленной темы усиливается тем, что Республика Казахстан переживает непростой исторический период, в который наблюдаются политическая нестабильность, недостаточная работа властных органов, отсутствие сильных институтов гражданского общества, низкий уровень культуры наших соотечественников, внеочередные выборы руководства страны и пр. Явление коррупции как социального феномена есть объект данной статьи. Типичные модели коррупционных действий государственных служащих в сегодняшнем Казахстане составляют предмет исследования. Целью заявленной статьи является социально-правовой анализ проявлений коррупции на данном

этапе развития нашего государства, достижению данной цели способствуют нижеприведенные задачи: раскрыть возможности антикоррупционных программ, показать влияние коррупции на работу государственных структур, изучить и проанализировать формы проявления коррупции в современном Казахстане и странах ближнего зарубежья на примере России и Кыргызстана. Методологическую основу заявленной статьи представляют общенаучные методы познания (обобщение, аналогия, анализ и др.), диалектический и системный методы, историко-сравнительный анализ предмета статьи.

Данная статья может быть представлена в качестве рекомендаций для общественных организаций, государственных органов, различных объединений, которые занимаются реализаций государственных мероприятий в сфере антикоррупционной политики, а также студентам и магистрантам в учебном процессе.

Основная часть

Коррупция есть уникальный феномен, уникальностью коррупции является то, что она присутствует в любой модели государства и крайне регрессивна во всех сегментах социума. Именно коррупция приводит к существенному имущественному расслоению общества, способствует росту преступности, в том числе и организованной. Помимо этого, к негативным последствиям относится снижение темпов экономического развития государства, из которого вытекают все остальные, такие как: снижение инвестиций, сокращение международного сотрудничества, подрыв репутации нашей родины и пр. Причем зачастую фактором, способствующим совершению коррупционных правонарушений, является деятельность государственных служащих, использующих при взаимоотношениях с гражданами и организациями свое служебное положение в собственных корыстных целях.

На данном этапе коррупция в Казахстане представляет собой системное явление с эффектом самовоспроизводства. Она нарушает существующие общественные отношения и связи, при этом коррупционные методы и способы постоянно совершенствуются, усложняются, вклиниваются в современное общество, практически срастаются с социумом, и тем самым тормозят его нормальное развитие. Все это представляет собой угрозу на национальном уровне.

В Республике Казахстан, как практически и в любой стране ближнего зарубежья, наблюдается преобладание государственных интересов по отношению к отдельным лицам и общественным формированиям. Если к этому добавить относительно снисходительное отношение к коррупционным действиям (многие граждане считают это нормальным) или, в отдельных случаях, необходимой мерой для решения конкретного вопроса, то получим благодатную почву для жизнеспособности и процветания коррупции. И как результат – наличие самых разнообразных форм коррупционных отношений (взяточничество, лоббизм, местничество, кумовство, протекционизм, различные всевозможные варианты незаконного присвоения государственных средств в личных целях и пр.).

Однозначно, что приоритетным направлением для национальной политики и казахстанского общества становится борьба с коррупцией. Для снижения уровня коррупционных правонарушений наиболее эффективны антикоррупционные меры системного характера. Осуществление подобных комплексных мер позволит сократить самовоспроизводство коррупции и в, целом, будет способствовать действенному и стабильному развитию социума. И ряд нормативно-правовых актов, принятых за последние годы, лишний раз это подтверждает. Перечислим лишь некоторые из них: «Антикоррупционная стратегия Республики Казахстан на 2015–2025 годы», утвержденная Указом Президента Республики Казахстан от 26 декабря 2014 года № 986 (http://mic.gov.kz/ru/kategorii/normativnye-pravovye-akty-v-sfere-protivodeystviya-korrupcii); законы Республики Казахстан от 18.11.2015г. «О противодействии коррупции» (https://online.zakon.kz/document/?doc_id=33478302); «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам противодействия коррупции» (https://tengrinews.kz/zakon/parlament_respubliki_kazahstan/natsionalnaya_bezopasnost/id-Z1500000411/); распоряжение Премьер-Министра Республики Казахстан от 24.11.2015г. «О мерах по реализации законов Республики Казахстан от 18.11.2015г. «О противодействии коррупции» и «О внесении изменений и дополнений в некоторые законодательные акты Республики Казахстан по вопросам противодействия коррупции» (https://online.zakon.kz/document/?doc_id=31945137#pos=1;-109); послания Лидера нации народу Казахстана от 31 января 2017 года «Третья модернизация Казахстана: глобальная конкурентоспособ-

ность» – «…Многое в борьбе с коррупцией будет зависеть от активного участия всего общества. С развитием социальных сетей и других медиаресурсов всеобщее неприятие должно стать мощным инструментом в противодействии коррупции». (http://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-prezidenta-respubliki-kazahstan-nnazarbaeva-narodu-kazahstana-31-yanvarya-2017-g) и от 10 января 2018 года «Новые возможности развития в условиях четвертой промышленной революции» – пункт 9 «Борьба с коррупцией и верховенство закона» (http://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-prezidenta-respubliki-kazahstan-n-nazarbaeva-narodu-kazahstana-10-yanvarya-2018-g); «План мероприятий на 2018 – 2020 годы по реализации Антикоррупционной стратегии Республики Казахстан на 2015 – 2025 годы», утвержденный постановлением Правительства Республики Казахстан от 31 мая 2018 года № 309 (https://egov.kz/cms/ru/law/list/P1800000309) и др.

Коррупцией поражены практически все государственные органы нашей страны, и бороться с коррупцией нужно сообща – и государству и обществу совместными усилиями.

Рассмотрим состояние с коррупционными правонарушениями и их динамические показатели в нашей стране. Так, например, можно констатировать, что доля коррупционных правонарушений от общего количества зарегистрированных правонарушений за последние годы несколько снизилась, но, тем не менее, не повлияла на ее процентное соотношение – 0,8% (https://qamqor.gov.kz/portal/page/portal/POPageGroup/Services/Pravstat), что, в свою очередь, говорит о том, что их уровень остался прежним на фоне общего снижения показателей по всем видам зарегистрированных в стране правонарушений (табл. 1).

Исследуем сведения по коррупционным преступлениям у соседей – Российской Федерации.

При некотором снижении показателей по общему количеству зарегистрированных преступлений в Российской Федерации количество преступлений коррупционной направленности практически не изменилось (разница всего в одну десятую процента), иными словами наблюдается то же постоянство совершения коррупционных правонарушений, как и в нашей стране.

Если обратимся к другой соседней стране – Кыргызской Республике, то увидим, что ситуация с коррупционными преступлениями изменилась – в стране наблюдается снижение показателей по коррупционным преступлениям.

Таблица 1 – Доля коррупционных правонарушений от общего количества зарегистрированных правонарушений в Республике Казахстан

№ п/п	Года	Количество зарегистрированных правонарушений	Коррупционные правонарушения	%
1	2016	361689	2807	0.8
2	2017	316418	2452	0.8
3	2018	292286	2375	0,8

Таблица 2 – Сведения о совершенных преступлениях в Российской Федерации (https://mvd.ru/upload/site163/document_text/Kompleksnyy_analiz__original-maket_24_04.pdf; http://crimestat.ru/offenses_map)

№ п/п	Года	Количество зарегистрированных преступлений з	Количество преступлений коррупционной направленности	%
1	2016	2 160 063	32 924	1,5
2	2017	2 058 476	29 634	1,4
3	2018	1 991 532	30 500	1,5

Таблица 3 – Сведения по преступлениям в Кыргызской Республике (http://www.stat.kg/ru/statistics/prestupnost/; https://www.prokuror.kg/files/docs/2018/09/oecd-acn-kyrgyzstan-4th-round-monitoring-report-2018-rus.pdf; https://ru.sputnik.kg/incidents/20190207/1043229071/korrupcionnye-dela-ushcherb-100-mln-sekretar-sovbez.html)

№ п/п	Года	Количество зарегистрированных преступлений	Коррупционные преступления	% корр. прест. от зарегистр. прест.	Взяточничество	% от зарегистр. корр.прест.
1	2016	27481	1135	4,1	100	8,8
2	2017	27706	996	3,6	57	5,7
3	2018	29718	988	3,3	45	4,6

Таблица 3.1

№	Страны	2016			2017			2018		
		Общ.кол-во зарег.прест	Из них корр.прест.	%	Общ.кол-во зарег.прест	Из них корр.прест.	%	Общ.кол-во зарег.прест	Из них корр.прест.	%
1	Республика Казахстан	361689	2807	0.8	316418	2452	0.8	292286	2375	0.8
2	Российская Федерация	2 160 063	32 924	1,5	2 058 476	29 634	1,4	1 991 532	30 500	1,5
3	Кыргызская Республика	27481	1135	4,1	27706	996	3,6	29718	988	3,3

Налицо тенденция к снижению показателей по коррупционным преступлениям. В табличном варианте это будет выглядеть нижеследующим образом.

При изучении коррупционных правонарушений, совершенных служащими государственных органов нашей республики, на основании сведений уголовной статистики, представленной КПС и СУ ГП Республики Казахстан в разделе «Правовая статистика», констатируем, что получение взятки (ст. 366 УК РК) является наиболее часто совершаемым коррупционным правонарушением, к тому же имеющим тенденцию к росту (2016 год – 25%, 2017 год – 33%, 2018 год – 34%).

Далее при относительном снижении показателей следует уголовное правонарушение, предусмотренное ст. 361 УК РК – «Злоупотребление должностными полномочиями»: 2016 год – 20%, 2017 год – 16%, 2018 год – 15%.

Затем с небольшим отличием следуют правонарушения, предусмотренные ст. 369 УК РК «Служебный подлог», ст. 367 УК РК «Дача взятки» и составляют 17% и 14% соответственно.

Следующим идет уголовное правонарушение «Присвоение или растрата вверенного чужого имущества», п.2 ч.3 ст.189 УК РК, совершенное лицом, уполномоченным на выполнение государственных функций, либо приравненным к нему лицом, либо должностным лицом, либо лицом, занимающим ответственную государственную должность, если они сопряжены с использованием им своего служебного положения, данный вид правонарушений составляет 14%.

Уголовное правонарушение «Мошенничество» (https://online.zakon.kz/document/?doc_id=31575252), если оно сопряжено с использованием им своего служебного положения, составляет 10%-11%. Вышеперечисленные сведения наглядно представлены в таблицах №№ 4-6.

При этом, не может не вызывать беспокойства, что максимальное количество зарегистрированных коррупционных правонарушений приходится на тяжкие коррупционные правонарушения (табл.7). Так, в 2016 году доля тяжких коррупционных правонарушений от общего числа зарегистрированных коррупционных правонарушений в Республике Казахстан, составила – 53,4%; в 2017 году доля тяжких коррупционных правонарушений от общего числа зарегистрированных коррупционных правонарушений в Республике Казахстан, составила –59%; в 2018 году доля тяжких коррупционных правонарушений от общего числа зарегистрированных коррупционных правонарушений в Республи-

ке Казахстан, составила –57,6%. Очевидно, что половину и более от всех зарегистрированных коррупционных правонарушений составляют именно тяжкие коррупционные правонарушения (табл.7), что не может не вызывать беспокойства.

Таблица 4 – Сведения о наиболее часто совершаемых коррупционных правонарушениях в Республике Казахстан в 2016 году (https://qamqor.gov.kz/portal/page/portal/POPageGroup/Services/Pravstat?_piref36_258157_36_223082_223082.__ora_navigState=page%3Dmode_report%26currPage%3D2%26eventSubmit_doNext по табл. 4-6)

Кол-во корруп. пр., соверш-х в 2016г.	Получение взятки (ст.366 УК РК)	%	Злоупотреб. должн. полномоч. (ст.361 УК РК)	%	Служ. подлог (ст.369 УК РК)	%	Присв.или растрата вверен.чуж. имущ. (п.2) ч.3 ст.189 УК РК)	%
2807	694	25	558	20	481	17	405	14

Таблица 5 – Сведения о наиболее часто совершаемых коррупционных правонарушениях в Республике Казахстан в 2017 году

Кол-во корруп. пр., совершенных в 2017г.	Получение взятки (ст.366 УК РК)	%	Злоупотреб. должн. полномоч. (ст.361 УК РК)	%	Дача взятки (ст.367 УК РК)	%	Мошенничество (п.2) ч.3 ст.190 УК РК)	%
2452	812	33	388	16	338	14	271	11

Таблица 6 – Сведения о наиболее часто совершаемых коррупционных правонарушениях в Республике Казахстан в 2018 году

Кол-во корруп. пр., совершенных в 2018г.	Получение взятки (ст.366 УК РК)	%	Злоупотреб. должн. полномоч. (ст.361 УК РК)	%	Присв.или растрата вверен.чуж. имущ. (п.2) ч.3 ст.189 УК РК)	%	Мошенничество (п.2) ч.3 ст.190 УК РК)	%
2375	802	34	366	15	339	14	239	10

Таблица 7 – Доля тяжких коррупционных правонарушений от общего количества зарегистрированных коррупционных правонарушений по Республике Казахстан

№ п/п	Года	Количество зарегистрированных коррупционных правонарушений	Из них тяжкие	%
1	2016	2807	1498	53,4
2	2017	2452	1447	59
3	2018	2375	1368	57,6

Помимо этого, вызывает тревогу, что за исследуемый промежуток времени не зарегистрировано на территории всей республики ни одного факта рейдерства, что ни в коей мере не свидетельствует об отсутствии этого явления в нашей стране, тем более, что в средствах массовой информации периодически освещается данная тема с приведением различных примеров.

Рассмотрим более детально показатели с получением взятки в Российской Федерации. Так, получение взятки, преступление, предусмотренное ст.290 УК РФ: в 2016 году зарегистрировано – 5344, в 2017 году – 3188, в 2018 году – 3499. (http://crimestat.ru). Тем не менее, несмотря на некоторое колебание, в структуре коррупционной преступности взяточничество составляет основную долю – 60,6%. По остальным составам преступления располагаются следующим образом: мошенничества, совершенные с использованием служебного положения, – 25,5 %; присвоение или растрата с использованием служебного положения – 13,1 %, служебный подлог – 7,7 % и др. (https://mvd.ru/upload/site163/document_text/Kompleksnyy_analiz__original-maket_24_04.pdf)

Если обратимся к нормативно-правовой основе, то в нашей республике составы коррупционных правонарушений представлены Главой 15 УК РК «Коррупционные и иные уголовные правонарушения против интересов государственной службы и государственного управления», в уголовном кодексе Кыргызской Республике в Главе 30 «Должностные преступления» в ст. 303 дано определение понятия «коррупция», а также составы коррупционных преступлений (https://online.zakon.kz/document/?doc_id=34350840), в Российской Федерации в уголовном кодексе коррупционные преступления не выделяются отдельной главой, однако существует ведомственный нормативный акт – Перечень преступлений коррупционной направленности, который отражен в Указании Генеральной прокуратуры РФ № 65/11 и МВД России №1 от 01.02.2016 г. «О введении в действие перечней статей Уголовного кодекса Российской Федерации, используемых при формировании статистической отчетности» с приложением Перечня № 23 классификации преступлений коррупционных направленности. (https://www.garant.ru/products/ipo/prime/doc/71231728/)

Теперь обратимся к индексу восприятия коррупции.

Таблица 8 – Сведения по индексу восприятия коррупции (http://tikazakhstan.org/kto-my/o-fonde/); (http://tikazakhstan.org/wp-content/uploads/2018/02/CPI-2017-Global-Report.pdf); (http://tikazakhstan.org/v-indekse-vospriyatiya-korruptsii-kazahstan-vozglavil-strany-tsentralnoj-azii/); (https://transparency.org.ru/research/indeks-vospriyatiya-korruptsii/indeks-vospriyatiya-korruptsii-2016-polozhenie-rossii-ne-izmenilos.html); (https://transparency.org.ru/research/indeks-vospriyatiya-korruptsii/rossiya-v-indekse-vospriyatiya-korruptsii-2017-posadki-ne-pomogli.html); (https://transparency.org.ru/research/indeks-vospriyatiya-korruptsii/rossiya-v-indekse-vospriyatiya-korruptsii-2018-28-ballov-iz-100-i-138-mesto.html); (https://vesti.kg/politika/item/44407-indeks-vospriyatiya-korruptsii-ivk-za-2016-god-kyirgyizstan-poluchil-28-ballov-zanyav-136-mesto.html). (https://knews.kg/2018/02/22/indeks-vospriyatiya-korruptsii-2017-kyrgyzstan-podnyalsya-na-odnu-pozitsiyu); (https://www.transparency.kg/news/2/34.html)

№ п\п	Страны	2016		2017		2018	
		баллы	место	баллы	место	баллы	место
1	Республика Казахстан	29	131	31	122	31	124
2	Российская федерация	29	131	29	135	28	138
3	Кыргызская Республика	28	136	29	135	29	132

Очевидно, что принимаемые государством и обществом антикоррупционные меры сказались должным образом, вследствие чего наша страна улучшила свои показатели по баллам. Кыргызская республика осталась на прежнем уровне, тогда как Россия снизила свои показатели на 1 балл.

