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## **Modern tendencies of the Kazakhstan criminal policy of law in regulation of the relations on release from a criminal responsibility**

In the article the basic directions of improvement of the institute of exemption from criminal responsibility in national legislation of the Republic of Kazakhstan. The authors note that the rules for exemption from criminal liability were highlighted in an independent institution with the entry into force of the Fundamentals of Criminal Legislation of the USSR and the Union Republics of 1958 and the Criminal Code of the Kazakh SSR, 1959. The comparative characteristic of the types of exemption from criminal responsibility, enshrined in the Criminal Code of the Kazakh SSR 1959, the Criminal Code of the Republic of Kazakhstan in 1997 and 2014. Analyzes new types of exemption from criminal liability: if the conditions and procedural arrangements with the establishment of the guarantee. Modern trends in Kazakhstan's criminal policy is to preserve the common types of exemption from criminal responsibility of the Soviet period and the constant increase in the number of types of release, according to the appreciation of the institution by the legislator as an effective legal instrument for crime prevention.

*Keywords:* criminal policy, types of exemption from criminal liability, Criminal Code of KazSSR of 1959, Criminal codes of the Republic of Kazakhstan in 1997 and 2014.

From history of the right it is known that everywhere and always punishment of the guilty person was the main means of crime control.

The Criminal Code of Kazakhstan defines punishment as the measure of the state coercion appointed according to the court verdict, consisting in the deprivations or restrictions of the rights and freedoms of the perpetrator provided by the criminal law. Punishment is applied for restoration of social justice, and also correction of the convict and the prevention of commission of new criminal offenses both the convict, and other persons (art. 39 of the Criminal Code of Kazakhstan).

The outstanding lawyer, V. N. Kudryavtsev, in one of the latest works of «The strategy of crime control», considering problems of fight against this phenomenon, wrote: Whether it is impossible to reduce all strategy of crime control to one, namely – to punishment of the criminal?», whether this measure of the state coercion «is the only means of real counteraction of crime and to criminals?» [1; 41].

In most cases the Kazakhstan society, the state, citizens do not doubt that only the realized criminal responsibility is exclusively effective instrument of criminal policy of law. However, it is not always so. For example, criminal prosecution and application of punishment are unfair, does not answer the purpose defined in the law when the person, though made a criminal offense, but does not need in general compulsory correction by means of criminal and legal means. In these cases practical realization of a criminal responsibility becomes inexpedient, inappropriate and unjustified. The institute of release from a criminal responsibility and punishment is urged to promote a fair solution of such situations. Therefore repressive approach to impact on the criminal demands essential addition with active application of incentive methods of regulation of a criminal responsibility [2; 178].

In practice release from a criminal responsibility on these or those bases (for example, pardon, release in connection with active repentance, etc.) was applied long ago, and it is possible to claim safely that it originates from sources of origin of the most criminal responsibility. The separate norms providing a possibility of release from a criminal responsibility of the persons who committed a crime were issued in independent institute of penal law only in the middle of last century.

Before acceptance by the republics which are a part of the USSR, in 1959-1960 criminal codes, norms which are considered as types of release from a criminal responsibility now were known to the Soviet legislation. So, such types as the expiration of limitation period, release from a criminal responsibility of minors and the briber were provided in CC RSFSR of 1922. CC RSFSR of 1926 in addition to them fixed such types as change of the criminal law or a socio-political situation and release under amnesty. However until the end of the 50th years of the last century all these norms were considered by both the legislator, and scientists as types of release from punishment, but not from a criminal responsibility.

Therefore in criminal and legal science it is considered to be that the independent institute of release from a criminal responsibility appeared with entry into force of Bases of the criminal legislation of USSR and federal republics of 1958 and CC KazSSR of 1959. Then also theoretical development of this institute began. E. V. Boldyrev, G. B. Vittenberg, G. A. Krieger, G. M. Minkovsky, A. P. Chugayev were the original Soviet authors who published works on this subject. Later there were publications of I.M. Galperin, N. F. Kuznetsova, S. G. Kelina, H. D. Alikperov, S. I. Zeldov, G. D. Korobkov, E. Tenchov et al.

