

Compromises in Criminal and Legal Policy of the Republic of Kazakhstan

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Abstract: The study is considered the compromises in criminal and legal policy of the Republic of Kazakhstan which were allowed to increase and expand of use of compromises in the criminal legislation, to reduce application of the criminal legislation and minimize process of involvement of citizens to the sphere of criminal legal relations.

Key words: Compromise, activity of law enforcement agencies, law-enforcement activity, performance of conditions of the procedural agreement, legal relations

INTRODUCTION

According to famous scientific criminologists in modern society it is observed the serious antagonism between crime and the state (Kudryavtsev, 2003).

And the forms and methods of criminal activity become more perfect, the activity of law enforcement agencies becomes more actively.

In Kazakhstan to this problem it is paid enough attention from the state. There is a legal basis of counteraction of crime, rather mobile law-enforcement system and the most important it is created negative attitude to criminal manifestations in society at the most part of the population.

In "The Concept of policy of law of the Republic of Kazakhstan for the period from 2010-2020", approved by the Presidential decree of the Republic of Kazakhstan from August 24, 2009 No. 858, it was noted that the most important part of policy of law of the state is the criminal policy, improvement of which is carried out by the complex, interconnected correction of the penal, criminal procedure and criminal and executive law and also law enforcement. In the light of implementation of the Message of President of the Republic of Kazakhstan the Leader Nation N.A. Nazarbayev to the people of Kazakhstan "Strategy "Kazakhstan-2050" it was noted: A new political course of the established state" as a result of active research of scientists, practitioners and deputies

there were adopted in 2014 Criminal procedure, Criminal, Criminal and executive codes of the Republic of Kazakhstan and the Code of Administrative Offences of the Republic of Kazakhstan which came into force on January 1, 2015.

The task of the state consists on the one hand to provide inevitability of punishment for the committed crime and on the other hand to make this punishment the most fair and effective, maximally reduced the social consequences, both for the most condemned and for the state in general.

MATERIALS AND METHODS

Main part: It is about the fastest return of the stumbled person to society and the normal course of life without turning him into the derelict and the eternal enemy of justice.

For this purpose, it is necessary to have the correct idea on the developed reality and on the other hand to help to orient the theory for needs and requirements of law-enforcement activity.

That is in criminal and legal policy certain compromises are necessary. The problem of compromises in the sphere of criminal and legal policy was a subject of independent research scientific other states (Alikperov and Zeinalov, 1999), however, the Kazakhstan jurisprudence independently practically did

not investigate the matters. Though, it should be noted that in the sphere of crime control it is spoken about compromises constantly at the highest level our country and they (compromises) were always presented and are presented at law-enforcement practice.

Before speaking about compromises in the sphere of crime control, we will consider the maintenance of this definition.

So, in the dictionary of Russian of Ozhegov (2008) the compromise is meant the agreement on the basis of reciprocal concessions concept.

According to Starkov (2005) the compromise with crime it is an agreement by reciprocal concessions and concessions of the state are: release from criminal responsibility and punishment up to recognition of a crime not criminal (for example, actions of the agents compelled by circumstances to it; members of the Criminal Organizations Promoting Law enforcement agencies; at voluntary delivery of the weapon, etc.), mitigation of punishment, prescription of punishment which is lower than the lowest limit in the presence of the mitigating circumstances (for example, with assistance to law enforcement agencies, prevention of harmful consequences of the act and so forth).

Other famous scientist of Dolgova, speaking about a compromise in counteraction of crime, points to such circumstance where it is about a special deal between the state and the criminal but it is the first, the compelled deal for more optimum results of crime control, secondly, it is rather “deal-forgiveness”, than “deal-compromise”: the criminal is exempted from criminal responsibility not because of there can be allowance of his criminal behavior at the certain conditions.

And according to Dolgova the concept “compromise” which is used even more often in relation to crime control does not seem exact. Such “compromise” is allowed only at response to concrete crimes, concerning specific criminals or their certain contingents. But not on crime as mass phenomenon.

But, the point of view the term “compromise” in counteraction with crime can be used slightly more widely, than Dolgova offers as also the humanization and liberalization of the criminal legislation, amnesty, decriminalization of separate corpus delicti all this in a complex has positive impact not only on separately taken person but also in general, on all crime.

Not incidentally, according to point of view of scientists, the criminal policy is understood as the general line developed by the state defining the main directions, the purposes and levers on criminals by formation of the criminal, criminal procedure, criminal and executive legislation, regulation of practice of its application and also by the development and implementation of measures directed on the prevention of crimes (Aslanov, 2008).