Заключение

На фоне существующих статистических данных возникает справедливый вопрос – каким образом можно улучшить ситуацию с коррупционными правонарушениями в нашем государстве? Конечно, речь идет об антикоррупционных способах и мерах, направленных на длительную перспективу, а не на сиюминутное улучшение положения с коррупцией в нашей стране. На наш взгляд, необходимы следующие меры:

- систематический финансовый анализ, цель которого определить общее состояние или размер расходов государственных служащих, достигающих определенного ранга в сравнении с их объявленными доходами;

- соблюдение норм этики государственного служащего. Периодически озвучивается мнение различных авторов (юристов, педагогов, экономистов, социологов и пр.) о том, что крайне желательно усилить дисциплину «Этика» при подготовке специалистов различных профессий, мотивируя тем, что это введение подобной дисциплины будет способствовать предупреждению либо сокращению коррупционных правонарушений;

- качественный аудит и постоянное совершенствование методов и способов его проведения, поскольку данные меры достаточно эффективны в отношении потенциальных коррупционеров. Ведение исключительно «белой» документации;

- надлежащий контроль над государственными контрактами**.** В данном случае имеет место

быть подкуп, на который идут представители бизнеса и проявляют интерес к получению доходных государственных контрактов (строительство, продажа оружия, продовольствия, техники, пошив обмундирования и пр.). Учитывая высокий риск коррупции, крайне важно ужесточение правил при заключении государственных контрактов, соответственно, риск совершения коррупционных правонарушений снизится. Ведь именно в этих сферах в последние годы многие высокопоставленные военные чиновники стали фигурантами резонансных коррупционных уголовных дел. Достаточно вспомнить бывших: заместителя главнокомандующего силами воздушной обороны генерал-майора А. Бульдешева, начальника главного управления вооружений министерства обороны генерал-майора А. Асенова, заместителя министра обороны генерал-лейтенанта К. Маерманова, заместителя начальника Главного управления материально-технического обеспечения министерства обороны Т. Жанказиева, заместителя по гос.закупкам Е. Шарипова. В то же время, нельзя не отметить, что, несмотря на существующие требования к проведению тендеров (прозрачность сделок, онлайн – режим подачи заявок либо, наоборот, заклеенные конверты с ними, конфиденциальность и пр.), к сожалению, имеется достаточно уловок, чтобы их обойти и вынести решение в пользу «нужных» лиц, организаций, фирм и пр. Иначе говоря, современные тендеры, несмотря на то, что производят впечатление законных, в реальности это впечатление не всегда соответствует действительности;

- формирование общественного мнения с использованием всех возможностей СМИ (ТВ, радио, социальные сети, Мессенджеры, Ютуб и пр.), учитывая какую важную роль они играют при разоблачении государственных служащих, которые оказались замешанными в коррупции;

- уменьшение чиновничьего аппарата**.** Как свидетельствует история, во многих странах именно коррупция помогает обойти многие запреты. Подтверждение тому – «сухой» закон в США, при котором законодательное вето на реализацию алкоголя лишь способствовало моментальному росту коррупции и, одномоментно, доходов подпольных торговцев, хотя изначальная цель «сухого» закона была благая. Подобные запреты (например, в настоящее время в ряде стран запрещены: игорный бизнес, проституция, нелегальная миграция, порнография и пр.), как правило, приводят к росту преступности в целом и совершению коррупционных правонарушений, в частности, – подкуп чиновников для разрешения ситуации в пользу криминальных элементов, «откаты», увеличение преступлений организованного характера, коррупции в департаментах полиции. Никого уже не удивляет существующее в настоящее время противоречие: полицейские, которые обязаны стоять на страже закона, зачастую, первыми его и нарушают. Тем не менее, несмотря на весь предшествующий исторический опыт, значительное количество стран не пересматривают порядок лицензирования, а именно нынешние «дырявые» правила, ограничения и пр.;

– детально пересмотреть существующие социальные пакеты для государственных служащих различных категорий и ведомств, в частности, такие его составляющие, как заработная плата, премирование, страховка, льготы, санаторно-курортное лечение и пр.

Меры, осуществляемые нашим государством и направленные на предотвращение коррупции, однозначно приносят положительные результаты, при этом упор приходится на профилактику криминального поведения. Это, в частности, меры, принимаемые по ведомственному контролю за соблюдением антикоррупционного законодательства во всех подразделениях различных ведомств, формированию и дальнейшему укреплению антикоррупционных норм в коллективе, что в конечном итоге приводит к четкому осознанию всех рисков коррупционных действий.

В то же время, необходимо помнить и акцентировать, что коррупция подобно некоторым представителям фауны способна мимикрировать и адаптироваться, казалось бы, даже к самым невыгодным для себя условиям. Ныне существующие, многократно проверенные и отработанные коррупционные схемы и практики могут трансформироваться и затем пробиться через проводимые антикоррупционные мероприятия. В целях выявления возникающих новых факторов и условий, способствующих коррупции, считаем необходимым продолжение исследований, посвященных этому явлению, С тем, чтобы в дальнейшем использовать полученные результаты проведенных научных исследований для внесения изменений и дополнений в существующую антикоррупционную государственную политику, и, соответственно, быстрее и эффективнее добиться больших позитивных сдвигов в борьбе с коррупционными правонарушениями.

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[1]К.Т. Ushurov, [2]I.A. Shalkarova (Kim)

[1]Candidate of Legal Sciences, Colonel of Police, e-mail: kama_ne@mail.ru
[2] PhD doctoral student, police Major, e-mail: kim.ira@rambler.ru
Makan Yesbulatov Almaty Academy of the Ministry of Internal Affairs
of the Republic of Kazakhstan, Kazakhstan, Almaty

ABOUT THE QUESTION OF THE HISTORY OF FORMATION OF OPERATIVE-SEARCH LEGISLATION IN THE REPUBLIC OF KAZAKHSTAN

Abstract. The article discusses the stages of the emergence and development of operational-search legislation in the Republic of Kazakhstan. The subject of the study is historical, theoretical and organizational-management aspects of the formation and development of operational and search legislation of the Republic of Kazakhstan. The methodological basis of the scientific article was the system-structural, comparative-legal, logical-theoretical methods of studying social and legal phenomena. These scientific justifications were applied comprehensively to achieve the objectivity of the results of the research carried out within the framework of the scientific publication. The scientific novelty is that the author investigated several topical problems related to the possibility of expanding approaches to the study of the organizational basis of the search work of the internal affairs agencies. Issues of regulatory and legal regulation of operational and search activities in the Republic of Kazakhstan have been updated. In conducting the study, the author was based on the provisions of the Constitution, the Code of Criminal Procedure and the Operational Investigation Act. The most important is the mutual relationship between the development of the structure of operational units, which has determined the further development of search work, and their connection with scientific research in the field of its organization, the definition and consolidation of legal status, the elaboration of issues of an organizational and managerial nature taking into account changing goals and tasks in the fight against crime.

Key words: operational and search activities, operational and search legislation, criminal investigation, tacit forces, means and methods in the fight against crime.

[1]К.Т. Ушуров, [2]И.А. Шалғарова (Ким)

[1]PhD докторанты, полиция майоры, e-mail: kama_ne@mail.ru
[2]з.ғ.к., полиция полковнигі, e-mail: kim.ira@rambler.ru
Қазақстан Республикасы ІІМ Мақан Есболатов атындағы Алматы академиясы,
Қазақстан, Алматы қ.

Қазақстан Республикасында жедел-іздестіру заңнамасының қалыптасу тарихы туралы сауалға

Аңдатпа. Мақалада Қазақстан Республикасында жедел-іздестіру заңнамасының пайда болу және даму кезеңдері қарастырылады. Зерттеу нысаны – Қазақстан Республикасының жедел-іздестіру заңнамасының қалыптасуы мен дамуының тарихи, теориялық және ұйымдастырушылық-басқарушылық аспектілері. Ғылыми мақаланың әдіснамалық негізі әлеуметтік-құқықтық құбылыстарды зерттеудің жүйелік-құрылымдық, салыстырмалы құқықтық, логикалық және теориялық әдістері болып табылады. Бұл ғылыми негіздемелер ғылыми жариялау аясында зерттеу нәтижелерінің объективтілігіне қол жеткізу үшін жан-жақты қолданылды. Ғылыми жаңалық автордың құқық қорғау органдарының іздестіру жұмыстарының ұйымдастырушылық негіздерін зерттеу тәсілдерін кеңейту мүмкіндігімен байланысты бірқатар өзекті мәселелерді зерттегендігінде жатыр. Қазақстан Республикасындағы жедел-іздестіру қызметін құқықтық реттеу мәселелері жаңартылуда. Зерттеуді жүргізу кезінде автор Қазақстан Республикасы Конституциясының, Қазақстан Республикасының Қылмыстық іс жүргізу кодексінің және «Жедел-іздестіру қызметі туралы» Қазақстан Республикасының Заңының ережелеріне негізделді. Ең бастысы жедел іздестіру жұмыстарының одан әрі дамуын алдын ала анықтаған жедел құрылымдар құрылымының өзара байланысы және олардың оны ұйымдастыру, құқықтық мәртебесін айқындау және шоғырландыру, қылмыспен күрестегі

өзгеретін мақсаттар мен міндеттерді ескере отырып ұйымдастырушылық-басқарушылық мәселелерді зерттеу саласындағы үйлесімділігі.

Түйін сөздер: жедел-іздестіру қызметі, жедел-іздестіру заңнамасы, қылмыстық тергеу, жасырын күштер, қылмысқа қарсы күрес құралдары мен әдістері.

[1]К.Т. Ушуров, [2]И.А. Шалкарова (Ким)

[1]майор полиции, докторант, e-mail: kama_ne@mail.ru
[2]к.ю.н., полковник полиции , e-mail: kim.ira@rambler.ru
Алматинская академия Министерства внутренних дел Республики Казахстан
имени Макана Есбулатова, Казахстан, г. Алматы

К вопросу об истории становления оперативно-розыскного законодательства в Республике Казахстан

Аннотация. В статье рассмотрены этапы зарождения и развития оперативно-розыскного законодательства в Республике Казахстан. Предметом исследования являются исторические, теоретические и организационно-управленческие аспекты становления и развития оперативно-розыскного законодательства Республики Казахстан. Методологической основой научной статьи послужили системно-структурный, сравнительно-правовой, логико-теоретический методы изучения социально-правовых явлений. Указанные научные обоснования применялись комплексно для достижения объективности результатов проводимого исследования в рамках научной публикации. Научная новизна заключается в том, что автор исследовал ряд актуальных проблем, связанных с возможностью расширения подходов к изучению организационных основ розыскной работы органов внутренних дел. Актуализированы вопросы нормативно-правового регулирования оперативно-розыскная деятельность в Республике Казахстан. При проведении исследования автор основывался на положениях Конституции Республики Казахстан, Уголовно-процессуального кодекса Республики Казахстан, Закона Республики Казахстан «Об оперативно-розыскной деятельности». Наиболее важной представляется взаимообусловленность развития структуры оперативных подразделений, предопределившей дальнейшее развитие розыскной работы, и их сопряженность с научными изысканиями в области её организации, определением и закреплением правового статуса, проработкой вопросов организационно-управленческого характера с учетом меняющихся целей и задач в борьбе с преступностью.

Ключевые слова: оперативно-розыскная деятельность, оперативно-розыскное законодательство, уголовный розыск, негласные силы, средства и методы в борьбе с преступностью.

Introduction

The establishment of operational and search legislation in the Republic of Kazakhstan involves both the development of legal science and the peculiarities (features) of the social and historical development of our country as a whole. Today, the need to strengthen the fight against crime and to ensure public security places special demands on the activities of law enforcement agencies and, above all, on the operational units of the internal affairs agencies.

The basic principles, norms and content of operational and search activities carried out in the territory of the Republic of Kazakhstan are defined by the 1994 Law of the Republic of Kazakhstan "On Operational and Search Activities." To date, 36 changes and additions have been made to it (last amended on 1 January 2019).

In the current conditions involving the modernization and reform of the law enforcement system, it is necessary to systematize and further improve the operational and search legislation.

Main part

Even since the formation of the sacred scriptures of many world religions, where the whole life experience of people has accumulated, transmitted from generation to generation, it is possible to trace the beginnings of today 's methods of operational and search activity (hereinafter referred to as ORD) (Bibliya. 13 glava «Kniga Chisla»; Koran. Sura 18:19 Al'-Kahf «Peshchera»). We agree with M.A. Shmatov 's opinion that mankind has not yet developed (and is unlikely to ever develop) more adequate and effective methods of combating crime than ORD (Shmatov 2001: 79.).

However, the regulatory regulation of operational and search activities got with the emergence of statehood and law (Izmozik 2002: 3).

In our view, the establishment of statehood was facilitated by the power of privileged sectors of society, which over time began to be isolated from it themselves, and had to create punitive vehicles in the form of law enforcement agencies, whose activi-

ties required appropriate regulatory and legal support in order to protect the territory, maintain law and order in the country, confront and detect external and internal threats in a timely manner.

By now, the study of the evolution of secret detective is devoted to the work of many scientists. Most of them affect the periods of formation and development of police and criminal law enforcement agencies (Vlasov 1997: 126; Elinskyi 1997: 84; Mulukaev 1995: 156), but very little attention was paid to the origin and development of their legislative regulation.

Analyzing the development of operational and search legislation of the Republic of Kazakhstan, it should be noted that in this process is inextricably connected with the history of Soviet operational units. On the third day after the creation of the new revolutionary state, the Soviet militia was established. The main principle of the new police structure was to abandon the previous (bourgeois) methods of solving crimes, to which tacit techniques and methods were identified. During the first year of the new State, the country was hit by banditry, theft, murder and other serious crimes. The leadership of the country decided to take the best of the police of the previous state. The result of these decisions was the establishment of a criminal investigation.

For the first time, criminal investigation bodies were established by the Regulation of the PCIA (People ‘s Commissariat of Internal Affairs of the USSR) of the RSFSR (Russian Soviet Federal Socialist Republic) of 5 October 1918. During that historical period, the country had a very dangerous criminal situation, caused by the power and disorder of the revolutionary period, and the establishment of criminal investigation bodies was a vital fact. Everywhere robberies, robberies, murders and riots were committed. And it was to combat crime that a criminal investigation was established within the Internal Affairs Drug Department.

Since then, after the adoption of the Regulation on the Organization of Criminal Investigation Departments, silent methods and methods of prevention and detection of crimes, search for criminals, work with confidential assistants and much more have been established by law, at the level of departmental normative legal acts of a closed nature, which existed at all times and in all police structures of all States.

In October 1920, the Central Department of Criminal Investigation was formed under the General Directorate of Police of Kazakhstan. Criminal investigation offices have been established in all major cities.

It should be noted that since 1867 Kazakhstan has been part of the Russian Empire as the Steppe Governor-General. Accordingly, as Russian statehood was formed, the functions of State bodies and the bodies authorized to carry out mass activities themselves were periodically subjected to reform, modification, redistribution of powers, elimination of certain areas of activity, in particular, deprivation of judicial and investigative functions to the police.

For the first time, criminal investigation bodies were established by the Regulation of the NKVD of the RSFSR of 5 October 1918. During that historical period, the country had a very dangerous criminal situation, caused by the power and disorder of the revolutionary period, and the establishment of criminal investigation bodies was a vital fact. Everywhere robberies, robberies, murders and riots were committed. And it was to combat crime that a criminal investigation was established within the Internal Affairs Drug Department.

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This was preceded by the adoption on 8 June 1860 by the Government Senate of the Russian Empire of a number of normative legal acts: Law No. 35890 “On the Establishment of Judicial Investigators,” Law No. 35891 “Order to Judicial Investigators,” Law No. 35892 “Order of the Police on the Conduct of Investigations into Incidents Likely to Commit a Crime or Misconduct” (Polnoe sobranie zakonov Rossyiskoy Imperii. T. 35. Otd. 1. №35890–35892. SPb., 1862).

Subsequently, the provisions of these acts formed the basis of the Statute of Criminal Procedure adopted on November 20, 1864 (Sudebnye ustavy 20 noyabrya 1864 goda, s izlozheniem rassuzhdenyi, na koih oni osnovany. CHast’ pervaya // Vvodnaya stat’ya. SPb, 1866. S. III–IV), according

to which the functional duties of the police were to conduct an inquiry on minor crimes.