Separate aspects of institute of release from a criminal responsibility are considered in works of the following domestic authors: G.M. Rysmagambetova, O.A. Wozniak, A.M. Kasenova, E.B. Ablayeva, A.K. Akhmetova.

CC KazSSR of 1959 provided such types of release from a criminal responsibility as: a) release owing to falling away of public danger of the act and the person who made it; b) release owing to the expiration of limitation periods of criminal prosecution; c) release with case referral in friendly court; d) release with transfer on bails; e) release with administrative prosecution; e) release in connection with voluntary assistance in investigation of a crime (it was included in CC KazSSR in 1995).

As we see, the legislator was guided by the widespread ideas of replacement of punishment with measures of educational character, involvement of the public to crime control in the second half of the 50th years and even transfers of the public of this function as parts of implementation of the theory about «dying off of the state». The question of dying off of the state was a component of the Marxist-Leninist doctrine about the state. The term «dying off of the state» was used by Marxists for justification of the thesis that in communistic society on condition of a victory and consolidation of socialism on the international scene need for the state and the right will disappear. They will die off and will give way according to the organization of communistic self-government and norms of communistic society [3; 333]. On a wave of these ideas in CC KazSSR of 1959 there were norms on release from a criminal responsibility with case referral in friendly court on minor offenses, about release from a criminal responsibility with transfer on bails of the public, and minor persons – in the commission on affairs of minors.

According to S. G. Kelina, there are «bases to believe that at the time of creation of these precepts of law their authors not really thought of the legal nature of the new legislation» [4; 436] as already then there were disagreements on the main question - to what acts (crimes or offenses) to apply the specified measures.

In the early nineties the last century, in anticipation of radical reforming of the criminal legislation, in the Soviet legal literature the question of the future of institute of release from a criminal responsibility was discussed. Scientists gave convincing arguments, both in favor of preservation of this institute, and against it.

In favor of preservation of institute of release from a criminal responsibility the following arguments expressed: 1) existence of this institute promotes realization of the principle of humanity fully; 2) application of this institute corresponds to a tendency of gradual narrowing of a circle of the acts punishable in a criminal legal order; 3) norms of this institute are applied when yet conditions for decriminalization of these or those acts did not ripen, but there are already bases not to apply criminal liability for such acts in concrete cases.

Opponents of preservation of institute of release from a criminal responsibility gave the following arguments:

1) norms on release from a criminal responsibility contradict the constitutional principle of a presumption of innocence. The constitutional court of the USSR even took out the conclusion about illegality of release from a criminal responsibility with case referral in friendly court and releases from a criminal responsibility with administrative prosecution as in these cases bodies of preliminary investigation actually determine a question of guilt of the persons who made the acts containing essential elements of offense whereas the solution of a question of guilt is within the exclusive competence of court;

2) the institute of release from a criminal responsibility presents too plenary powers to law enforcement officers that considerably increases probability of official abuses. They are actually granted the right to decriminalize the act recognized as a crime under the law. Business here not only that these cases were not release from a criminal responsibility in pure form (rather at a pre-judicial stage criminal sanction was replaced with other measures), but also that the center of gravity was transferred to unreasonable expansion of intervention of the public in criminal trial to the detriment of requirements of legality.

In general, the Soviet period of development of our state was characterized by domination of the retaliatory criminal policy meaning intensive application to the persons who committed a crime, very drastic measures of criminal sanction. In the conditions of domination of a command management system at impossibility of the solution of the specific problems demanding radical economic and organizational

restructurings quite often resorted to means of criminal repression [5; 44]. Low efficiency of such policy producing crime and deforming public consciousness demanded qualitatively new, nonconventional approaches to a problem of counteraction of crime and neutralization of its consequences. As a result, in science and in positive penal law there were new ideas and approaches connected with reaction of society and state to crimes [6; 55].

First, this emergence in world practice of the concept of recovery justice (restorative justice) which essence comes down to involvement in the solution of consequences of a crime of conflicting parties and the public that promotes social reintegration of the criminal and reduction of volume of repressions. Secondly, objective assessment of a role and opportunities of the state and its institutes in crime control, and also studying of potential of civil society in counteraction of crime in the conditions of the present [7; 78].