Let's consider on the example of again adopted criminal legislation of the Republic of Kazakhstan, what approximate groups of compromises are present there.

The first group of compromises in the criminal legislation is connected with creation of a number of conditions for release from criminal responsibility of the persons who committed crimes (Article 23 criminal code of Kazakhstan Innocent infliction of harm; Article 26 criminal code of Kazakhstan Voluntary refusal of a criminal offense; Article 30 criminal code of Kazakhstan Excess of the accomplice of a criminal offence; Article 32 criminal code of Kazakhstan Justifiable defense; the Article 33UK RK-Infliction of harm during detention of the person who made encroachment; Article 34 criminal code of Kazakhstan Emergency; Article 35 criminal code of Kazakhstan Implementation of operational search actions or secret investigative actions; Article 36 criminal code of Kazakhstan Reasonable-Risk; Article 38 criminal code of Kazakhstan-Performance of the order or order).

The second group of compromises provides a number of eases at purpose of punishment in the criminal legislation (Article 52 of Circumstance, the commuting criminal responsibility and a penalty; the Article 55 Criminal code of Kazakhstan Prescription of commute, than it is provided for this criminal offense; Article 63 criminal code of Kazakhstan Suspended sentence).

The third group of compromises in the criminal legislation is connected with questions of release from criminal responsibility and punishment (Article 65 criminal code of Kazakhstan release from criminal responsibility in connection with active repentance; Article 66 criminal code of Kazakhstan release from criminal responsibility at excess of limits of justifiable defense; Article 67 criminal code of Kazakhstan release from criminal responsibility when performing conditions of the procedural agreement; Article 68 criminal code of Kazakhstan release from criminal responsibility in connection with reconciliation; Article 69 criminal code of Kazakhstan release from criminal responsibility with establishment of the guarantee; Article 70 criminal code of Kazakhstan release from criminal responsibility in connection with change of a situation; Article 71 criminal code of Kazakhstan release from criminal responsibility in connection with lapse of time; the Article 72 conditional early release from punishment serving; the Article 73 replacement of unexpired part of punishment commute type or reduction of term of the imposed sentence; the Article 74 criminal code of Kazakhstan delay of serving of punishment to expectant mothers and women having juvenile children, to the men alone raising juvenile children; Article 75 criminal code of Kazakhstan release from punishment in connection with an illness; Article 76 release from punishment and a delay of serving of punishment owing to confluence of difficult circumstances; Article 77

criminal code of Kazakhstan release from serving of punishment in connection with lapse of time of a conviction judgment; Article 78 release from criminal responsibility and punishment on the basis of the act of amnesty or mercy).

The fourth group of compromises in the criminal legislation is connected with criminal responsibility of minors (Article 83 criminal code of Kazakhstan release of minors from criminal responsibility and punishment; Article 84 criminal code of Kazakhstan enforcement powers of educational character; the Article 86 criminal code of Kazakhstan conditional early release of minors from punishment serving; Article 87 criminal code of Kazakhstan replacement of unexpired part of punishment to minors; Article 88 criminal code of Kazakhstan limitation periods; the Article 90 application of provisions of the present section to persons aged from 18 till 21 years) (LAWYER, 2014a).

RESULTS AND DISCUSSION

That is the legislator allows certain concessions at appointment and release from punishments applying as we noted above compromises.

However, if to compare contents of the new criminal code of Kazakhstan to the Criminal code of the Republic of Kazakhstan of 1997 which is the document of a transition period and successfully executed the mission, the uneven ratio of types of punishments in favor of imprisonment (744) is observed, further there is a penalty (471), then corrective labors (468), restriction on service (342), confiscation of property (264), attraction to public works (152), arrest (150), capital punishment (12).

From our point of view by developers of the new criminal code of Kazakhstan of purposes of the head of our state in respect of a humanization of the current legislation, sounded in the message to the people of Kazakhstan on January 29, 2010 by the President of the Republic of Kazakhstan Nazarbayev are realized not in full.

So, the President was specified that at us in system of punishment penalties make <5%, corrective labors-0.4%, public works 0%. The main type of punishment is imprisonment. Nobody is engaged in rehabilitation released from detention centers. As a result they fill up number of criminals.

Therefore, the new criminal legislation has to be rigid, even cruel concerning the ardent criminals who are repeatedly judged, committing crimes deliberately and their stay in society represents the increased danger to people around. They should be isolated from society, certainly.

At the same time, the criminal legislation has to show humanity concerning persons for the first time committed

crimes, especially if it is about the crimes committed on imprudence. That is presence of compromises must be here.