Thus, the adoption of the Statute of Criminal Procedure of 1864 played a certain role in the legal regulation of the activities of criminal detective and enshrined the right of the police to apply tacit methods of work in the fight against crime.

At the same time, the need to reform the police and to allocate in its structure special bodies authorized to carry out raw activities remained extremely urgent. And on December 31, 1866, Order No. 266 of the Police of St. Petersburg was established for the first time in Russia (Ochkur R. V., 2010: 100). Despite the undisputed merits, the raw parts also had serious shortcomings, mostly of organizational and managerial nature. That is why they have never been able to have a significant impact on reducing crime growth and improving the effectiveness of the fight against it.

A few decades later, the question of their organizational and legal formalization was raised in the State Duma: "the state of detective in the Empire is undoubtedly a direct danger during such a rapid increase in crime" (Mulukaev R. S., Polubinskij V. I., 1990: 37). On July 6, 1908, Law No. 30672 "On Organization of the Raw Part" (Polnoe sobranie zakonov Rossyiskoi Imperii. T. 28. SPb., 1908) was adopted, which contained 12 articles and an annex with a staffing table of raw offices, expenses for their maintenance and the amount of salaries of employees. According to it, in 89 cities (counties) of the Russian Empire, detective branches of four ranks were formed.

However, the law did not cover the Turkistan Governor-General, as the Turkistan region was governed by a special provision and was administratively subordinate to the military minister. A few years later, the need for raw departments arose in the Turkistan region, and since May 1910 raw parts began to be created in Syr-Daryinsky, Samarkand, Fergana, Semirechenskiy and Zakaspian regions (Peregudova 2013: 62). This was the first legal basis for the formation of a State-wide system of criminal detective bodies, which was identified by the legislator as an independent function of the police.

With the establishment of Soviet power, the current unfavourable operational situation required the early development of organizational and legal forms of combating crime, as well as the allocation of raw activities to the independent direction of police work. In October 1920, the Central Department of Criminal Investigation was formed under the General Directorate of Police of Kazakhstan. Criminal investigation offices have been established in all major cities.

Since 1922, the criminal investigation has been an independent service of the internal affairs agencies and only in May 1931 was included in the militia. On October 5, 1918, the NKVD of the RSFSR approves the Regulation "On the Organization of the Criminal Investigation Department" (Vestnik Narodnogo Komissariata Vnutrennih Del. 1918. 28 dekabrya. № 24: 8–9), according to which criminal investigation departments with centralized management were established in cities and counties with a population of at least 40-45 thousand people to protect revolutionary order by tacit investigation of crimes and fight against banditry. This Regulation was the first legal basis for the creation of a system of Soviet criminal investigation, and the issues of their legal regulation were formulated during the first year of their operation and are set out in the Instructions on Criminal Investigation issued by Centrorosk in December 1919. (Central'nyi gosudarstvennyi arhiv Oktyabr'skoy revolyucii SSSR (dalee – CGAOR SSSR). F. 393. Op.16. D. 1. L. 321)

The legislative regulation of the ORD has not undergone qualitative changes with the adoption of the first Code of Criminal Procedure of the RSFSR and the Union Republics (UPK v RSFSR, 1922, v Belorusskoy SSR, 1922, v Armyanskoy SSR, 1923, V Kirgizskoy ASSR,1922). In it we can see only certain "strokes": the existence of tacit activities of the bodies of inquiry and the adoption of operational and search measures was mentioned in article 93:... "anonymous statements can give rise to criminal proceedings only after prior tacit inspection by their body of inquiry."

In this way, the legislator noted the importance of the results of the IA(Investigation activities) in deciding on the initiation of criminal proceedings and reflected the existing understanding of the strategy of ensuring conspiracy and the necessary secrecy in combating crime.

In the following, investigative measures were enshrined in the Bases of Criminal Procedure of the Union of SSR and the Union Republics of December 25, 1958 (FZ Rossyiskoy Federacii ot 18 dekabrya 2001 g. № 177-FZ), where, in accordance with Article 29, the bodies of inquiry were entrusted with taking the necessary investigative measures to combat crime, as a result of which the Investigation activities gained a certain legitimacy.

The debate on the need to draft an Investigation activities law was held until the early 1990s: Resolution of the Supreme Council of the RSFSR of 18 April 1991 "On the Procedure for Putting into

Force the Law of the RSFSR" On Militia, "which in paragraph 4 expressly states: "To committee of the Supreme Council of RSFSR concerning legality, law and order and fight against crime together with committees of the Supreme Council of RSFSR on safety and on the legislation in two-month time to draft and present drafts of laws of RSFSR to the Supreme Council of RSFSR:... "On Operational and Search Activities" (O milicii»: postanovlenie Verhovnogo Soveta RSFSR ot 18 aprelya 1991. № 1027-1).

It should be noted that the time of drafting the law in the field of Investigation activities coincided with the collapse of the USSR. Having gained independence, the former Union republics faced an active increase in crime (statisticheskyi sbornik / MVD RF, Minyust RF. M. : Finansy i statistika, 1992: 176). Criminal elements penetrated all spheres of activity of the State and society, which threatened the existence of the State itself.

One solution to the problem was the adoption by the former Union Republics of independent laws on the Investigation activities – as a desire to build a rule of law, to develop similar rules of tacit activity in combating crime, where respect for and respect for human and civil rights and freedoms is a leading principle. During this period, Kazakhstan adopted several normative acts aimed at ensuring the coordinated activities of all branches of State power (Muhamadieva G.N., 2018: 151). Found reflection of situation in again adopted regulations, concerning to Investigation activities that emphasized the importance of formation, formation and further improvement of the operational search legislation.

Conclusion

The analysis of the normative provisions of the current Act on ARD leads to the conclusion that it, acting as the "core" of operational and search legislation, presents a comprehensive normative and legal act, which, first, contains the norms (parts of the norms) of several branches of law and, second, includes a rather monolithic "clot" of rules (concentrated from the provisions of numerous departmental acts) (Zakon Respubliki Kazahstan ot 15 sentyabrya 1994 goda № 154-XIII «Ob operativno-rozysknoy deyatel'nosti»).

The list of legislative acts establishing rules governing certain aspects of operational and search activities (with some degree of detail) shows the desire of the legislator to solve the problem before him in a comprehensive manner.

Article 3 of the Kazakhstan Republic Act stipulates that investigative activities are carried out following the principles of legality, respect for rights and freedoms, respect for the dignity of the individual, equality of citizens before the law, based on conspiracy, a combination of transparent and tacit methods and professional ethics.

. To date, no state on a global scale, regardless of any objective-subjective factors of its development, has abandoned tacit forces, means and methods in the fight against crime. Axiomatic in this regard, the validity of the regulation in departmental acts having a restrictive makeup, the procedure for organizing and tactics for carrying out tacit events and confidential assistance of citizens.

In summary, the historical prerequisites for the establishment and development of operational and search legislation in the Republic of Kazakhstan are divided into three stages:

- Imperial stage (1860-1917)

The beginning of the legislative regulation of the detective of Kazakhstan within the Russian Empire; Is characterized by the allocation of criminal and raw-law activities of the police as an independent part of the inquiry, the adoption of the Law "On the Organization of the Raw Part" and the formation of a State-wide system of criminal mass bodies;

- Soviet stage (1917-1991)

At this stage, the development of legislative regulation of operational and search activities is characterized by a fragmented reference to operational and search measures in the normative legal acts of the country, the development of proactive draft laws in the field of operational and search activities;

- Modern stage (from 1991 to present)

At this stage, the development of legislative regulation of operational and search activities begins with the collapse of the USSR and the creation of an independent legislative framework, in particular the adoption of the Law "On Operational and Search Activities.

Thus, the development of the structure of operational units has determined the further development of search work, which involves scientific research in the field of its organization, the definition and consolidation of legal status, the elaboration of organizational and managerial issues taking into account changing goals and tasks in the fight against crime.

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5-бөлім

ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ

Section 5

INTERNATIONAL LAW

Раздел 5

МЕЖДУНАРОДНОЕ ПРАВО

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D. Orynbayeva

Master of International Law, KIMEP University,
Kazakhstan, Almaty, e-mail: d.orynbayeva@gmail.com

AN INTERACTION BETWEEN THE REPUBLIC OF KAZAKHSTAN AND THE UNITED NATIONS: ACTIVITIES, PROBLEMS AND PROSPECTS

Abstract. This article provides a holistic analysis of cooperation between the Republic of Kazakhstan and the UN. This study examines a holistic system of relations starting with the development of independent Kazakhstan as a participant in international relations, and ends with an analysis of current trends and the direction of political and economic interaction between the Republic and the UN. In this work, special attention was paid to problematic issues, as well as to the prospects for further cooperation between Kazakhstan and the UN, in the framework of the development of international cooperation.

Today, considering the development of international law, it should be noted that Kazakhstan, in the framework of the activities of large international organizations, is actively involved in their activities, and is also a stably developing state.

The integral relevance of the article is determined by the need to study the contribution of the Republic of Kazakhstan to the development of modern international relations and international law. One of the important organizations regulating the processes of international interaction between countries is the United Nations. In the current conditions of globalization, as well as the ever-increasing independence of individual states, issues of regulation of relations between countries become the most acute problems affecting world geopolitics. In this regard, the role of individual states and countries in organizing stable international relations in the world is growing.

In this case, Kazakhstan has already managed to establish its own position in the international arena as an open and peace-loving state. Kazakhstan's refusal of nuclear weapons made a significant contribution to the nuclear disarmament process, the cessation of nuclear testing and the strengthening of the nuclear non-proliferation regime. The progressive formation of the economic and political systems of the state, active work in leading international organizations allowed the Republic to gain significant experience and political authority on the world stage.

Kazakhstan's well-known initiatives in the field of sustainable development allow the Republic to position itself as a state committed to peaceful policy, as well as having the main goal of creating full and good-neighborly relations with other countries.

Key words: United Nations, UN Charter, UN General Assembly, UNESCO, CICA, Nuclear Non-Proliferation Treaty, UN peacekeeping operations, protection of human rights, gender equality.

Д.Е. Орынбаева

заң ғылымдарының магистрі, КИМЭП Университеті,
Қазақстан, Алматы қ., e-mail: d.orynbayeva@gmail.com,

Қазақстан Республикасы мен Біріккен Ұлттар Ұйымы арақатынасы: әрекеттері, мәселелері және келешегі

Аңдатпа. Бұл мақалада Қазақстан Республикасы мен БҰҰ ынтымақтастығына талдау жүргізілген. Қазақстанның тәуелсіз мемлекет ретінде қадам басқан алғашқы сатысынан бастап, халықаралық қатынастардың қатысушысы ретінде республиканың және БҰҰ-ның саяси және экономикалық бағыттағы өзара қарым-қатынастардың біртұтас жүйесін, өзара іс-қимылының қазіргі тенденциялары мен бағыттарына талдау жасалынған. Халықаралық ынтымақтастықты дамыту шеңберінде проблемалық мәселелерге, сондай-ақ Қазақстан мен БҰҰ арасындағы одан әрі өзара іс-қимылының келешегіне тоқталып зерттелген.

Бүгінгі таңда халықаралық құқықтың дамуын қарастыра отырып, ірі халықаралық ұйымдардың қызметі аясында Қазақстан өз қызметін жүзеге асыру барысында белсенді қатысып қана қоймай, сондай-ақ тұрақты дамып келе жатқан мемлекет болып табылатынын атап өткен.

Мақаланың өзектілігі халықаралық қатынастар мен халықаралық құқықтың дамуына Қазақстан Республикасының қосқан үлесін зерттеу қажеттілігімен анықталды. БҰҰ халықтар

арасындағы өзара халықаралық қатынастар процестерін реттеу үшін арналған маңызды ұйымның бірі болып табылатыны анық. Қазіргі жаһандану жағдайында, сондай-ақ жеке тәуелсіз, дербес мемлекеттердің өсу қарқынына сай, халықтар арасындағы қатынастарды реттеу мәселелері әлемдік геосаясатқа әсер ететін аса өткір мәселеге айналып отыр. Осыған байланысты әлемдегі тұрақты халықаралық қатынастарды ұйымдастырудағы тәуелсіз мемлекеттер мен елдердің рөлі артып келеді.

Қазақстан көрсетілген зерттеу барысында халықаралық аренадағы ашық және бейбітсүйгіш мемлекет ретінде өз орнын бекітті. Қазақстанның ядролық қарудан бас тартуы ядролық қарусыздану процесіне, ядролық сынақтарды тоқтатуға және ядролық таратпау режимін нығайтуға елеулі үлес қосқан болатын. Мемлекеттің экономикалық және саяси жүйелерінің қарқынды қалыптасуы, жетекші халықаралық ұйымдардағы белсенді қызметінің арқасында республикаға әлемдік аренада елеулі тәжірибе мен саяси беделге ие болуға мүмкіндік берді.

Қазақстан орнықты дамуға бағытталған бастамалардың негізінде, бейбітшілік сүйгіш саясатты жақтайтын, сондай-ақ басқа елдермен толыққанды және тату көрші қарым-қатынастарды қалыптастыруға бағыт алған мемлекет ретінде танытып отыр.

Түйін сөздер: Біріккен Ұлттар Ұйымы, БҰҰ-ның Жарғысы, БҰҰ-ның Бас Ассамблеясы, ЮНЕСКО, АӨСШК, Ядролық қаруды таратпау туралы Шарт, БҰҰ-ның бітімгершілік операциясы, адам құқығын қорғау, гендерлік теңдік.

Д.Е. Орынбаева

магистр международного права, Университет КИМЭП,
Казахстан, г. Алматы, e-mail: d.orynbayeva@gmail.com

Взаимодействие Республики Казахстан и Организации Объединённых Наций: деятельность, проблемы и перспективы

Аннотация. В данной статье проводится целостный анализ сотрудничества Республики Казахстан и ООН. А точнее, рассматривается целостная система взаимоотношений, начиная с развития независимого Казахстана, как участника международных отношений, и заканчивая современными тенденциями и направлениями политического и экономического взаимодействия Республики с ООН. В данной работе особое внимание было уделено проблемным вопросам, а также перспективам дальнейшего взаимодействия Казахстана и ООН в рамках развития международного сотрудничества.

Сегодня, рассматривая развитие международного права, следует отметить, что Казахстан в рамках деятельности крупных международных организаций принимает активное участие в их деятельности, а также является стабильно развивающимся государством.

Целостная актуальность статьи определяется необходимостью изучения вклада Республики Казахстан в развитие современных международных отношений и международного права. Одной из важных организаций, проводящей регулирование процессов международного взаимодействия между странами, является ООН. В настоящих условиях глобализации, а также всё возрастающая независимость отдельных государств, вопросы регулирования отношений между странами становятся наиболее острыми проблемами, влияющими на мировую геополитику. В связи с этим возрастает роль отдельных государств и стран в организации стабильных международных отношений в мире.

Казахстан в данном случае уже успел утвердить собственное положение на международной арене как государства открытого и миролюбивого. Отказ Казахстана от ядерного оружия внес заметный вклад в процесс ядерного разоружения, прекращения ядерных испытаний и укрепления режима ядерного нераспространения. Прогрессивное становление экономической и политической систем государства, активная деятельность в ведущих международных организациях позволили Республике обрести существенный опыт и политический авторитет на мировой арене.

Известные инициативы Казахстана в области устойчивого развития позволяют Республике позиционировать себя как государство, приверженное миролюбивой политике, а также имеющее основной целью создание полноценных и добрососедских отношений с другими странами.

Ключевые слова: Организация Объединенные Наций, Устав ООН, Генеральная Ассамблея ООН, ЮНЕСКО, СВМДА, Договор о нераспространении ядерного оружия, миротворческие операции ООН, защита прав человека, гендерное равенство.

Introduction

The development strategy of the state "Kazakhstan 2050", the main goal of becoming one of the thirty most competitive countries in the world, determines new horizons for the development and strengthening of the country's international prestige. In the 21st century, the importance of the United Nations as the only supranational interstate association on a global scale is growing, as new global challenges and problems require the organization of new conditions for cooperation and interaction between participants in the global dialogue.

The decisive role of the UN in various aspects of the activities of the world community within the framework of the disarmament international legal peacekeeping political, socio-economic, cultural and humanitarian agenda makes an indispensable contribution to strengthening multilateral cooperation and interaction.

In this context, the relevance of the topic of the article is the need to analyze the results of cooperation between Kazakhstan and the UN at the present stage in the context of globalization, taking into account the set priorities and development objectives, as well as upholding the national interests of the state. The issues of ensuring international security based on the UN Charter continue to play a key role in the organization's activities.

Possessing unprecedented opportunities and rights in the field of peace for individual states, the UN in the last decade has often been faced with the unilateral nature of resolving international conflicts.