Therefore not casually when developing the Criminal code of 1997 the legislator refused the become obsolete types of release of a criminal responsibility and entered the new types answering to «spirit» of time. Criminal and legal short stories showed commitment of the legislator to the principles of humanity and the positive relation to institute of release from a criminal responsibility.

The adopted law allocated the general and special views of release from a criminal responsibility. The following general views of release from a criminal responsibility were fixed in the general part of the Criminal Code of Kazakhstan: in connection with active repentance (Art. 65 of the Criminal Code of Kazakhstan); in connection with excess of limits of justifiable defense (Art. 66 of the Criminal Code of Kazakhstan); in connection with reconciliation with the victim (Art. 67 of the Criminal Code of Kazakhstan); in connection with change of a situation (Art. 68 of the Criminal Code of Kazakhstan); in connection with the expiration of limitation periods (Art. 69 of the Criminal Code of Kazakhstan), in connection with the act of amnesty (Art. 76 of the Criminal Code of Kazakhstan).

Special types of release from a criminal responsibility were established by norms of the Special part of UK (for example, notes to st.st.125, 165, 231 Criminal Codes of Kazakhstan, etc.). Also Criminal code provided types of release from punishment: parole from serving sentence (Art. 70 of the Criminal Code of Kazakhstan); replacement of an unexpired part of punishment with softer type of punishment (Art. 71 of the Criminal Code of Kazakhstan); a serving sentence delay to the expectant mothers and women having juvenile children (Art. 72 of the Criminal Code of Kazakhstan); release from punishment in connection with a disease (Art. 73 of the Criminal Code of Kazakhstan); release from punishment and a serving sentence delay owing to force majeure (Art. 74 of the Criminal Code of Kazakhstan); release from serving sentence in connection with lapse of time of a conviction judgment (Art. 70 of the Criminal Code of Kazakhstan); release from punishment on the basis of the act of amnesty (Art. 76 of the Criminal Code of Kazakhstan); release from punishment on the basis of the act of pardon (Art. 76 of the Criminal Code of Kazakhstan).

The legislator for the first time united norms on release from a criminal responsibility and punishment in the independent section. However, the system of these norms had no accurate criteria of construction and the developed theoretical justification.

The new stage in development of the national right is connected with the Concept of policy of law of the Republic of Kazakhstan of September 20, 2002 and the Concept of policy of law of the Republic of Kazakhstan for the period from 2010 to 2020 of August 21, 2009. Both Concepts determined by the priority directions of criminal policy of RK: improvement of institutes of release from a criminal responsibility, serving sentence, parole from serving sentence, minimization of involvement of citizens to the sphere of punitive justice, economy of measures of criminal repression. At the same time improvement of criminal policy was carried out by the interconnected correction of the penal, criminal procedure and criminal and executive law, and also law-enforcement practice.

To numerous changes norms on release from a criminal responsibility in connection with reconciliation, in connection with lapse of time, parole from serving sentence were exposed, to a serving sentence delay. For example, the possibility of release from a criminal responsibility in connection with reconciliation as mediation was brought in the Criminal Code of Kazakhstan of 1997.

Adoption of the Criminal Code of Kazakhstan which is put into operation since January 1, 2015 became on July 3, 2014 a result of improvement of criminal policy. The new criminal law, in general, having kept provisions of the Criminal Code of Kazakhstan of 1997, expanded a coverage of institute of reconciliation for social and vulnerable segments of the population. According to provisions of the p. 2 of Art. 68 of the Criminal Code of Kazakhstan on for the first time to the committed serious crimes not connected with causing death or heavy harm to health, release in connection with reconciliation can be applied to minors (the p. 3 of Art. 83 of the Criminal Code of Kazakhstan), to other perpetrators relating to social and vulnerable seg-

ments of the population: to the pregnant women, mothers having dependent on juvenile children, to the men raising alone juvenile children, to women at the age of fifty eight and over years, to men at the age of sixty three and over years. In, the first stage, it is connected with the fact that the reformed criminal legislation moved apart scope of a criminal responsibility, having established it for commission of criminal offense. Along with a crime criminal offense makes a concept of a criminal offense. Criminal offenses as it is specified in p.1 Art. 10 of the Criminal Code of Kazakhstan, depending on degree of public danger and punishability are subdivided into crimes and criminal offenses. Thus, in penal law of the Republic of Kazakhstan (Art. 4 of the Criminal Code of Kazakhstan), there were bases of a criminal responsibility, both for the committed crime, and for perfect criminal offense. In compliance with these changes the legislator differentiated types of release from a criminal responsibility which differ from each other in application conditions.

