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Legal technique of the new Criminal Code Republik of Kazakhstan

This article is dedicated to analysis of the methods of legal technique used in the Criminal Code of 2014 of the Republic of Kazakhstan. The legislative definition of legal technique of legal acts, conditioned by the dynamic trends of improvement of legislation, which requires to minimize the spontaneity of legislative work, improve coherence level, consistency of existing legislation. An analysis of the historical development of legislative techniques showed that there is succession in the forms of law, in the ways and means of legal expression in the systematics of right, the external design of the normative act. Rules that are reviewed by authors, related to the content and form of criminal laws (mixed formal-evaluatory techniques, differentiation of general and specific parts of the Code, the establishment of classifications of criminal acts within specific parts of the Criminal Code, the methods of reception, ratification and referencing in accordance with international standards). Among the features of the legislation following expressions are marked: change of numeration points; the highlighting of the self-sufficient a separate structural and compositional elements, that contain the interpretation of certain terms (Article 3 of the Criminal Code); change of the number and nature of the notes to the articles of the Criminal Code.

Keywords: Criminal Code of the Republic of Kazakhstan in 1997, the Criminal Code of the Republic of Kazakhstan in 2014, legal technique, legislative technique, an explanation of the concepts contained in the Criminal Code, note to the article of the Special part Criminal Code.

In modern penal law of the Republic of Kazakhstan the increasing value is given to questions of the legislative techniques. Program documents of the country among the priority direction specify improvement of quality of laws. The concept of policy of law of the Republic of Kazakhstan for the period from 2010 to 2020 fixes that «... the law limiting constitutional rights and freedoms has to conform to requirements of legal accuracy and predictability of consequences, that is its norms have to be formulated with sufficient degree of clearness, and are based on the clear criteria allowing to distinguish with all definiteness lawful behavior from illegal excepting a possibility of any interpretation of provisions of the law».

The next stage of reforming of the domestic criminal legislation (acceptance on July 3, 2014 and enforcement since January 1, 2015 of the new Criminal Code of the country) staticizes need of knowledge of methodology, the theory and practice of use of tools of creation of the criminal law providing process of the lawmaking which is harmoniously combining properties of social conditionality, scientific validity and its practical importance.

The considerable work directed to clarification of a concept of the legal techniques was done by the Soviet scientists - theorists of the right (S.S. Alekseev, D.A. Kerimov, A.F. Shebanov, A.S. Pigolkin et al.).

The legal equipment is understood as set of certain techniques, rules, methods, the ways applied when developing contents and structure of legal acts [1; 273]. The legal equipment includes rules of preparation, registration, the publication and systematization of regulations, terminology, legal designs, language and style of legal acts. In general, rules of the legal equipment belong to all types of legal acts, i.e. to normative legal acts, acts of interpretation of the right (interpretative) and to acts of use of the right.

Modern scholars legal technique as a specific socio-legal phenomenon is analyzed from the viewpoint of different creative approaches. Some see it as a legal phenomenon formal social control, the system has certain properties and structures that occur in all areas of law. In this regard, the legal machinery in the system of law is defined as a complex multi-structured, multi-functional, comprehensive legal phenomenon by which the theory and practice of reaching the goal of a legal regulation.

Other scientists believe that when considering the legal phenomenon of legal technique should take into account the specifics of the legal-technical methods used in certain areas of law (eg civil, criminal, procedural, environmental and others.), Because they are inherent unequal attributes describing the object, subject and method of the relevant sectoral regulations.

To date, the legal machinery is part of the theory of law, but has a practical orientation. Many of the problems related to the theoretical scientific analysis of this legal phenomenon, there are still little studied. In turn, the features mentioned above can not proceed from certain methodological assumptions, no developed theory of law and set forth in the laws of the essential provisions of the law machinery.

Modern Russian writers, in particular, of T.V. Kashanina, the main criterion of classification of types of the legal techniques call stages (stages) of legal regulation - law-making, action of the right, realization is right (and respectively rightstating, right realizable and interpretative legal techniques). At the same time the author notes that cases when the specified main stages of legal regulation «acquire» auxiliary or additional stages take place. Therefore, it is possible to allocate «... six types of the legal techniques: law-making technique; technology of publication of regulations; technology of systematization of regulations; interpretative technique; right realizable technique; law-enforcement technique» [2].

As well as in a number of many countries («The reference book on the rule-making technique» of Germany, «The principles of the legislative technique» of Poland, «Legislative conventions of the uniform right of Canada»), requirements of the legal technique are fixed in the Republic of Kazakhstan standardly, their use is obligatory. The public relations connected with order of development, representation, discussion, acceptance, registration, enforcement, change, addition, termination, suspension of action and publication of legal acts are regulated by the law of the Republic of Kazakhstan of April 6, 2016 «About legal acts». Before its acceptance the law of the Republic of Kazakhstan «About regulations» of March 24, 1998 was applied. Let's notice that among the State Parties of the CIS it was accepted only in Kazakhstan and solved many problems connected with orderliness of all system of the normative legal acts existing in the country, providing higher requirements to their contents and a form, improvements of their scientific validity and increase in efficiency.