In these circumstances, the United Nations should be more adapted to the new political realities and changes in the international situation. One of the priority. tasks in this direction is the reform of the main UN bodies and its decision-making mechanisms. Today, many experts question the relevance of UN policies, highlighting the need for structural change.

In the era of globalization and the rapidly changing global political and economic situation, the general scientific relevance of the study is also determined by the end of the term for fulfilling the goals.

Over more than twenty years of independence, the Republic of Kazakhstan has reaffirmed its commitment to peaceful politics, and the desire to resolve all contradictions through a constructive dialogue. The renunciation of nuclear weapons, as well as the country's position on many problems of resolving disputed and conflict situations, allowed Kazakhstan to determine its own significance and authority on the world stage.

The object of research in this article is the process of interaction between Kazakhstan and the United Nations in the ever-changing realities of modern international relations.

The subject of the research in the article is the level of effectiveness, as well as the result of cooperation between Kazakhstan and the UN.

The purpose of the study in the article is a general analysis, as well as a systematization of the results, cooperation between the Republic of Kazakhstan and the UN at the present stage of development.

In accordance with the goal, the following research objectives are identified in the article:

– to consider the process of forming an independent Kazakhstan as a participant in international relations;

– identify and systematize the main aspects of the foreign policy of the Republic of Kazakhstan, and its interaction with international organizations;

– to analyze the development and establishment of cooperation between Kazakhstan and the UN;

– to consider the foreign policy initiatives of the Republic of Kazakhstan as part of its interaction with the UN;

– highlight the main aspects of the activities of Kazakhstan in the UN at the present stage, as well as note the problems and prospects of cooperation in the future.

The chronological framework of the article's research covers the period of cooperation between Kazakhstan and the UN during 1992 – 2019.

The source research base of the study in question in the article uses a significant range of sources and materials, which we can divide into several main groups.

First, a significant part of the sources used in writing the article are the main normative documents and materials of the UN, as well as other international organizations: the UN Charter, the UNESCO Charter, resolutions and declarations. Also, a significant place among the source materials is also determined by international conventions and agreements on the studied problem. An analysis of this group of sources made it possible to most fully and qualitatively consider the legal and theoretical framework regarding the work of the UN, as well as the integrated functionality for maintaining and organizing the world security system.

The second group of sources that we reviewed is presented by official materials and reports on the UN and its specialized agencies on international security issues. This group of sources of materials most fully

represents the main trends in the development of modern international relations on globalization and international security policy.

The third group of sources is the materials of official speeches by the President of the Republic of Kazakhstan N.A. Nazarbayev, on the issues being studied. An analysis of this group of works allows us to draw conclusions regarding the holistic policy of the Republic in cooperation with the United Nations, as well as the main priority areas in the political line of Kazakhstan.

The fourth group of works consists of a system of speeches by both ministers and diplomatic representatives of Kazakhstan at the UN, as well as other officials at sessions of the General Assembly and international forums.

The fifth group of source materials consists of documents from government departments and strategic program documents regarding the development of the Republic of Kazakhstan and a holistic political strategy of the state.

Thus, the sources used represent a holistic basis for resolving the issues and tasks posed, allowing to reveal the goals and ensure the objectivity of conclusions on the work.

The theoretical and methodological basis of the research in the article is represented by official documents and publications of the United Nations, as well as the works of domestic and foreign authors. The article is devoted to the cooperation of Kazakhstan and the UN at the present stage of development, which, in turn, involves the use of certain scientific methods and approaches that provide objective and comprehensive analysis. In the course of the study, we mainly implemented a systematic approach, synthesis and analysis method, comparative, normative , comparative methods, as well as a method of political analysis of the study of topics.

Thus, the method of political analysis made it possible to trace the evolution and dynamics of the development of interaction between Kazakhstan and the UN in the field of key areas of cooperation on international security, sustainable development and the cultural and humanitarian dimension.

System analysis revealed the role and place of the UN in the context of increasing interdependence of various factors affecting the stability and sustainability of the system of international relations.

The normative method for studying the research topics was to analyze the provisions of international legal and regulatory documents, in particular the UN Charter, UNESCO Charter, resolutions of the General Assembly and the UN Security Council, international conventions and treaties.

The scientific novelty of the study lies in a holistic analysis of the previously not extensively studied period of cooperation between Kazakhstan and the UN. Also of great importance is the analysis of the events of the end of 2016, the beginning of 2019, when there are significant changes in the global structure, which causes numerous negative aspects for the development of world cooperation and security.

Within the framework of recent events, the relevance of cooperation between Kazakhstan and the United Nations is carried out, as well as the negative aspects and ways to resolve them are determined. As new aspects of the study, the article should highlight:

identification of the growing dynamics of relations between Kazakhstan and the UN;

determining the future prospects of this cooperation, both at the present stage of interaction and in the future;

determination of the need to strengthen the role of Kazakhstan in the international arena, as well as the reorientation of the republic from the recipient country to the donor country.

The analysis and introduction into the scientific circulation of many documents on the development of relations between Kazakhstan and the UN, which have not previously been analyzed, redistributes the basis of the novelty of this study.

The theoretical and practical significance of the research in the article is determined by the need for holistic scientific processing, as well as the systematization of the available material on cooperation between Kazakhstan and the UN. Studying the evolution of the role and place of the republic in the UN system can serve as a useful experience for the development of similar trends in other countries.

The practical significance of the research lies in the possibility of further use of work materials in the development of theoretical and conceptual foundations for the implementation of an effective state foreign policy. The study may also be useful in the practical work of the Ministry of Foreign Affairs and the Permanent Chairmanship of the Republic of Kazakhstan at the UN.

The main provisions of the topic of the article:

1. In the context of growing globalization processes, as well as the close relationship between countries, international security, as well as the process of its regulation in the framework of the activities of international organizations,

should become one of the main tasks of international law.

The experience of cooperation of the Republic of Kazakhstan in this case confirms the growing role of each individual state in regulating the system of international relations.

2. The Republic of Kazakhstan considers cooperation with the UN as a guarantor of maintaining peace and security. Especially in light of the growing political and economic opposition between individual regions.

3. The interaction of the Republic of Kazakhstan and the United Nations in the field of sustainable development requires significant economic, social and political transformations from the republic (Topornin 1994: 226)

Main part

With the collapse of the USSR, many new states that were previously unknown and of great interest to the entire world community are emerging on the world stage. Immediately with these processes, the stage of recognition of our republic by many states, as well as international organizations, begins. With the beginning of independence, we can talk about the beginning of the evolutionary entry of the Republic of Kazakhstan into international communities. (Torkunov 2000: 22)

It is starting from this stage that the formation of independent Kazakhstan begins, as a full-fledged participant in international relations. (Gabdullina 2001: 266-270)

The foreign policy activity of the Republic of Kazakhstan itself receives significant incentive. Concepts are being developed and the Ministry of Foreign Affairs is being created. The Republic of Kazakhstan has been building diplomatic activities from the very beginning, guided by universally recognized norms, taking an active part in the work of the UN, Kazakhstan has a real opportunity to actively participate in the development of decisions on many international issues, especially those that are part of the republic's vital interests. In this case, of course, membership in the UN should give Kazakhstan political, economic and other returns, contribute to the progressive development of the state – strengthening national security.

Officially, the beginning of full-fledged diplomatic relations between the states can be considered January 28, 1992, when the sovereign Republic of Kazakhstan began to establish cooperation in various fields with various countries.

In the political and diplomatic life in the 90s, the concept of "partnership" became widespread. Although in international legal theory, this concept is still poorly developed, it reflects the intention to increase the level of existing relations. So, the basis of relations of the European Union with any third state, not a member of the EU, is the conclusion and operation of the Partnership and Cooperation Agreement. (Gabdullina, 2001: 12-15)

Such agreements, as a rule, become the main instrument of political dialogue with new states, and the Central Asian republics are no exception.

The main objective of such a partnership is to create favorable conditions for the integration of new independent states into the European economy. Along with economic, political, military cooperation, the partnership attaches particular importance to the provisions on the rule of law and respect for human rights, especially the rights of minorities. Partnership implies the principle of equality. Before signing the first partnership agreements, it was necessary for the CIS countries to begin a comprehensive reform of the legal mechanism. Initially, deideologization of legal documents was carried out. Further, preliminary criteria were identified in establishing contractual relationships that would allow a non-discrimination approach.

These agreements should be based on general principles and objectives: a rule of law, the development of political freedoms and the establishment of a market economy. One of the necessary conditions for partnership is that a country concluding an agreement with the EU should demonstrate a desire to get involved in the process of democratization and respect for international principles. Thus, joining the well-known international institutions for the protection of human rights can be considered as evidence of this desire.

Today in the world, as we mentioned in relations between countries and alliances, we can observe greater mobility of movement of citizens, especially in nearby regions, if at the beginning of the 20th century, the very concept of traveling to another country was inherent only to a certain class of people, now go to visit another country, to visit, to rest or to study is an ordinary occupation which, in fact, any citizen can afford.

For the Republic of Kazakhstan, as for a region with the potential for development, especially in the framework of cooperation with the countries of East Asia, the EAEU and the SCO, the development of the fundamentals of the law of the legal status of foreigners is an important necessity.

For many years the formation and formation of international relations and law, there has been an acute question regarding cooperation and the development of diplomacy between states, in which the legal status of citizens in various countries occupies the main place. And also the need to ensure their protection and penalties from the constitution. (Sultanov 2002: 11)

As you know, in the Middle Ages, merchants were forced to stay in other states for a long time, there were also hostages, amanats, and diplomatic embassies. It is not surprising that since antiquity many states have sought to support both the conditions of stay of foreigners.

Providing security and benefits, protecting and ensuring the rights of foreign merchants at that time, was considered one of the foundations of good neighborly relations. Ensuring their legal status was also the responsibility of the host State. In Byzantium, if the merchants rake the state reimbursed them the full cost of the goods brought. Of great importance is how foreigners were given to diplomats and consuls. In many ways, their status was the basis of their immunity. A foreigner, in fact, is a representative of his state in another country. For many years, a holistic diplomatic policy has been a priority for the Asian region. (Manilov 2002: 17)

From the point of view of the prospects for the development of relations between the European Union and Central Asian states, it is important that, with the introduction of the PCA, the relations between them acquire a solid international legal basis. PCA by their nature are "mixed", i.e. halfway between model agreements, such as those that the Commission has signed with a number of countries in the world, and "European agreements" existing with CEE. The system of Partnership and Cooperation Agreements is the principal means of political dialogue with the governments of Central Asian states. (Aubakirova 2003: 91)

It was then that it became important to create full-fledged legislation and legal acts regarding international regulation. Kazakhstan initially had significant potential and historical ties with China, Korea, Russia and other states of the Eurasian region, as well as rich diasporas of many peoples. Which is also within the framework of its attractiveness was a big plus for cooperation with the republic. With the advent of independence, for example, the Korean diaspora in the republic partially left for its historical homeland, but a large number remained, and began to attract both tourists and foreign capital from their historical homeland. (Laumulin 2005: 55)

As it is worth noting, today the formation of the legal framework is not yet completed and is in a state of development, this is due to the development of the republic itself, as well as an increase in the number of foreign citizens.

Considering the Republic of Kazakhstan as a whole, we should note that Kazakhstan, initially a state located at the crossroads of cultures, has great potential for becoming both a country with many foreign citizens who are in the republic, both for travel and for business and unofficial purposes.

Now the Republic of Kazakhstan is a developing country, it is especially worth noting the need and importance of such a factor as the need to coordinate actions between states, and the development of such associations as the SCO and the EAEU, which in the future will require a holistic formed base, both legal and legislative. Regarding the status of stay, we can distinguish such groups as legal and illegal foreigners. Those. Arriving in the state legally with registration and execution of all necessary documents, either secretly and illegally and without a visa, and registration in the state of arrival. (Ermekbayev 2006: 19)

Today, through the experience of Europe, we were also able to make sure that even good legislation and a legal framework are not a guarantee for the stable regulation of a large influx of foreigners. (Lebedeva 2006: 18)

To summarize, it is important to note, despite the difficulties in the formation of current legislation, as well as significant changes in international law. The Republic of Kazakhstan, in spite of everything, has rich roots in international politics and relations with a number of countries in the Asian region. (Laumulin 2006: 7)

Historically, during the Middle Ages, very saturated relations were in full swing, and significant trade interaction took place between the largest, cultural centers. Today, considering and analyzing the current state and complexities of world politics, as well as the general destructuring and destabilization of society. When, at first glance, such a rich cultural and personal development, even the modern political strong states of Europe can not eliminate the national and cultural hostility. The Republic of Kazakhstan should, taking into account the rich historical multicultural past, transfer relations, both interstate and interethnic, to a high level of development.

It is also important to note that in conditions when borders between countries are blurring and global processes penetrate deeper into the social environment, we can attribute the regulation of

this issue to the number of necessary. (Lebedeva 2006:57)

Today, the legislation of the Republic of Kazakhstan only spells out the basic elements of legal statuses and regulations of foreigners, the main goal is to consider all the nuances of this legislation in accordance with international standards.

That is, we can say that today in the republic at the moment there is a legislative base capable of functioning and working in conditions of a small number of foreign citizens. If we consider this aspect in the future, we can conclude that it is necessary to improve and develop its institutions, since in the future, with favorable developments in relations with the UN, as well as with other countries, the number of foreigners will increase.

Considering how the republic is developing today, we can say that today most of the development of any state depends on the globalization of the country and its cooperation with other states. (Lebedeva, 2006: 45)

Today, to a greater extent, in times of crisis, the formation of so-called small groups and the creation of a holistic system, microeconomics between the states of one region, are of great importance.

Having examined the history of the development of international relations in the republic, we can say that historically the Republic of Kazakhstan is a state in which with a rich multicultural past. As well as with international relations with the European and Asian region.

This is due to the fact that, being in the center between two large regions, the territory of Kazakhstan has become a kind of bridge in which we can find both western and eastern roots.

In this matter, it is especially important that now the relevance of this region as a cultural bridge has increased significantly, and today, despite the presence of a serious legislative base and relations of regulation of foreign citizens, we can note for the future – the prospects of these facts are not enough.

In this regard, the development of foreign law is becoming an important task. In many respects, the institutes of law act separately from other bodies, and in part, their decisions not only do not support, but vice versa, eliminate the progress made.

Thus, we can say that today the formation and creation of special decisions on foreign citizens, as well as the reform of their own systems and institutions, is of great importance.

In general, considering the legal status and development of the republic, we can say that Kazakhstan has a stable and developing legal base. But as mentioned above, she will not be able to cope with critical and emergency situations. The creation of such threats as terrorism and extremism is also of great importance. In this connection, there is a need for better and more detailed control over foreign citizens. (Baizakov 2006: 91-101)

It is also important to note the presence of difficulties in the work of state institutions themselves. When the reform and efforts of one body, which took place over several years, are simultaneously crossed out by an act of another body. (Lebedeva 2006: 7)

Thus, considering the development of the legal framework, we should also note that, in fact, changes and achievement of results cannot occur immediately. The formation and implementation of stable and working legislative systems require some time to evaluate and record the results. The increasing foreign presence requires adequate legal regulation by the state, which has resulted in the development of a special regulatory body of legislative norms specifically dedicated to the rights, freedoms and duties of foreigners. The various goals and grounds for the stay of foreigners in the country also have a significant impact on the particular legal regulation of their statuses. (Baizakov 2006: 14)

Since the Republic of Kazakhstan became independent, the transition period in the state has been associated with both positive and negative consequences. Studying them requires a lot of effort and expense from the republic and is fraught with difficulties. As mentioned above, the Interpol National Central Bank and interstate interaction play a major role in the conduct and modification of these problems.

Today, the NBC of the Interpol of the Republic of Kazakhstan maintains business contacts with more than 40 countries, seeking to improve the efficiency of its work. (Vishnyakov 2006: 19)

Interpol cooperates with the Republic of Kazakhstan at several levels of interaction, first of all, it takes place at the bilateral level of dialogue. As we can note, this is one of the most initial types of cooperation between the Interpol system and the Republic. Despite its strong obsolescence recently in the system of international relations, this type of cooperation is very popular and has a tendency to popularize. Bilateral projects and agreements are of great importance in relations considered as an internal dialogue, examining in detail each side of the problem.

Of great importance under this agreement is the Kalkan project, implemented in 2005, as necessary for the timely detection and elimination of terrorist threats.

So, as to a greater extent for obtaining financing, within the framework of terrorist groups in almost 90% of cases, the accompanying factor is human trafficking and drug trafficking.

The TACIS project, created on March 18, 2009, also plays an important role. The project includes Interpol in Central Asia. The main goal of this project is to implement and further expand the Interpol information network. An important factor will be the holding of a wide range of trainings and educational programs in the countries of the Central Asian region.

Of great importance was the spread of cooperation and programs to counter terrorism and illegal gangs in the Asian region.