Emergence and further development of norm on release from a criminal responsibility in connection with reconciliation in the legislation of the Republic of Kazakhstan demonstrates realization in criminal policy of strategy of «recovery justice». The article 68 Criminal Code of Kazakhstan (Art. 67 of the Criminal Code of Kazakhstan of 1997) and the Standard Resolution of the Supreme Court of the Republic of Kazakhstan No. 4 of June 21, 2001 «About court practice on application of article 67 (in the existing Criminal code of RK – article 68) the Criminal Code of Kazakhstan» in details regulate release from a criminal responsibility in connection with reconciliation.

Application of release from a criminal responsibility in connection with reconciliation is inadmissible to the persons who committed crimes on the imprudence, acts which entailed the death of the person or the death of two and more persons, to corruption, terrorist, extremist crimes, crimes committed as a part of criminal group, to crimes against sexual integrity of juveniles (the p. 4 of Art. 68 of the Criminal Code of Kazakhstan). Besides, two new types of release from a criminal responsibility earlier unknown to the criminal legislation are provided in the Criminal code: release from a criminal responsibility when performing conditions of the procedural agreement (Art. 67 of the Criminal Code of Kazakhstan) and with establishment of the guarantee (Art. 69 of the Criminal Code of Kazakhstan).

The defining moment, according to protsessualist, for emergence in the Criminal code of the article 67 Criminal Code of Kazakhstan, public interest of criminal prosecution authorities began «to solve the problems facing them - to solve the crimes having high degree of public danger, to expose and bring to trial the persons who made them» [8; 343].

According to official statistics in 2015 in the Republic of Kazakhstan between prosecutors and suspected (defendants) 4104 procedural agreements in the form of the transaction on recognition of fault, from them 4039 – are concluded on crimes, including on crimes of small weight – 615, average weight – 1857, heavy – 1567.

Article 7 Code of Criminal Procedure RK defines the procedural agreement as the agreement concluded between the prosecutor and the suspect, the defendant or the defendant at any stage of criminal procedure or the convict.

The definition of the term «transaction» as A. N. Akhpanov, V. A. Azarov, A. O. Balgyntayev specify, emphasizes the contractual nature of criminal procedure legal relationship between the parties of charge and protection when will of the prosecutor, victim and suspect (the defendant, the defendant) both on its conclusion, and on refusal of already concluded bargain is taken into account [8, 344]. According to Art. 612 of the Code of Criminal Procedure RK investigation of criminal cases within the concluded procedural agreement is made: in the form of the transaction about recognition of fault – on crimes of small, average weight or serious crimes – in case of a consent of the suspect accused with suspicion, charge; in the form of the cooperation agreement – on all categories of crimes at contribution to disclosure and investigation of the crimes committed by criminal group, especially serious crimes committed by other persons and also extremist and terrorist crimes.

The procedural agreement in the form of the transaction on recognition of fault can be concluded in the presence of the following conditions:

- 1) voluntary expression by the suspect accused desires on the conclusion of the procedural agreement;
- 2) the suspect, the defendant do not challenge suspicion, charge and available in the matter of the proof in crime execution, character and the extent of the harm done by them;
- 3) a consent of the procedural agreement which was injured on the conclusion.

The procedural cooperation agreement is concluded between the prosecutor and the suspect, the defendant, to the defendant condemned with participation of their defenders and is approved as the prosecutor of the region or the prosecutor equated to it, their deputies, and with the convict – the Attorney-General of the Republic of Kazakhstan or his deputy.

According to p.1 Art. 69 of the Criminal Code of Kazakhstan, the basis of release from a criminal responsibility with establishment of the guarantee is commission by the person for the first time of the criminal offense or a crime of small or average weight which is not connected with causing death or heavy harm to health of the person for which commission the penalty among other types of the main punishments is provided.