For the first time the legal equipment received standard fixing in article 1 of the law «About Regulations» (in edition of April 1, 2011): the legal technique - set of ways, requirements and rules of execution of regulations. The legislative definition of the legal technology of legal acts presented in the current law also reflects the characteristics of this concept considered above.

Need of creation and use of the complete concept of the legal technique was caused by the tendencies of dynamic improvement of the legislation demanding to minimize spontaneity of legislative work, to increase the level of coherence, systemacity of the current legislation.

Apparently, the legal technique is brought to the conceptual level of judgment; it found a strong methodological basis and rose in one row with essential research problems of theoretical jurisprudence [3].

The legal equipment covers questions of creation of acts (a preamble, sections, heads, articles), definition of terms, use of formulations (clearness, unambiguity, literacy, etc.). But the legal technique is not only methods of preparation of legal acts (logical, grammatical, structural, etc.). It also assessment of the act from a position of expression of the social order, lack of gaps, inadmissibility of internal and external contradictions, existence of compromises, etc. The legal technique has important substantial value, it is essential influencing quality of laws, and, finally, efficiency of legal regulation.

For this reason the greatest attention of scientists was traditionally drawn by the legislative technique which is quite often identified with the legal technique [4, 5; 5]. Scientific interest and a wide readiness of legislative technique are explained by importance of normative legal acts for the mechanism of legal regulation.

We are solidary with the scientists believing that functional purpose of the legislative technique - creation of the law corresponding to contents of the rule of law brought to life by a legal situation and demanding legislative fixing. It finds the expression in total receptions and means by means of which there is an application of knowledge, experience, skills in the course of activities for creation of the law. Respectively, the legislative technique can be defined as the set of certain means, receptions, the rules used in legislative activity for the purpose of quality ensuring its results [6; 132] caused by regularities of development of legal system.

The analysis of a historical way of development of the legislative technique allows to note that all changes in contents and structure of the criminal legislation had accumulative character which usefulness is fully shown during the periods of large legal reforms. Process of formation of the right went not only from the real relations to a formulation of norms, but also from the doctrine to practice.

Continuity in the field of a right form, in ways and means of legal expression is observed in systematization of the right, in external design of the statutory act, that is in means of legislative display of reality by means of the legal equipment.

Having all properties of the written document and legal act, the criminal law represents difficult education. The organic unity of its contents and a form finds expression in structure, internal «device» of standard material and in language. The norms and institutes which are contained in the law have a certain structure and are constructed of language, verbal material.

At all dependence of a form on contents, it has a certain independence and is even capable to make active impact on contents. The form of the criminal law can promote achievement of the main objective facing it - protection of the public relations from criminal encroachments, and can complicate its achievement.

Earlier existing Criminal Code of Kazakhstan of 1997 as corresponding to socio-political and economic realities and processes of the sovereign state, was recognized as rather effective instrument of crime control and criminal legal protection of the rights and freedoms of the person, interests of the state and society. The guarding mission of penal law, importance of regulation of interests and severity of influence caused specifics of lawmaking and the ways providing it. At the same time comparative studying of texts of criminal laws of 1997 and 2014 allowed to reveal some features of expression of legislative will.

Criminal law is more than any other branch of law, strives to ensure maximum legal regulation requires the maximum specificity and uniqueness of the legal regulations, the recognition of non-criminal acts, not expressly provided for by the criminal law.

We consider it necessary to note that the fundamental developments in the criminal law theory devoted to legislative issues, implemented V.M. Kogan, N.D. Durmanova, J.M. Brainin, M. Gradzinskrf, M.I. Kovalev, I.A. Semenov, E.V. Ilyuk, N.B. Aliyev, K.K. Panko, V.P. Konyakhin et al.

In general, developers of the new Criminal code followed the technical rules relating as to contents, and a form. The best reception of creation of the criminal law remains the mixed formal and estimated (constructive) reception at which in the general norm the generalizing abstraction is formulated (a concept, judgment, conclusion), and in special, created by casuistic reception, features of signs of an actus reus are specified. Legislative systematization (categorization), differentiation of the General and Special parts of the code, creation of classification of criminal actions within Special parts of UK, methods of reception, ratification and sending according to the international standards belong to means of structure.

The legal design as means of the legislative equipment which main objective is the formulation of the law most leads to achievement of goals of its creation. Pursuing the aim of search of the best way of reflection it is normal of the right of difficult legal reality, the legislator by means of designs forms the typified legislative models: regulations, notes, presumptions, fictions, each of which corresponds to a peculiar kind of the public relations.

The rule of law, being contents of the law, transfers it a part of the structure owing to what structure of the criminal law of the Special part is two elemented: disposition and sanctions. The general part of UK carries out special functions in criminal and legal regulation, being one hypothesis, difficult on the structure, which found the reflection not in each article of the criminal law, and in the form of a preamble to the Special part.