As part of the work of Interpol, it is worth noting that in 80% of cases we can observe in these criminal groups not only the transportation and distribution of drugs, but also whole and complete systems for their production.

In general, an important part of the development of Interpol, as well as projects to combat the spread of narcotic drugs, is a broad information interaction, in the framework of detection and search, terrorist groups and gangs. (Tokaev 1997: 55)

Kazakhstan is a consistent and committed supporter of a collective and comprehensive solution to the problem of terrorism. The Republic has acceded to all twelve universal UN conventions against terrorism. Bilateral agreements have been concluded on cooperation in this field, as well as in the fight against international crime with 13 states. (Vishnyakov 2006: 81)

It must be emphasized that in our opinion a full-fledged program is being implemented and is being implemented to prevent the spread of drugs. In this factor, it is important to understand that it is necessary to carry out the fight against the spread and elimination of drugs precisely in several countries at once. Since, unfortunately, we can note that with the advent of globalization, crime has also become transnational.

Undoubtedly, it is worthwhile to understand that the spread of drugs in the region takes place with the participation of criminal groups in many countries. And to eliminate them, it is necessary to approach the problem very carefully.

Of particular importance for the republic is cooperation in energy security, trade, and the economy as a whole. This cooperation is supported by the Central Asian Border Management Program (BOMCA). Its main areas are: ensuring the security of the borders of the region, promoting legal trade and also transit.

The existing programs in the fields of education and science, such as TEMPUS and Erasmus Mundus. (Ensebaeva 2012: 65-67)

Their significance is especially great within the framework of enriching the personnel potential of the Republic of Kazakhstan, as well as increasing the mobility of teachers and government personnel. In 2009, a new regional program is being created, CA – CAREN, using high-speed Internet, to provide maximum fast communication in cooperation between universities. One of the well-known programs is the TACIS program, which in 2007 was replaced by a cooperation development tool. (Ensebaeva 2012: 55)

The main objective of this interaction program is to strengthen democracy. For Kazakhstan, several thematic DCI programs have been proposed. Among them, the "Investing in People" Program is implemented in six main areas of activity: health, knowledge and skills, culture, employment and social cohesion, gender equality, youth and children.

Also in this system, the process of environmental protection in the region occupies a significant place. The DCI program is designed in such a way that it can not only function within its own projects, but also complement existing projects, which is a very flexible and significant function. (Vishnyakov 2006: 300)

It should be noted that along with DCI there are also a number of tools for interaction and cooperation. European Instrument for Democracy and Human Rights (EIDHR); Nuclear Safety Instrument; Stability Instrument (IFS) as anti-crisis measures and to eliminate specific global and inter-regional threats that have a destabilizing effect.

Considering these development programs, and the desire of the EU not only to participate but also to attract East Asian countries. Including Kazakhstan. Given the recent events of 2010-2015, and considering the policy of Germany as the leading EU state, we can observe the tendency for the European Union to be inclined towards cooperation and the creation of a multipolar world, and in contrast to NATO's emphasis on unipolarity.

Of great importance for the establishment and strengthening of the political and economic weight of Kazakhstan in the international arena is its participation in international space organizations that explore space and also use high technology.

Based on an intergovernmental agreement, active cooperation between the Kazakhstan National Company "Kazakhstan Garysh Sapary" JSC and the French company "EADS Astrium" on the implementation of two major projects is carried out:

the creation of a space system for remote sensing of the Earth of the Republic of Kazakhstan and the assembly and testing complex of spacecraft (SCSC) in Astana. (Ensebaeva 2012: 64)

On July 1, 2013, during the official visit of British Prime Minister David Cameron to Kazakhstan, a contract was signed for the creation of a space system for scientific and technological purposes (SC NTN) with Surrey Satellite Technology Ltd (SSTL).

The goal of the project is the creation of a space system designed to develop technologies for designing, assembling and testing a spacecraft, conducting scientific research of the Earth's ionosphere, and obtaining flight history for a technological load of its own design.

In order to increase the economic efficiency of the project, agreements were reached with the English company SSTL on the joint development of the NTN spacecraft, the creation and launch of a scientific and technological spacecraft as part of the Earth Mapper European satellite constellation. This will reduce the risks, timing and costs of creating a spacecraft.

JSC "NC" UC "together with SSTL studied the issues of joint development and creation of the NovaSAR radar spacecraft, which will be funded by UKSA.

In addition, in the production of the Kazakhstan medium-resolution satellite "KazEOSat-2" satellite, SSTL acted as a contractor for Airbus Defense & Space.

Cooperation with China is one of the main and main types of strategic partnership. Given the pace of development in China, especially in technical terms, we can highlight its desire for the need to master space technology. Thus, the Republic of Kazakhstan is very popular in terms of providing both space training grounds for research, and as a strategic partner for joint cooperation. (Lantsov 2008: 8)

Thus, considering cooperation, we can talk about how Kazakhstan is today, an important player, both in the European Region and in Asia. And mentioning the words of Peter the Great, Kazakhstan is the key and the gateway between Europe and Asia, we can say that with the right policies, the Republic in organizing international cooperation can become the link in the interaction of the two cultures.

Conclusion

In the modern world, international organizations play a significant role. Since the 19th century, the desire for internationalization of many aspects of society has necessitated the creation of new forms of international cooperation.

Currently, there are more than 4 thousand international organizations operating in various directions. But today, one of the most influential and popular organizations in the world is the United Nations, which was created after the end of World War II (October 24, 1945) by 51 countries in order to maintain peace through the development of international cooperation and collective security. (Lantsov 2008: 8)

On March 2, 1992, at the UN General Assembly (GA), Kazakhstan became one of the members of an authoritative, international organization of peace. Thus, the international recognition of state sovereignty and independence of the country took place.

A new sovereign state appeared on the world map – the Republic of Kazakhstan, which became the 168th member of the UN. It is necessary to highlight the main, significant initiatives of our republic within the United Nations since joining this organization. Having become a full-fledged participant in the universal international forum, Kazakhstan received the opportunity to fully integrate into the world community as a worthy partner in international relations.

The first session in which Kazakhstan participated was the 47th GA session. During the general discussion, the first in the history of Kazakhstan speech of the President of the Republic of Kazakhstan N.A. Nazarbayev, in which he reaffirmed the commitment of the new independent state to the goals and principles of the Charter of the Organization.

In December 1992, Nazarbayev put forward the initiative and the need to create SVDM, which would unite the states of the Asian continent, ensuring safe and stable development of the region (Nazarbayev 1995: 94)

The first CICA summit was held in 2002. Since then, the composition of the organization has been significantly replenished by influential participants. Being a member of the UN, Kazakhstan is involved in the search for a solution to many political problems, primarily affecting the security of the Central Asian region, therefore, at the end of 1994, President of Kazakhstan N.A. Nazarbayev during a meeting with the UN Under-Secretary-General at the OSCE summit in December 1994 proposed the UN on behalf of 3 states – Kazakhstan, Kyrgyzstan, Uzbekistan – to create a battalion for possible peacekeeping operations in the Central Asian region (Nazarbayev 1995: 32)

This proposal was perceived by the UN as a sincere desire to help strengthen peace and stability in Central Asia. Soon a year later, on December 15, 1995 in Taraz, the Presidents of the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Uzbekistan signed an agreement on the creation of a collective peacekeeping battalion in Central Asia under the auspices of the UN. In 2000, the leadership of Kazakhstan decided to create an independent Kazakhstan peacekeeping battalion "Kazbat", the main task of which is peacekeeping, which was carried out by "Kazbat" in the peacekeeping mission in Iraq to destroy explosives and ensure water supply. On the territory of the former USSR, nuclear powers formed – Russia, Ukraine, Kazakhstan and Belarus. Belarus, Kazakhstan and Ukraine pledged to join the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as states without a nuclear arsenal (Durdenevsky 1956: 64)

The historical decision of the leadership of Kazakhstan regarding non-nuclear status was appreciated at the UN. At the 49th session in 1994, the General Assembly in its resolution welcomed the accession of the Republic of Kazakhstan to the NPT. The initiative of the Republic of Kazakhstan and the policy of the former President of the Republic of Kazakhstan, N. Nazarbayev, aimed at ridding humanity of nuclear weapons and strengthening the non-proliferation regime of weapons of mass destruction, has earned the recognition of the international community.

The Republic of Kazakhstan actively supports the work and activities of the UN in all its areas. Of particular importance is the issue of international diplomacy, which considers the multilateralism of the participants as one of the main priorities.

The geopolitical position of the republic in this case is one of the main and determining moments of this development. Of great importance also is the growing potential of the country. Of course, in these conditions it is still too early to say that the republic is a full member of the UN, other more "strong" members of the organization will listen to their advice and position, but it should be emphasized that for more than 20 years of independence Kazakhstan has managed to determine its own priorities and a holistic position in the system of international relations. (Danenov 2014: 124)

In this case, we are pretty much sure that the main and most important prospect for Kazakhstan in cooperation with the UN is to create our own economic and political potential, which other countries will listen to, which will further allow us to get ahead of the country on a par with other leaders in diplomacy and international relations. (Kazykhanov 2007: 2)

Today, within the framework of the situation under consideration, it is quite difficult to predict the further development of the world system, the positions of world leaders are too uncertain and random, the factor of chance plays a big role in forecasting. But despite this, the implementation of the republic within the framework of international politics, as well as the determination of its own significant place in this system, is the main priority for further development and cooperation with the UN.

The formation of internal political and economic systems that will most effectively realize the country's potential also plays a greater role.

In general, as already noted, Kazakhstan shows itself among other UN states as one of the active players fighting for the organization of a world security system and stability of common international relations, providing a process of cooperation in the system of interaction between Asia and Europe.

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[1]Р.Е. Джансараева, [2]М.Ш. Құрманғали

[1]доктор юридических наук, профессор, Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы, e-mail: rima.jansaraeva@kaznu.kz
[2]кандидат юридических наук, старший научный сотрудник, университет Нархоз, Казахстан, г. Алматы, e-mail: medeu.kurmangali@narxoz.kz

ПРАВИЛА НЕЛЬСОНА МАНДЕЛЫ: АНАЛИЗ ОБНОВЛЕННЫХ СТАНДАРТОВ ОБРАЩЕНИЯ С ЗАКЛЮЧЕННЫМИ

Аннотация. В статье анализируются Правила Нельсона Манделы в части обновленных стандартов обращения с заключенными. Новая редакция Правил была одобрена в 2015 году. Цель научной статьи – обратить внимание юридической общественности Казахстана на изменения международных стандартов и обновления в подходе к вопросам прав заключенных. В первой части статьи проводится общий обзор внесенных в Минимальные стандартные правила ООН для персонала пенитенциарных учреждений при обращении с заключенными поправок в 9 областях стандартов. Во второй части авторами осуществлен научный анализ внесенных в данный документ ООН изменений и сформулированы предвариательные выводы по ним. Третья часть статьи посвящена концептуальным вопросам имплементации минимальных стандартов обращения с заключенными в национальную сферу Казахстана. Научная и практическая значимость работы состоит в правовом анализе содержания обновленных правил. Основные результаты и выводы авторов состоят в том, что Правила Нельсона Манделы имеют огромное значение и оказывают существенное влияние на развитие политики, законодательства и практики государств во всем мире. В написании статьи использовались методы логики, формально-юридический и системный методы исследования. Ценность статьи состоит в разработке проблем пенитенциарной науки и права РК. Практическое значение итогов работы заключается в научном обосновании возможностей имплементации рассматриваемых стандартов в национальную систему РК.

Ключевые слова: Правила Нельсона Манделы, международно-правовые стандарты обращения с заключенными, пенитенциарные учреждения, международное пенитенциарное право, уголовно-исполнительное законодательство РК, уголовно-исполнительная система РК.

[1]R.E. Jansaraeva, [2]M.Sh. Kurmangali

[1]Doctor of Law, Professor, Al-Farabi Kazakh National University, Kazakhstan, Almaty, e-mail: rima.jansaraeva@kaznu.kz
[2]PhD in Law, Senior Researcher, Narxoz University, Kazakhstan, Almaty, e-mail: medeu.kurmangali@narxoz.kz

Nelson mandela rules: analysis of updated standards for the treatment of prisoners

Abstract. The article analyzes the Nelson Mandela Rules regarding updated standards for the treatment of prisoners. The new version of the Rules was approved in 2015. The purpose of the scientific article is to draw the attention of the legal community of Kazakhstan to changes in international standards and updates in the approach to the rights of prisoners. The first part of the article provides a general overview of the UN Standard Minimum Rules for Prison Staff when dealing with prisoners in nine areas of standards. In the second part, the authors carried out a scientific analysis of the changes made to this UN document and formulated preliminary conclusions on them. The third part of the article is devoted about the conceptual basics of implementation the minimum standards for the treatment of prisoners in the national sphere of Kazakhstan. The scientific and practical significance of the work lies in the scientific analysis of the content of the updated rules. The main results and conclusions of the authors are that the Nelson Mandela Rules are of great importance and have a significant impact on the development of policies, laws and practices of states around the world. In writing this article, methods of logic, formal-legal and systematic research methods were used. The value of the article lies in the development of the problems of penitentiary science and law of Kazakhstan. The practical significance of the results of the

work lies in the scientific substantiation of the possibilities of implementing the standards in question in the national system of Kazakhstan.

Key words: Nelson Mandela Rules, International Legal Standards for the Treatment of Prisoners, Penal Institutions, International Penitentiary Law, Penal Legislation of Kazakhstan, Penal System of Kazakhstan.

[1]Р.Е. Джансараева, [2]М.Ш. Құрманғали

[1]заң ғылымдарының докторы, профессор, әл-Фараби атындағы Қазақ ұлттық университеті,
Қазақстан, Алматы қ., e-mail: rima.jansaraeva@kaznu.kz
[2]заң ғылымдарының кандидаты, аға ғылыми қызметкер, Нархоз университеті,
Қазақстан, Алматы қ., e-mail: medeu.kurmangali@narxoz.kz

Нельсон Мандела Ережелері: қамауға алынған адамдарға қатысты жаңартылған стандарттарды талдау

Аңдатпа. Мақалада Нельсон Мандела Ережелерінің қамауға алынған адамдардың құқықтарына қатысты жаңартылған стандарттар талданады. Ереженің жаңа нұсқасы 2015 жылы мақұлданған. Ғылыми мақаланың мақсаты – Қазақстанның заңгерлер қауымдастығының назарын халықаралық стандарттардағы өзгерістерге және сотталғандардың құқықтарына қатысты жаңа көзқарастарға аудару. Мақаланың бірінші бөлімінде Қамауға алынған адамдардың құқықтарына қатысты түрме қызметкерлеріне арналған БҰҰ ең төменгі стандартты ережелеріне 9 салада енгізілген стандарттарға шолу жасалған. Екінші бөлімде авторлар осы БҰҰ құжатына енгізілген өзгерістердің ғылыми талдауын жасап, олар туралы бастапқы тұжырымдарын ұсынады. Мақаланың үшінші бөлімі қамауға алынған адамдардың құқықтарына қатысты ең төменгі стандарттарды Қазақстанның ұлттық жүйесіне енгізудің тұжырымдық мәселелеріне арналған. Жұмыстың ғылыми және практикалық маңыздылығы жаңартылған ережелердің мазмұнын ғылыми талдаудан тұрады. Мақаланың негізгі нәтижелері мен тұжырымдары келесіден көрініс тапқан. Авторлар Нельсон Мандела Ережелері маңыздылығын атап, оның бүкіл әлемдегі мемлекеттердің саясаты, заңдары мен тәжірибесін дамытуға айтарлықтай әсер ететінін қорытындылайды. Мақаланы жазу барысында логикалық, формальды-құқықтық және жүйелік зерттеу әдістері қолданылды. Мақаланың маңыздылығы ҚР-дың пенитенциарлық ғылымы мен құқығының мәселелерін дамытуға үлес қосуында. Жұмыс нәтижелерінің тәжірибелік маңыздылығы Қазақстанның ұлттық жүйесінде қарастырылған стандарттарды енгізу мүмкіндігін ғылыми негіздеу.

Түйін сөздер: Нельсон Мандела Ережелері, қамауға алынған адамдарға қатысты халықаралық-құқықтық стандарттар, пенитенциарлық мекемелер, халықаралық пенитенциарлық құқық, ҚР қылмыстық-атқару заңнамасы, ҚР қылмыстық-атқару жүйесі.

Введение

Комиссия ООН по предупреждению преступности и уголовному правосудию в мае 2015 г. одобрила пересмотренные Минимальные стандартные правила ООН в отношении обращения с заключенными (Правила Нельсона Манделы) (далее – МСП) и представила весь пакет пересмотренных правил на утверждение в Экономический и Социальный Совет ООН (далее – ЭКОСОС) для их последующего принятия Генеральной Ассамблеей ООН (далее – ГА). Это стало возможным благодаря тому, что на своем четвертом совещании в г. Кейптаун (Южная Африка) в марте 2015 г. созданная ранее ГА ООН межправительственная группа экспертов достигла консенсуса по всем правилам, подлежащим пересмотру.