For what compromises are necessary. It is known that legal regulation in the sphere of law-enforcement activity has also social consequences.

First, there is a continuous process of intensive increase in number of the "prison" population.

So, for years of sovereign development of our country through system of correctional facilities there were passed over one and a half million people.

Secondly, the placement to correctional facility first of all means physical isolation condemned and has the increased repressiveness as it is interfaced to assignment on condemned certain and enough serious right restrictions: free movement, possibility of a choice of a type of work, operating time and rest, communication with relatives and relatives, etc.

Thirdly, condemnation of the person to imprisonment is the tragedy not only for the most condemned (isolation from society, loss of communications with friends, fellow workers and even with relatives) but also for his close relatives, friends (a negative assessment from neighbors, colleagues of the spouse, schoolmates of children and many other things).

Especially if it is about the high-ranking official the former prime minister, the minister, the deputy of a minister or Akim of area. Such examples in Kazakhstan, unfortunately, became not a rarity.

Fourthly, custodial sanction in itself generates the certain negative consequences which are often poorly depending on law enforcement agencies therefore there is a serious deformation of the identity of the condemned. Fifthly, stay of persons in correctional facilities promotes criminalization of society. Sixthly, execution of punishments is action, very expensive for the state.

So, in 2014 the confinement of one condemned in a year costs 613 thousand tenges to the state and all penal system of 47.5 billion tenges, it is without the expenses demanded on the confinement of former condemned which quantity fluctuates annually from 10-20 thousand people.

Therefore, it is necessary to continue work on search of new compromises in the criminal legislation of the Republic of Kazakhstan to which it is possible to carry the following.

The first, it is necessary to reconsider an order of a conditional early release of the condemned. So, instead of established in the Article 72 criminal code of Kazakhstan Conditional early release from punishment serving (LAWYER, 2014b) obligatory terms of serving of punishment, having replaced them with others: for crimes of small weight till 1 year, average weight till 2 years, heavy till 3 years, especially heavy till 4 years.

It will give the chance to stimulate condemned to correction and it is essential to reduce the number of the prison population and at the same time to increase the responsibility of staff of correctional facilities and also considerably to reduce cost intensity of the applied type of punishment.

The second, it is necessary to continue work on reduction of application of such type of punishment as imprisonment. To use this type of punishment only in exceptional cases.

The third, considering the international experience of law enforcement it is necessary to reconsider the maximum terms of imprisonment. As the analysis is shown, the maximum term of imprisonment in France makes 30 years, Great Britain 25 in Japan, Singapore, China 20, South Korea 25 in Germany 15 years, the system of "summation" of punishments is used in the USA as a result final punishment to the condemned can be estimated centuries.

In Kazakhstan the maximum term of imprisonment makes 25 and on cumulative sentences of 30 years. It would be expedient to be guided for 10 and 15 years respectively.

The fourth, it is necessary to intensify application of Article 63 conditional condemnation of the Criminal code of the Republic of Kazakhstan.

The fifth, it is necessary to strengthen preventive functions of civil society. For activation of the criminal legislation of the Republic of Kazakhstan there would be expedient to use possibilities of the Law RK "About prevention of offences" (LAWYER, 2012) for association of efforts of all bodies and the public on formation of new ideology in society in the sphere of counteraction of crime. It is necessary to attract all bodies and public organizations, citizens for implementation of the Message of President of the Republic of Kazakhstan the Leader Nation Nazarbayev to the people of Kazakhstan "Kazakhstan-2050": A new political course of the established state" about following of the state to the principle of zero tolerance to a disorder.

CONCLUSION

At the organization of counteraction of crime it is necessary to take into account an opinion of the famous scientific criminologist Avanesov (2010) that the crime is generated by conditions of public life but it is a part of these conditions.

It will be correct to consider process of crime control not only as impact on crime as negative compound societies but also on society which generates this crime. Our law-enforcement system concentrated the attention only on that part of the population which commits crimes

that is potential offenders and criminals. And the main part of representatives of society, law-abiding citizens, remains out of sight. Though, the special border dividing the law-abiding population and persons of crimes, made or inclined to commission in the nature does not exist. Any law-abiding citizen can appear on a dock. And each person serving sentence in correctional facility can return to normal life.

This process has to assume broader and large-scale actions which realization would promote not only liquidation of the concrete reasons and conditions of crime but also would include impact and on healthy, law-abiding part of society.

It will allow increasing to expand use of compromises in the criminal legislation to reduce application of the criminal legislation and it is necessary to minimize process of involvement of citizens to the sphere of criminal legal relations.

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