The court has the right to decide a conviction judgment with release of the person from a criminal responsibility with establishment of the guarantee if bail is posted on the deposit of court before removal of court to the consultative room.

The term of the guarantee is established for a certain period:

- 1) at commission of criminal offense – from six months to one year;
- 2) at crime execution of small weight – from one to two years;
- 3) at crime execution of average weight – from two to five years.

Release from a criminal responsibility with establishment of the guarantee belongs to conditional types of release. If in the period of the guarantee the person makes a new criminal offense, the court cancels the decision on release from a criminal responsibility and imposes it sentence by rules of assignment of punishment on cumulative sentences. At the same time pledge addresses in the income of the state. If the person exempted from a criminal responsibility did not make in the period of the guarantee of a new criminal offense, after guarantee term pledge comes back to the guarantor.

Release of the person from a criminal responsibility with establishment of the guarantee is not allowed if the defendant or the victim objects to it.

Provisions of Art. 69 of the Criminal Code of Kazakhstan do not extend to the persons who committed corruption crimes, terrorist crimes, extremist crimes, crimes committed as a part of criminal group, a crime against sexual integrity of minors.

Thus, improvement of institute of release from a criminal responsibility and a tendency of continuous increase in quantity of types of release testify to an appreciation the legislator of the considered institute as the effective legal instrument of crime prevention.

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### **Қылмыстық жауаптылықтан босату бойынша қатынастарды реттейтін қазақстандық қылмыстық-құқықтық саясаттың заманауи үрдістері**

Мақалада Қазақстан Республикасының ұлттық заңнамасындағы қылмыстық жауаптылықтан босату институтын жетілдіру бойынша негізгі бағыттар қарастырылған. Авторлардың атауы бойынша, қылмыстық жауаптылықтан босату нормалары КСРО қылмыстық заңнама негізі және одақтас республикалардың 1958 және 1959 жылғы ҚазКСР ҚК күшіне енгеннен бастап жеке-дара институт ретінде бөлінді. 1959 жылғы ҚазКСР Қылмыстық кодесінде, 1997 және

2014 жылғы Қазақстан Республикасының Қылмыстық кодекстерінде бекітілген қылмыстық жауаптылықтан босату түрлеріне салыстырмалы сипаттама берілген. Қылмыстық жауаптылықтан босатудың жаңа түрлері талданған: процестік келісімнің талаптары орындалған кезде және кепілгерлік белгіленуіне байланысты қылмыстық жауаптылықтан босату. Кеңестік дәуірдегі қылмыстық жауаптылықтан босатудың жалпы түрлерін сақтау мен босатудың түрлерінің санын тұрақты арттыруға негізделген қазақстандық қылмыстық саясаттың қазіргі таңдағы үрдістері қарастырылып отырған институтты қылмыстың алдын алудың тиімді құқықтық құралы ретінде заң шығарушының берген жоғарғы бағасын дәлелдейді.

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Л.И. Четрикова, А.М. Калгужинова

## Современные тенденции казахстанской уголовно-правовой политики в регулировании отношений по освобождению от уголовной ответственности

В статье рассмотрены основные направления совершенствования института освобождения от уголовной ответственности в национальном законодательстве Республики Казахстан. Авторы отмечают, что нормы об освобождении от уголовной ответственности были выделены в самостоятельный институт с вступлением в силу Основ уголовного законодательства Союза ССР и союзных республик 1958 г. и УК КазССР 1959 г. Дана сравнительная характеристика видов освобождения от уголовной ответственности, закрепленных в Уголовном кодексе КазССР 1959 г., Уголовных кодексах Республики Казахстан 1997 г. и 2014 г. Проанализированы новые виды освобождения от уголовной ответственности: при выполнении условий процессуального соглашения и с установлением поручительства. Отмечено, что современные тенденции казахстанской уголовной политики, заключающиеся в сохранении общих видов освобождения от уголовной ответственности советского периода и постоянном увеличении количества видов освобождения, свидетельствуют о высокой оценке законодателем рассматриваемого института как эффективного правового инструмента предупреждения преступности.

*Ключевые слова:* уголовная политика, виды освобождения от уголовной ответственности, УК КазССР 1959 г., УК РК 1997 г. и 2014 г.

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