Как известно, МСП были приняты в 1955 году на Первом конгрессе ООН по предупреждению преступности и обращению с правонарушителями и утверждены двумя резолюциями ЭКОСОС ООН от 1957 г. и 1977 г. Однако, с 1955 года прошло значительное время и возникла потребность учета и отражения в этом документе последних достижений в области международного права и пенитенциарной науки. Как объясняется в документах ООН и из выступлений его должностных лиц, МСП в новой редакции было дано название «Правила Нельсона Манделы» в знак уважения к наследию покойного президента Южной Африки, который провел в тюрьме 27 лет в период борьбы за права человека, равенство, демократию и формирование культуры мира во всем мире. Кроме того, ООН было принято решение расширить рамки Международного дня Нельсона Манделы (18 июля) для содействия обеспечению гуманных условий тюремного заключения, повышения осведомленности о том, что заключенные являются неотъемлемой частью

общества, и для признания значимости работы персонала пенитенциарных учреждений как социальной службы особой важности.

Внесенные в МСП поправки

Обновленные Правила Нельсона Манделы затронули пересмотром следующие области стандартов: уважение человеческого достоинства заключенных; уязвимые группы лишенных свободы лиц; медицинские услуги и охрана здоровья; ограничения, дисциплина и меры взыскания; расследование случаев смерти и пыток в местах заключения; доступ к юридической помощи; жалобы и независимая инспекция; обучение персонала; терминология (The Nelson Mandela Rules 2015). Всего одна третья часть документа подверглась поправкам. Вкратце рассмотрим новые стандарты:

1. Уважение человеческого достоинства заключенных касается правил с 1 по 5 МСП.

2. Уязвимые группы лишенных свободы лиц касается правил 2, 5(2), 39(3), 55(2) и 109–110 МСП.

3. Медицинские услуги и охрана здоровья касается правил 24–27, 29–35 МСП.

4. Ограничения, дисциплина и меры взыскания касаются правил 36–39, 42–53 МСП.

5. Расследование случаев смерти и пыток в местах заключения касается правил 6–10, 68–72 МСП.

6. Доступ к юридической помощи касается правил 41, 54–55, 58–61, 119–120 МСП.

7. Жалобы и независимая инспекция касается правил 54–57, 83–85 МСП.

8. Обучение персонала касается правил 75–76 МСП.

9. Терминология была обновлена в МСП. Объясняется это тем, что процесс пересмотра МСП потребовал унификации терминологии во всем документе и замены устаревшей терминологии, которая больше неприменима в свете последних достижений в области международного права. В частности, изменения в данной тематической области касаются корректировки медико-санитарной терминологии и приведения пересмотренных правил в соответствие с т.н. «гендерно-чувствительными аспектами» (The Nelson Mandela Rules 2015).

Анализ изменений в МСП и выводы по ним

Первое. ГА ООН выбрала путь обновления действующих МСП, в то время как были альтернативные варианты: 1) разработка и приятие абсолютно новых Правил, касающихся обращения с заключенными; 2) разработка и предложение к принятию государствами Конвенции ООН по обращению с заключенными, имеющего статус международного договора. В качестве возможного для сравнения примера можно привести Женевскую конвенцию от 12 августа 1949 года об обращении с военнопленными (Geneva Convention on the Treatment of Prisoners of War of August 12, 1949). Таким образом, на некоторое время прекратятся дискуссии и исследования проблем статуса международно-правового документа, который должен был или в будущем должен будет регламентировать вопросы обращения с заключенными. Возможно, позиция ООН основывалась на том, что юридически обязательный для государств международный договор, определяющий права заключенных (Конвенция ООН по обращению с заключенными), будет сложно предложить к принятию всем государствам в виду различных разногласий политического и юридического характера. К тому же согласно нормам международного уголовного права и существующей практике международных судебных учреждений, исполнение наказаний даже за международные преступления (в том числе предусмотренные статутом Международного уголовного суда) реализуется посредством национальных судов и пенитенциарных учреждений государств. Однако, отсутствие международного договора (Конвенции), налагающего на государства юридически обязательные нормы по обращению с заключенными, по нашему мнению, не будет способствовать улучшению состояния прав человека в пенитенциарных системах государств. Поэтому вопросы разработки и принятия специальной Конвенции должны всегда находиться в сфере научных и аналитических исследований в области прав человека.

Второе. При разработке поправок в МСП ГА ООН определила общие параметры процесса пересмотра: 1) любые изменения в правилах должны не снижать уровень каких-либо действующих стандартов, а улучшать их в целях обеспечения безопасности и гуманных условий для заключенных; 2) в процессе пересмотра необходимо поддерживать существующий уровень применения МСП. Надо отметить, что эти требования экспертами-разработчиками были выполнены. Однако, понимание «стандартов» в науке международного права в то время, когда принимались МСП и в настоящее время, ка-

чественно эволюционировало. Так, под «стандартами», используемыми в документах ООН, изначально понимался образец, модель, эталон поведения в значении близком идеалу, к которому должны стремиться государства. Затем с годами, при анализе проблем соблюдения «стандартов» в пенитенциарной сфере, юристами-международниками они стали характеризоваться как минимальные правила и условия, которые должны соблюдаться государствами при обращении с заключенными. В настоящее же время, в юридической науке стало преобладать мнение, что значение «стандартов» больше соответствует значению обязательств государства в области прав человека. При этом «стандарты» выступают как конкретизированные требования норм международного права прав человека, подкрепленные международной правозащитной и судебной практикой, рассматриваемые в рамках принятых на себя государствами обязательств в данной сфере. С учетом сказанного, по нашему мнению, межправительственная группа экспертов не смогла учесть и отразить в обновленном документе современное понимание «стандартов», хотя это можно объяснить рамками поставленных ГА ООН перед ней задач.

Третье. Включенные в МСП многие «новые» стандарты в области: уважение человеческого достоинства заключенных; уязвимые группы лишенных свободы лиц; медицинские услуги и охрана здоровья; ограничения, дисциплина и меры взыскания; расследование случаев смерти и пыток в местах заключения; доступ к юридической помощи; жалобы и независимая инспекция – строго говоря, не являются новыми. Эти стандарты, современному международному праву, давно уже известны и закреплены в других специальных документах ООН в пенитенциарной сфере и международных договорах (и протоколах к ним) в области прав человека. Например, внесенные в МСП «новые» стандарты в области медико-санитарного обслуживания заключенных (пункты 24–27, 29–35) закреплены в Принципах медицинской этики 1982 года (Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 1982). «Новые» стандарты в области дисциплины и мер взыскания (пункты 36–39, 42–53 МСП); расследование случаев смерти и пыток в местах заключения (пункты 6–10, 68–72 МСП); жалобы; независимая инспекция (пункты 54–57, 83–85 МСП) основаны на нормах Факультативного протокола к Конвенции против пыток 2002 года (Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002). Обновленные стандарты в области доступа к юридической помощи (пункты 41, 54–55, 58–61, 119–120 МСП) базируются на Основных принципах, касающиеся роли юристов 1990 года (Basic Principles on the Role of Lawyers, 7 September 1990) и т.д. В определенной степени новым является уточнение стандартов в области обучения персонала (пункты 75–76 МСП), охраны и безопасности, а также использование в документе, получившего в последнее время развитие в науке пенитенциарного права, понятия «концепции динамической безопасности». Таким образом, новым является сам факт включения вышеуказанных стандартов в МСП, а также конкретизация и детализация некоторой части правил. Еще одним из недостатков, пересмотренных МСП, можно отметить отсутствие указания на связи между МСП и другими специальными документами ООН в пенитенциарной сфере (Бангкокские, Пекинские, Токийские, Кодекс поведения должностных лиц по поддержанию правопорядка и многие другие правила). В будущем если будут разработаны экспертами ГА ООН или Управления ООН по наркотикам и преступности (далее – УНП ООН) Комментарии к МСП, то в них, на наш взгляд, следует охарактеризовать взаимные связи всех документов ООН, касающихся обращения с заключенными в целях системного восприятия стандартов государствами и их эффективной реализации.

Четвертое. Обновление терминологии в МСП затронуло, в том числе, и вопросы приведения пересмотренных правил в соответствии с т.н. «гендерно-чувствительными аспектами». В рамках работы по обновлению терминологии путем включения в текст МСП в области не дискриминации заключенных по различным признакам словосочетания «любого иного обстоятельства» разработчики заложили правовые основания для возможности включения на практике в категорию уязвимых групп – заключенных с т.н. «особыми потребностями». Здесь подразумеваются в том числе и лица нетрадиционной сексуальной ориентации: лесбиянки; гомосексуалы; бисексуалы; трансгендеры (далее – «ЛГБД»). Надо сказать, что на международном уровне дискуссии о необходимости защиты прав этих категорий лиц ведутся давно, а в последнее время в мире определенными политическими силами идет весьма усиленное их продвижение.

Так, в декабре 2008 года по инициативе Франции при поддержке Европейского союза (далее – ЕС) правительства Франции, Великобритании, Германии, Нидерландов и Швеции представили ГА ООН проект Декларации ООН по вопросам сексуальной ориентации и гендерной идентичности (Draft UN Declaration on Sexual Orientation and Gender Identity, 18 December 2008). Она стала первой декларацией, касающейся прав «ЛГБТ», обсуждаемой в ГА ООН. Вначале проект этого документа был задуман как резолюция ГА ООН, но в виду отсутствия широкой поддержки такого статуса документа инициаторы определили ее в качестве декларации. В настоящее время Декларацию подписали 96 государств, включая всех членов ЕС. 57 стран-членов Организации Исламского Сотрудничества (далее – ОИС) и некоторые другие выступили против попыток сосредоточить внимание на правах отдельных лиц и подписали альтернативное заявление. Россия и КНР не подписали Декларацию, но и не подписали альтернативное заявление ОИС с комментарием о том, что искусственное выделение лиц с нетрадиционной сексуальной ориентацией чревато перегрузкой и без того обширной повестки дня ГА ООН и смещением ключевого вектора ее работы в плане преодоления дискриминации и ксенофобии. Украина отозвала свою подпись перед датой оглашения Декларации. Казахстан так же (как Россия и КНР) придерживается нейтральной позиции в ООН к этому вопросу. Таким образом, в международном сообществе существует и продолжается политическое противоборство в позициях двух групп государств по вопросу прав «ЛГБТ», которое отражается в деятельности органов, учреждений и документах ООН. В случае с рассматриваемым нами документом – МСП, первая группа государств-инициаторов Декларации ООН по вопросам сексуальной ориентации и гендерной идентичности смогла отразить в нем свои интересы. Теперь при осуществлении мониторинга за процессом имплементации МСП во внутригосударственной сфере, международные эксперты и наблюдатели, получив необходимые правовые основания, могут отдельным пунктом заострять свое внимание на проблемах прав «ЛГБТ» в пенитенциарной сфере. Известны случаи, когда в 2000-х годах в комнате отдыха некоторых колоний на столе раскладывались презервативы для активной профилактики СПИДа и помещаемых туда перед приездом различных международных инспекций. Понятно, что продвижение через политику и документы ООН таких западных «культурных ценностей» вызовет негативную реакцию у второй группы государств, к которой в цивилизационном плане относится и Казахстан.

Пятое. Обращает на себя внимание тот факт, что в сопроводительных к Правилам Нельсона Манделы документах ООН и в выступлениях его должностных лиц применительно МСП в новой редакции используется словосочетание «для персонала пенитенциарных учреждений». К примеру, если ранее при характеристике МСП в неофициальном варианте использовалось словосочетание «Минимальные стандарты обращения с заключенными», то в настоящее время: «Минимальные стандарты для персонала пенитенциарных учреждений при обращении с заключенными». Тем самым, на наш взгляд, ООН стремится обеспечить качество применимости (реализуемости) МСП во внутригосударственной правовой системе путем подчеркивания управленческой направленности Правил и адресуя ее администрации и сотрудникам тюремной системы. Здесь и в целом по внесенным поправкам заметно просматривается заимствование европейского подхода к обеспечению прав заключенных, и отраженного в пересматриваемых в настоящее время Европейских пенитенциарных правилах 2006 года (European Prison Rules 2006).

Шестое. С точки зрения организационно-правовых аспектов реализации МСП государствами заметно усиление роли УНП ООН в этом вопросе, которое приняло активное участие в процессе пересмотра МСП. Как известно, в системе универсальной организации УНП ООН курирует вопросы соблюдения международных стандартов и норм в области предупреждения преступности и уголовного правосудия. С позиции ООН вопросы обращения с заключенными всегда рассматривались неотрывно от проблем борьбы с преступностью. В процессе пересмотра МСП, УНП ООН выполняло функции Секретариата. Действительно, основываясь на полномочиях своего мандата и на практике работы с государствами по применению этих стандартов и норм на практике, УНП ООН накопило значительный опыт в предоставлении технического руководства и содействию в реализации программ реформы пенитенциарных систем государств, в том числе по совершенствованию законодательства (Crime Prevention and Criminal Justice / Materials of the UNODC website).

МСП и Казахстан

Несмотря на вышеуказанные замечания к отдельным обновленным стандартам, МСП в

целом остаются важным ориентиром развития законодательства и правоприменительной практики государств в пенитенциарной сфере. Однако, здесь требуется учесть следующее. Так, на основе определения роли и места уголовно-правового принуждения в политике государства, специалисты в сфере сравнительного правоведения предлагают все уголовно-правовые системы государств современного и прошлого периода классифицировать на 3 вида: репрессивные; карательные; гуманистические (Малиновский А.А. 2002: 13). В гуманистической правовой системе уголовное, уголовно-процессуальное и пенитенциарное законодательство используется в целях ре-социализации правонарушителей. При этом во всех минимальных стандартных правилах ООН, касающихся прав человека в сфере уголовной юстиции, в нормативном виде закрепляются идеи-принципы гуманистической уголовно-правовой системы.

Что касается казахстанской уголовно-правовой системы, то она, как и системы большинства государств мира, относится к карательной. К тому же в практике реализации уголовного законодательства могут наблюдаться и некоторые черты (доставшейся нам в наследство от советского периода) репрессивной уголовно-правовой системы. Когда международное сообщество в лице ООН требует от нас соблюдения и реализации в национальной сфере международных стандартов, касающихся прав человека в сфере уголовной юстиции, в том числе по обращению с заключенными, мы вынуждены делать это во многом формально и поверхностно, а также предпринимать попытки чисто технически соответствовать стандартам. Это связано также и с тем, что полноценная имплементация норм-стандартов в отдельных сферах (в нашем случае – обращения с заключенными) или фрагментарно из одной (гуманистической) уголовно-правовой системы в иную (карательную) невозможна в виду существенных различий в ценностях, концепции и принципах их построения.

Так, в гуманистической правовой системе правонарушителем является человек, неразумно (в силу особенностей психики или сложившейся ситуации) осуществивший предоставленные ему обществом и государством права и свободы. Действующее законодательство в данной системе предусматривает такие меры воздействия на лицо, совершившее противоправное деяние, которые минимизируют возможность его криминализации и призонизации (усвоение тюремного опыта, обучение преступным навыкам, формирование устойчивой криминальной мотивации) и обеспечивают возвращение в общество в качестве полноправного члена. Тюремное заключение рассматривается не с точки зрения кары или воздаяния, а как возможность переосмыслить свое поведение и вернуться в качестве полноправного члена в свободное общество (Малиновский 2002: 15). Характерные признаки гуманистической уголовно-правовой системы следующие. Это отсутствие смертной казни, длительных сроков заключения за совершение не тяжких деяний; хорошие условия содержания осужденных; приоритет уголовно-правовых мер, не связанных с лишением свободы; широко применяемое досрочное освобождение осужденных от отбывания наказания; применение наказаний, не влекущих разрыва социальных связей (например, арест на выходные дни); ре-социализация правонарушителя – основная цель наказания.

К характерным чертам карательной уголовно-правовой системы относятся: подход к наказанию как к каре, воздаянию за содеянное; устрашение и абсолютная превенция как основные способы предупреждения преступлений; закрепление в уголовном законодательстве длительных сроков лишения свободы. В нем лицо, повторно совершившее умышленное преступление рассматривается как не исправимый «преступник», в отношении которого необходимо применять пожизненное или длительное лишение свободы в целях исключения его дальнейшего социально опасного поведения и т.д. (Малиновский 2002: 14). Для репрессивной уголовно-правовой системы уголовное право является эффективным способом борьбы с социальными отклонениями. Под «преступником» в рамках этой системы понимается лицо, находящееся в «опасном для общества состоянии», потенциально готовое совершить противоправное деяние. Поэтому основной задачей права выступает то, чтобы посредством устрашения удержать человека, склонного к преступлению, от его совершения, а лицо, совершившее преступление, наказать как можно строже (Малиновский 2002: 14).

Таким образом, в концептуальном плане проблемы реализации международных стандартов обращения с заключенными во внутригосударственной сфере зависят от характера уголовно-правовой системы государства. В свою очередь, характер уголовно-правовой системы непосредственно связан с вопросами политического режима государства (а это уже предмет конституционного права и политологии). В существующих условиях сглаживающим недостатки в реализации стандартов МСП в национальной

уголовно-исполнительной системе фактором может выступить, как ни странно это бы не звучало, такой «культурный» ресурс, как человечный (гуманный) характер взаимоотношений между администрацией, сотрудниками учреждений и заключенными. Так, еще в начале 2000-х годов, когда тюремная система Казахстана была очень далека от международных стандартов по материально-бытовым, медико-санитарным, трудовым и иным условиям, зарубежными экспертами был замечен и отмечен в качестве позитивного явления – особый характер взаимоотношений между сотрудниками учреждений и заключенными (Койл Э. 2002: 112). Такой человечный характер отношений, по нашему мнению, основан на нашем национальном менталитете, и в частности, на следующих культурных ценностях нации. «Адамгершілік» – человечность. Адамгершілік болмай, әділдік болмас (Адамгершілік туралы мақал – мәтелдер / https://bilim-all.kz/). «Бауырмалдық» – любовь к ближнему и сердечность. Махаббат, достық, бауырмалдық – адамның ең бір асыл қасиеттері (Мүсірепов Ғ. 1980: 310). «Кеңпейілділік» – великодушие (Кең болсаң, кем болмайсың, кекшіл болма, көпшіл бол). «Кешірім» – прощение. Кешірім – ізгіліктің белгісі. Өзгені айыптағыңдай өзіңді айыпта, өзіңді кешіргеніңдей басқаларды кешір. Кешірім жасау – кеңдік, кешіре алмау – кемдік. (Материалы сайта / http://bilimsite.kz/). «Қайырымдылық» – отзывчивое, участливое отношение к переживаниям, несчастью других. Қайырымдылық жасасаң, қайырын өзің көресің. Адам бір-біріне қонақ. Жетім көрсең жебей жүр. «Ар-намыс, ұят» – честь и достоинство, нравственность. Өлімнен ұят күшті. Қазаққа ар-ұят ең жоғары саналады. (Ар-намыс, ұят туралы / https://el.kz/). «Даналық» – мудрость. Ашу дұшпан, ақыл дос – ақылыңа ақыл қос. «Жөн сөзге тоқтау» – внять голосу разума (разрешение дела миром). «Үлкенді сыйлау» – уважение к старшему. Үлкенді сен сыйласаң, кіші сені сыйлайды, кіші сені сыйласа, кісі сені сыйлайды. «Сөзде тұру» – верность слову. Ердің екі сөйлегені – өлгені и многие другие. (Мақал – мәтелдер жинағы / https://www.zharar.com/kz/makal/).

На наш взгляд, администрация пенитенциарного учреждения в сложившихся условиях могла бы шире использовать данный «культурный» ресурс посредством политики своей работы, а также путем обучения, инструктирования и привития необходимых умений и навыков сотрудникам учреждения. Представляется, что установление человечного характера взаимоотношений между администрацией, сотрудниками учреждений и заключенными будет отражать сам дух международного документа – Правил Нельсона Манделы, где красной нитью проходит идея уважения достоинства человека. Эта идея отражена в словах: «Адам өмірін бағалап, оның ар-намысына тимеу; адамның қадір-қасиетін сақтау; арсыз қылыққа бармау». Культивирование нравственных ценностей выступит идейной и фундаментальной основой процесса имплементации международных стандартов в пенитенциарной сфере. И на этой основе можно будет осуществлять реализацию международных стандартов в отдельных областях: материально-бытового и медико-санитарного обслуживания заключенных; организации их труда; общего гуманитарного воздействия; и в целом ре-социализацию заключенных.

Заключение

Таким образом, несмотря на некоторые замечания к обновленным стандартам, одной из важных поправок в МСП является нормативное закрепление принципа уважения человеческого достоинства. «Все заключенные должны пользоваться уважительным отношением вследствие присущего им достоинства и их ценности как человеческой личности …» (пункт 1 МСП). Самый главный внедренный в МСП стандарт – принцип уважение человеческого достоинства заключенных основан на ст. 1 Хартии ЕС об основных правах 2000 года (European Union Charter of Fundamental Rights 2000) и прецедентной практике Европейского суда по правам человека. Как известно, право ЕС, в частности в части прав человека, в настоящее время выступает самой развитой правовой системой, отражающей последние достижения мировой юридической мысли. Право на человеческое достоинство лежит в основе ряда конвенций и рассматривается в качестве базового принципа права Совета Европы, который предполагает обязанность государства уважать и защищать достоинство лица и право человека требовать уважения и защиты собственного достоинства. В целом МСП продолжают воспринимаются в качестве универсальных и признанных минимальных стандартов для персонала пенитенциарных учреждений при обращении с заключенными; в них отражен позитивный мировой опыт обращения с заключенными. Правила Нельсона Манделы действительно имеют огромное значение и оказывают существенное влияние на развитие политики, законодательства и практики государств во всем мире.

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[1]О.Х. Смаилов, [2]С.Ш. Абдельдинов

[1]заң ғылымдарының кандидаты, полиция полковнигі, e-mail: o.smailov@list.ru
[2]PhD докторанты, полиция майоры, e-mail: abdeldinov_8686@mail.ru
Қазақстан Республикасы ІІМ Мақан Есболатов атындағы Алматы академиясы,
Қазақстан, Алматы қ.

КЕЙБІР ЕУРОПА МЕМЛЕКЕТТЕРІНІҢ ҚЫЛМЫСТЫҚ ПРОЦЕСІНДЕГІ ЖЕДЕЛ ІС ЖҮРГІЗУ

Аңдатпа. Мақалада Қазақстан Республикасының 2014 жылғы Жаңа қылмыстық іс жүргізу кодексі бойынша кейбір еуропалық мемлекеттер мен Қазақстан Республикасының сотқа дейінгі тергеу институтының заңнамалық ережелері мен жұмыс істеу тәжірибесі талданады. Жеделдетілген өндірістердің негізгі және қосымша белгілері анықталды. Алдын ала тергеу алдын ала тергеудің өзінен міндетті емес істер бойынша анықтауды шектеудің ұйымдық сипатының үстемдігіне қатысты қорытындылар жасалды. Зерттеу нысаны қылмыстық сот ісін жүргізу нысандарын жеңілдету жағына қарай саралауды дамытудың теориялық және ұйымдастырушылық бағыттары болып табылады. Ғылыми жаңалық – Ұлттық қылмыстық іс жүргізу заңнамасын негізсіз айыптаудан және соттаудан сақтап, іс жүргізу кепілдіктерін күшейту, адам мен азаматтың құқықтары мен бостандықтарын заңсыз шектеуден сақтап, сондай-ақ әділ сот талқылауын қамтамасыз ету, заңдылықты нығайту және еуропалық мемлекеттердің тәжірибесі мысалында құқыққа құрметпен қарауды қалыптастыру жағына қарай одан әрі жетілдіруді негіздеу болып табылады. Зерттеу барысында автор Қазақстан Республикасы Конституциясының, Қазақстан Республикасының Қылмыстық іс жүргізу кодексінің ережелеріне негізделді.

Түйін сөздер: қылмыстық іс жүргізу заңнамасы, жеңілдетілген іс жүргізу, сотқа дейінгі тергеу, алдын ала тергеу, қылмыстық сот ісін жүргізу.

[1]O.H. Smailov, [2]S.Sh. Abdeldinov

[1]candidate of legal Sciences, police Lieutenant Colonel, e-mail: o.smailov@list.ru
[2]PhD doctoral student, police Major, e-mail: abdeldinov_8686@mail.ru
Makan Yesbulatov Almaty Academy of the Ministry of Internal Affairs
of the Republic of Kazakhstan, Kazakhstan, Almaty

Fast production (ligitation) in the criminal process some European states

Abstract. The article analyzes the legislative provisions and the practice of the functioning of the institution of pre-trial investigation of individual European states and the Republic of Kazakhstan under the new Code of Criminal Procedure of the Republic of Kazakhstan in 2014. The main and additional signs of accelerated production are highlighted. Conclusions are drawn regarding the dominance of the organizational nature of the delimitation of inquiry on cases in which the preliminary investigation is not necessarily from the preliminary investigation itself. Subject of research are theoretical and organizational areas. The development of differentiation of forms of criminal proceedings in the direction of simplification. Scientific novelty lies in the justification of further improvement of the national criminal procedure legislation in the direction of strengthening procedural guarantees against unreasonable charges and convictions, illegal restrictions on the rights and freedoms of man and citizen, as well as ensuring a fair trial, strengthening the rule of law and forming a respectful attitudes to law, as exemplified by the experience of European states. When conducting the study, the author was based on the provisions of the Constitution of the Republic of Kazakhstan, Code of Criminal Procedure of the Republic of Kazakhstan.

Key words: criminal procedure legislation, simplified production, pre-judicial investigation, preliminary investigation, criminal legal proceedings.

[1]О.Х. Смаилов, [2]С.Ш. Абдельдинов
[1]кандидат юридических наук, полковник полиции, e-mail: o.smailov@list.ru
[2]докторант PhD, майор полиции, e-mail: abdeldinov_8686@mail.ru
Алматинская академия МВД Республики Казахстан имени Макана Есбулатова,
Казахстан, г. Алматы

Ускоренное производство в уголовном процессе некоторых европейских государств

Аннотация. В статье проводится анализ законодательных положений и практика функционирования института досудебного расследования отдельных европейских государств и Республики Казахстан по новому Уголовно-процессуальному кодексу Республики Казахстан 2014 года. Выделены основные и дополнительные признаки ускоренных производств. Сделаны выводы относительно доминирования организационного характера разграничения дознания по делам, по которым предварительное следствие не обязательно от самого предварительного следствия. Предметом исследования являются теоретические и организационные направления развития дифференциации форм уголовного судопроизводства в сторону упрощения. Научная новизна заключается в обосновании дальнейшего совершенствования национального уголовно-процессуального законодательства в сторону усиления процессуальных гарантий от необоснованного обвинения и осуждения, незаконного ограничения прав и свобод человека и гражданина, а также обеспечения справедливого судебного разбирательства, укреплению законности и формированию уважительного отношения к праву, на примере опыта европейских государств. При проведении исследования автор основывался на положениях Конституции Республики Казахстан, Уголовно-процессуального кодекса Республики Казахстан.

Ключевые слова: уголовно-процессуальное законодательство, упрощенное производство, досудебное расследование, предварительное расследование, уголовное судопроизводство.

Кіріспе

Қылмыстық процесті саралау процестері әрдайым заңгер-ғалымдардың да, сондай-ақ практикалық қызметкерлердің де назарына ие болған. Бұған мыналар себеп болып табылады: қылмыстық іс жүргізу нысанын жетілдіруге ұмтылу, қылмыстық сот ісін жүргізуде күштер мен құралдарды пайд+алануды оңтайландыру қажеттілігі, сотқа дейінгі тергеп-тексеру міндеттеріне қол жеткізуде жылдам және үнемді қамтамасыз ету, азаматтардың құқықтарын қорғау саласын кеңейту.

2014 жылдың 4 шілдесінде Қазақстанда 2015 жылдың 1 қаңтарынан бастап қолданысқа енгізілген қылмыстық іс жүргізу кодексі қабылданды. Қазақстан Республикасының жаңа ҚІЖК (ҚР ҚПК) атап өтетін жайттарының бірі – бұрын жұмыс істеген «сотқа дейінгі жеңілдетілген іс жүргізу» институтының орнына «сотқа дейінгі жеделдетілген тергеу» институтын енгізу болды. Сонымен қатар, ҚР ҚІЖК-нің 102 бабының талабына сай, тергеушіге, прокурорға, сотқа іс бойынша маңызы бар мән-жайларды анықтау, іс жүргізу іс-әрекеттерін жүргізу немесе іс жүргізу шешімдерін қабылдау туралы өтініштер бере алады. Қазақстан Республикасының Қылмыстық іс жүргізу кодексі 190 бабының 1 бөліміне сәйкес, «хаттамалық нысандағы жағдайларды қоспағанда, сотқа дейінгі тергеу жедел жүргізілуі мүмкін».

Жаһандану үдерістерімен ұштасқан қазіргі жағдайда шет мемлекеттердің тәжірибесін зерделеу ғылыми зерттеулердің ажырамас атрибуты болып табылады. Қылмыстық процесте қылмыстық сот ісін жүргізудің ұлттық моделдеріне қарамастан, негізгі болып күдіктіні, айыпталушыны және сотталушыны қорғау құқығын қамтамасыз ету, сондай-ақ оның тиімділігі мен үнемділігін қамтамасыз ету болып табылады (Алимкулов 2019: 151).

Әр мемлекеттің заңнамасында іске асырылған заң ғылымының жетістіктерін пайдалану, тиімді және әділ қылмыстық сот ісін жүргізуге қол жеткізудің оңтайлы жолдарын табуға мүмкіндік береді.

Негізгі бөлім

2014 жылғы ҚР ҚПК негізі ГФР ҚПК болды, одан бұрын Ұлттық қылмыстық процеске бейімәлім институттар негізге алынды. Қолда бар шетелдік тәжірибені жеңілдетілген іс жүргізу түрлері бойынша талдау оларды терең түсінуге, олардың мәні мен шет мемлекеттердің қылмыстық сот ісіндегі орнын көрсетуге мүмкіндік берді.

Германияның қылмыстық сот жүргізуінде сотқа дейінгі тергеу нысандарын жеңілдетуге

жол берілмейді. Процедураны жеңілдету тек қылмыстық процестің сот сатыларында ғана жүреді және екі түрде көрінеді:

1) жиынтық іс жүргізу (сот шешімі);

2) жеделдетілген өндіріс.

Бұл процедуралар туралы мәселені прокурор сотқа дейінгі тергеудің соңында шешеді. Қысқартылған іс жүргізудің шарттары (сот шешімі) куәгерлерден ақпарат алу қажеттілігінің болмауы немесе арнайы алдын-алуға баса назар аудару болып табылады. Прокурордың сот талқылауынсыз сот бұйрығын шығару туралы өтініші бұған негіз болып табылады. Судья істі дербес қарайды және шешім шығарады: жаза туралы, адамның өтінішін қабылдамау және ақтау туралы, немесе сот тәртібін жалпы тәртіппен тағайындау туралы.

Қалай болғанда да, тек келесі заңды салдарлар жеке-жеке немесе жиынтық өндіріс аясында шешілуі мүмкін:

1. ақшалай айыппұл, жаза туралы ескертумен ескерту, көлік құралын жүргізуге тыйым салу, Қылмыстық жолмен алынған нәрселерді тәркілеу, әрекет жасау заттары мен құралдарын алып қою, заттарды жою, заттарды жарамсыз ету, соттау туралы хабарлау және заңды тұлғаға немесе бірлестікке қатысты ақшалай өндіріп алу,

2. екі жылдан аспайтын мерзімге жүргізуші құқығынан айыру, сондай-ақ

3. жазадан бас тарту.

Сот ісін жүргізуде жазбаша дәлелдемелерді зерделеу кезінде дәлелденген процесті қысқарту және тараптардың қосымша дәлелдемелер алу туралы өтініштерін іске қатысы жоқ себептерді түсіндірместен бас тарту жеделдетілген іс жүргізу үшін негіз болып табылады. Жедел іс жүргізу нәтижесінде шығарылған үкімге жалпы ережелерге сәйкес, апелляциялық және кассациялық шағымдар бойынша шағым жасалуы мүмкін (Головненков 2012: 328-335).

Қылмыстық істер бойынша өндірістің оңайлатылған нысандарында соттың дәлелдемелерді тікелей зерттеуі жоқ, бірақ бұл ретте неміс қылмыстық процесіндегі осындай алып қоюларды өтеуге мүмкіндік беретін егжей-тегжейлі ескеру қажет.

Біріншіден, бұл жеңілдетілген сот ісін жүргізуге көшу алдында толық алдын-ала тергеу. Неміс заңгері алдын ала тергеуде жеңілдетілген дәлелдеумен өзара байланыста сотта дәлелдеудің жоқтығы осындай істер бойынша шығарылған үкімдердің заңдылығын бұзады, ал ең бастысы адамды қорғау құқығынан айырады.

Екіншіден, Германияда жеңілдетілген тәртіппен шығарылған шешімге іс жүргізу қателіктері тұрғысынан ғана емес, істің нақты мән-жайларына қатысты шағым жасау мүмкіндігі қарастырылған. Егер жаза туралы бұйрыққа қарсы наразылық берілсе, кейбір ерекшеліктері бар жеңілдетілген іс жүргізу (мысалы, дәлелдемелерді оңайлатылған зерттеу) жалпы тәртіпке ауысады (Брестер 2018: 167-168).

Жалпы, А. А. Брестер мен А. С. Быковскаяның пікірімен келісе отырып, Германияның қылмыстық процесі жеңілдетілген нысандармен байланысты алып қоюларды өтеуге мүмкіндік беретін рәсімдерді көбірек қарастыратынын атап өтуге болады. Немістің жеңілдетілген түріндегі дәлелдемелерді тікелей емес зерттеу нәтижесіндегі қате, айыпталушыға зақым келтіру және қылмыстық процесті беделін түсіру үшін жеткіліксіз (Брестер 2018: 167-168).

Мұндай жағдайларда В.В. Хан: «қылмыстық процеске біріктірілген әкімшілік іс жүргізу ережелері іс жүзінде әкімшілік құралсаймандарға қылмыстық іс жүргізу сипатын береді» деген ұстаным әділ болып табылады (Хан 2019: 12-23).

Швейцарияның қылмыстық сот төрелігі Германияның қылмыстық іс жүргізу моделінің бір түрі болып табылады. Швейцарияның КҚК өндірістің ерекше түрлері ретінде мыналарды аталып өтіледі:

1) жаза тағайындау туралы бұйрық шығару туралы іс жүргізу;

2) оңайлатылған өндіріс.

Жаза тағайындау туралы бұйрықты шығару үшін айыпталушының алдын-ала сот ісін жүргізу кезінде кінәсін мойындаумен байланысты шарттар мен алты айдан аспайтын мерзімге үкім шығару мүмкіндігі сақталуы керек (Трефилов 2011: 174).

А.А. Брестер және А.С. Быковская швейцариялық жазалау бұйрығын қолданылу аясы үлкен және қоғамдық қауіпті емес қылмыстарға арналған мекеме ретінде сипаттайды. Олардың пікірінше, ол қылмыстық істерді сотсыз шешуге арналған ұсыныстардың кейбір түрін білдіреді. Айыпталушы осы ұсынысты қабылдай отырып, өзінің іс жүргізу құқықтарын шектеуге келіседі, бірақ жазаны төмендетуді қамтамасыз етеді. Істің мән-жайлары алдын ала тергеу сатысында түпкілікті белгіленген болып саналады: процесс сот үкіміне теңестірілген бұйрықтың өзі белгілеген мән-жайлары негізінде Прокурордың шығаруымен аяқталады. Егер айыпталушы

сот үкімімен келіспесе, онда ол он күн ішінде наразылық білдіру құқығын сақтайды (Брестер 2018 а: 100).

А.А. Трефилов жазалау тәртібінің швейцариялық үлгісінің мәні айыпталушының алдын ала іс жүргізу барысында оның кінәсін растайтын мән-жайларды мойындауында немесе оларды жеткілікті түрде нақтылауында, бұл прокурорға мүмкін болатын шартты жазаны ескере отырып, жазалау тәртібін шығаруға құқық беретіндігін айтады.

Сот үкімінде айыпталушыны азаматтық заңның талаптары деп тану туралы жазба жасалады. Сонымен қатар, мойындалмаған талаптар азаматтық сот ісіндегі қылмыстық істің шеңберінен тыс қаралуы мүмкін (Швейцария ҚІЖК-нің 353-бабы).

Жазалау тәртібіне қатысты прокуратураға 10 күн ішінде жазбаша түрде қарсылық білдіруге құқылы:

а. айыпталушы;

ә. басқа зардап шеккен адамдар;

б. егер қарастырылған болса, федерацияның Обер және Бас прокуратурасы немесе тиісінше Швейцарияда немесе оның кантондарында (штаттарында) жүргізілетін өндірістерде қозғалатын Кантон.

Қарсылықтар айыпталушыдан алынған қарсылықты қоспағанда, дәлелді болуға тиіс.

Егер заңды қарсылық болмаса, жаза тағайындау шешімі үкімге тең заңды күшке ие (Швейцария ҚІЖК-нің 354-бабы).

Францияда жеңілдетілген сот ісін жүргізуге қылмыстық заңның ұсақ бұзушылықтарына қатысты да, санкция ретінде бас бостандығынан айыру қарастырылмаған. Дәл осы санаттағы қылмыстық әрекеттер үшін жеңілдетілген іс жүргізудің екі түрі жақсы дамыған: қылмыстық бұйрықтар жүйесі және белгіленген мөлшерде айыппұл салу жүйесі.

Қылмыстық бұйрық прокурордың іс материалдарын өзіндік талаптарымен полиция полициясына жіберуден тұрады. Егер судья қылмыстық бұйрық шығаруда ешқандай кедергілерді көрмесе (әйтпесе, іс прокурорға қайтарылады), онда сот отырысынсыз және тараптарды шақырмай, ол өзінің шешімін белгілейтін қылмыстық бұйрық болып табылатын нысанды толтырады: не ақтауға, не айыппұл түрінде жазаға кесуге.

Прокурор үкімнің мөлшерімен келіспегендіктен (немесе ақтау үкімімен) қылмыстық бұйрыққа қарсылық түрінде он күн ішінде шағымдана алады. Мұндай жағдайларда қылмыстық бұйрық жойылады және іс тараптардың қатысуымен әдеттегі тәртіпте қаралады. Прокурордың қылмыстық бұйрықпен келісуімен, үкімнің ерікті түрде орындалуы (айыппұл төлеу) немесе апелляциялық шағым беру, қылмыстық бұйрықтың күшін жоятын және жалпы тәртіпте тыңдауға әкелетін отыз күні бар екендігі сотталушының назарына жеткізіледі. Егер сотталған адам ешқандай әрекет жасамаса, онда бұйрық заңды күшіне енген болып саналады және орындалады.

Белгіленген мөлшердегі айыппұл – бұл соттық сипатын жоғалтатын және әкімшілік іс жүргізуге жақындаған қылмыстық процесті жеңілдетудің төтенше нысаны. Айыппұлды белгілі мөлшерде өндіру белгілі бір бұзушылықтардың түрлерімен шектеледі, мысалы, жол ережелерін бұзу, ұлттық саябақтарда болу және т.б.

Мұндай жағдайларда полиция бұзушылық фактісін анықтайды, ол хаттама болып табылады және қылмыскерге оның құқықтары, атап айтқанда тиісті айыппұл төлеу арқылы жазаны өз еркімен орындау құқығы туралы хабарлама береді. Сонымен бірге, полиция айыппұлды жекелей алмайды, өйткені заңда нақты белгіленген мөлшер анықталған. Айыппұлды үш күн ішінде төлеу оның мөлшерін автоматты түрде азайтуға алып келеді. Басқа жағдайларда айыппұл отыз күн ішінде төленуі керек немесе істі қарау туралы өтінішпен прокурорға хабарланады. Өтінішті қарау нәтижелері бойынша прокурор қылмыстық құдалаудан бас тартады немесе оны жалпы негізде бастайды (соттан сот бұйрығын шығаруды сұрауы мүмкін). Отыз күн өткеннен кейін айыппұл төленбесе немесе айыпталушы прокурорға өтініш бермеген жағдайда артады. Айыпталушы айыппұлды өсірілген мөлшерде төлеу туралы хабарлама алғаннан кейін он күн ішінде прокурорға жүгінуге құқылы. Бұл жағдайда соңғысы қылмыстық құдалауды бастау (немесе одан бас тарту) туралы жалпы негізде, оның ішінде оның орындылығының негізінде шешеді. Егер қылмыстық іс қозғалса, іс сотқа жіберіледі. Егер кінәлі тараптың қарсылығы болмаса, онда он күннен кейін айыппұл күшейтілген түрде өндіріліп алынады.

Екі процедурада да айыпталушыға әрқашан процестің жеңілдетілген сипаты мен бірқатар процессуалдық кепілдіктердің жоқтығын өтейтін классикалық қылмыстық сот ісін жүргізуге жүгінуге мүмкіндігі бар. Сонымен қатар, Францияда әкімшілік құқық бұзушылық туралы

түсінік қолданылмайды, сондықтан қылмыстық процесті жеңілдету негізінен біздің еліміздегі қылмыстық іс жүргізу шеңберінен шығарылған актілерге қатысты (Гуценко 2001: 372-374).

Француз қылмыстық процесінің жеңілдетілген нысандары эксклюзивтілік және өтемақы принциптеріне сәйкес келеді.

Австрияның жалпы (қысқартылған) іс жүргізу үрдісі адамның айыпталушы ретінде ресми қатысуын қарастырмайды, сот талқылауы мен үкім шығару ісі ұжымдық түрде жүргізілетін Шаффен сотынан айырмашылығы, барлық мәселелерді шешетін және барлық дәлелдерді дербес зерттейтін жалғыз судьяға жүктеледі. Жалғыз судья ұзақ мерзімге бас бостандығынан айыру үкімін заңды түрде тағайындай алмайды.

Сонымен бірге, заң шығарушы өндіріс жеделдетілген жағдайда шындықты анықтау процесі мен жекелеген азаматтардың заңды мүдделеріне қауіп төнуі мүмкін екенін ескереді. Сондықтан, бірінші сатыдағы соттың судьясы қараған барлық жағдайларда толықтай апелляция қарастырылған.

Қысқартылған іс жүргізудің негізі прокурордың айыпталушыны жазалау туралы жазбаша ұсынысы болып табылады. Мұндай ұсыныс айыптау мазмұнымен ұқсас, оны дәлелдеу және дәлелдеу қажет емес. Соңғы сот тыңдауына дейін алдын ала іс жүргізілуі мүмкін, бірақ көбінесе олар онсыз істей алады.

Жалпы өндіріс ерекшеліктері ретінде мыналар бөлінеді:

а) айыпталушы сот отырысына шақырылған шақыру қағазына прокурордың қылмыстық қудалау туралы ұсынысының көшірмесі қоса беріледі. Шақыру, айыпталушының өзінде болған дәлелдерді ұсына алатындығын немесе сотқа тиісті дәлелдерді ала және сотқа жібере алатын уақыты туралы алдын-ала хабарлауы мүмкін екендігін көрсетеді. Айыпталушыға оның қорғаушының қызметтерін пайдалану құқығы және қорғаушының қатысуының алғышарттары түсіндіріледі;

б) егер жалғыз судья сот отырысында қажетті дәлелдерді алу мүмкін емес деп санаса, тергеу судьясына алдын-ала тергеу жүргізуді тапсырады, оның нәтижелері кейіннен сотқа ұсынылады;

в) егер соттың нұсқауы бойынша іс бойынша алдын ала тергеу немесе қосымша тергеу жүргізілмеген болса, айыпталушының өтініші бойынша іс жүргізу жабық сотта өтеді;

г) процесстегі жалғыз судьяның төрағалық етуші және бірінші сатыдағы соттың құқықтары мен міндеттері бар;

д) егер басты сот талқылауы барысында жалғыз судья қаралып жатқан іс Шеффен сотының немесе алқабилердің қарауына жататын болса, ол істі соттың қарауына жатпайтындығы туралы шешім шығарады, яғни сіздің қабілетсіздігіңіз туралы.

Шешім күшіне енгеннен кейін, прокурор 14 күн ішінде құзыретті сотқа берген ұсынысы бойынша процесті бастау немесе жалғастыру туралы мәселені көтере алады (жеке және қосалқы прокурорлар үшін бұл мерзім айрықша). Дәл осы ереже жергілікті юрисдикция белгіленсе қолданылады;

е) сот отырысының хаттамалары мен үкімнің ерекшеліктері ретінде істі қарау және судья немесе сот отырысының хатшысы қол қойған шешім қабылдау туралы бір құжатпен (белгі) ауыстырылуы мүмкін. Бұл келесі жағдайларда рұқсат етіледі: егер айыпталушы ақталған болса немесе сотталған болса, ол өзінің толық кінәсін мойындаған, дәлелдемелер жиынтығымен расталған, сотта жан-жақты және толығымен қаралған; егер тараптар сот шешіміне шағымданудан бас тартса.

Заң мұндай құжатқа (белгіге) ескертулер беру мүмкіндігін қарастырады. Бұл ескертулер үкімнің көшірмесі оның түпнұсқасына сәйкес келмеген жағдайда, қабылданған шешімнің негіздерін қоспағанда, соттау немесе Ақтау үкімінде жеткіліксіз расталған жағдайда, күндізгі ставканың дұрыс белгіленген мөлшері (күндізгі ставкаларда өлшенетін ақшалай айыппұл түрінде жазаға сотталған кезде), жәбірленушіні толық немесе ішінара азаматтық сот ісін жүргізуге қылмыстық істе мәлімдеген талаптармен негізсіз жіберген кезде және т. б. келтірілуі мүмкін.] қолданылуы мүмкін. Қазақстанның қылмыстық процесінде қылмыстық туралы істер бойынша іс жүргізу хаттамалық нысанда жүзеге асырылады.Қылмыстық теріс қылық жасағаны үшін айыппұл, түзеу жұмыстары, қоғамдық жұмыстарға тарту, қамауға алу, шетелдікті немесе азаматтығы жоқ адамды Қазақстан Республикасының шегінен шығарып жіберу (ҚР ҚК 10-бабының 3-бөлігі) түріндегі жаза көзделген, қоғамға үлкен қауіп төндірмейтін, азғана зиян келтірген не жеке адамға, ұйымға, қоғамға немесе мемлекетке зиян келтіру қатерін төндірген кінәлі әрекеттер жатады (Бутов 1988.: 124-128).

Қылмыстық құқық бұзушылықтар бұрын Қазақстан Республикасының қылмыстық заңнамасымен ғана емес, сонымен бірге басқа да посткеңестік мемлекеттердің қылмыстық

заңнамасымен таныс емес қылмыстық құқық бұзушылықтардың түбегейлі жаңа түрлері. Қылмыстық жазаланатын актілердің санына қылмыстық құқық бұзушылықтың енгізілуі әкімшілік-қылмыстық заңнама нормаларының қылмыстық заңнамаға интеграциялануын құрайды, өйткені үлкен қоғамдық қауіпті тудырмайтын қылмыстық жазаланатын әрекеттердің ең төменгі категориясы болып табылады (Борчашвили 2015: 126).

Сотқа дейінгі жеделдетілген тергеуге онша ауыр емес және ауырлығы орташа қылмыстар, сондай-ақ ауыр қылмыстар бойынша рұқсат беріледі.

Сонымен қатар, Қазақстанның қылмыстық процесінің сотқа дейінгі сатыларында жеңілдету сотта іс жүргізуді жеңілдету үшін негіз болып табылады.

Осылайша, ұлттық қылмыстық процесте сот ісін жүргізудің жеңілдетілген нысандарын қолдану, егер айыпталушыға бір жылдан астам бас бостандығынан айыру түріндегі жаза қатерін төндірсе, жалпы тәртіптен ауытқуға жол бермейтін неміс қылмыстық іс жүргізу заңнамасына қарағанда, шамадан тыс кең.

Қазақстанда қысқартылған тәртіппен сот талқылауынан басқа, қылмыстық теріс қылықтар мен ауыр емес қылмыстар бойынша (айыппұл түрінде қылмыстық жаза тағайындаған кезде) жүзеге асырылатын Бұйрық шығару үрдісі бар.

Қорытынды

Осылайша, Еуропаның жекелеген мемлекеттерінің қылмыстық процестерінде жеделдетілген іс жүргізудің кейбір ерекшеліктерін қарастыра отырып, батыс мемлекеттерінде жеделдетілген және жеңілдетілген сот ісін жүргізу тек біздің түсінігіміз бойынша әкімшілік құқық бұзушылықтар мен қылмыстық құқық бұзушылықтарға қатысты істерде және кейбір ұсақ қылмыстар үшін жүзеге асырылады деп қорытынды жасауға болады.

Қазақстанның қылмыстық процесінде жеделдетілген сотқа дейінгі тергеу эксклюзивтілік пен өтемақы, іс жүргізу кепілдіктерін шектеу қағидаларына толық сәйкес келмейді. Сотқа дейінгі жедел тергеудің ұлттық институтын одан әрі дамытуды негізсіз айыптаудан және соттаудан, адам мен азаматтың құқықтары мен бостандықтарын заңсыз шектеуден іс жүргізу кепілдіктерін күшейту, сондай-ақ әділ сот талқылауын қамтамасыз ету, заңдылықты нығайту және еуропалық мемлекеттердің тәжірибесі мысалында құқыққа құрмет көзқарасын қалыптастыру жағына бағыттау қажет.

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