In the Criminal Code of Kazakhstan of 2014 are kept traditional system of creation of the criminal law (The general and Special part), a way of communication of its components (sections, chapters, articles, parts, points, subparagraphs) [7; 129]. However, points are numbered by the Arab figures 1), 2), 3) and further; in the Criminal Code of 1997 other format of numbering - a), b), c) and was used further. The necessity of change of numbering was caused by need of reduction of ways, requirements and rules of execution of the criminal code to provisions of the Law of the Republic of Kazakhstan «About legal acts».

Among short stories of the Criminal Code of Kazakhstan of 2014 it should be noted allocation of the independent structural and composite element containing interpretation of separate terms (article 3 Criminal Code of Kazakhstan).

Offers on need of interpretation of terms for the text of the criminal law began to express in the 90th [8; 45, 9; 122, 10, 11]. However, a question of that how many terms it is necessary to explain and how, it was not resolved. Improvement of language of the criminal law by means of use of technologies of their designing, nonconventional for domestic penal law, was caused by development of the draft of the new Criminal Code.

In the theory of the right it is noted that definitions have to meet the following requirements of the legislative equipment: 1) they have to satisfy to practical requirements, to be certain and almost expedient; 2) definitions of the legislator have to have ability to cover all phenomena of a certain category, to have flexibility and tensile properties to cover again arising uniform phenomena, and again arising relations; 3) in definition the legislator has to select the main thesis, and then by means of additional signs or restrictive reservations (notes) to establish necessary modifications [6; 138].

As showed experience of application of the previous criminal laws, an ambiguity, uncertainty, a polysemy criminal right of terms brings confusion in it is judicial-investigative practice, leads to rough violations

of the principle of legality. Thus, the legal explanation of the used terms has important value in the plan of ensuring uniform application of the criminal law.

In the article 3 of CC RK the interpretation is given:

- terms, i.e. separate words or phrases having exact value (gang, the public agent);
- estimated concepts with approximate criteria of their assessment (large damage, heavy consequences);
- exhausting definitions (criminal group; corruption, terrorist, extremist crimes).

At the same time according to the Law of the Republic of Kazakhstan «About legal acts» terms in Art. 3 of the Criminal Code in Kazakh are located in alphabetical order. Terms in Russian correspond to an order of their statement in Kazakh.

Let's note also that introduction of the special article explaining the main concepts which are contained in the Code entailed change of quantity and character of notes to articles of the Special part of CC [11]. Notes as the means of the legislative equipment fixing the additional rules (information) established by the state to the general instructions governing the public relations were for the first time used in CC RSFSR of 1926. In the criminal law of the Republic of Kazakhstan of 1997 there were notes to chapters and articles of the Special part of CC. At the same time several options of classification of notes were allocated. On action volume all notes fixed in CC were divided into the general for all articles of a special part of CC (the note to Art. 175 of CC); extending the action only to this or that chapter (notes to st.st.288, 289 CC); tied to concrete article (notes to st.st.190, 193, 195, 209, 210, 213, 214, 221, 222, 311 CC) [7; 130].

Note also that the introduction of a special article explaining the basic concepts contained in the Code, entailed changes in the number and nature of the notes to the articles of the Special part of the Criminal Code. All available in the current Criminal Code of Kazakhstan notes extend the action only on specific standards and contain special provisions exempting a person from criminal responsibility.

The idea of compromise in combating crime, which is one of the key areas of the criminal policy of the Republic of Kazakhstan, expressed in a phased reduction of the scope of criminal repression by improving institute release from criminal liability. Comparison of the norms of the Criminal Code of the Republic of Kazakhstan of 1997 and 2014 shows the trend of constant increase in the number of both general and special types of exemption from criminal liability.

Most of the special types of exemption from criminal liability is mandatory, but there are also those for which exemption from criminal liability depends on the discretion of the court. Analysis of articles on the exemption from criminal liability in connection with active repentance, leads to the conclusion that a meaningful distinction between general and special types of exemption from criminal liability in connection with active repentance, depends on the social danger of the crime and the object of a criminal assault.

The need for this type of exemption from criminal liability due to the requirements for the prevention of socially dangerous consequences caused by a crime committed. In addition, the existence of special grounds for exemption from criminal liability in connection with active repentance encourages the perpetrators to samoizoblicheniyu, assist in the detection and investigation of crimes.

It should, however, bear in mind that criminal acts related to the category in question represent a higher degree of public danger. By virtue of this exemption from criminal responsibility for their commission is a necessary measure, which the state is to protect the public relations protected from greater harm. Among the scientists expressed the following, which are special types of exemption from criminal liability is not acts of humanity, and ways to prevent, combat and disclosure of serious crimes, not necessarily associated with active repentance. The legislator departs from the principles of the inevitability of punishment for a crime, and the equality of all before the law for the salvation of people, property, protect the higher public interest and disclosure of serious crimes.

Legislative release formulation of signs of criminal responsibility in special cases of active repentance is based on the following formula: specify the necessary action on the part of the perpetrator, which form the content of active repentance, then the legal consequences of their commission - exemption from criminal liability. Nearing completion called norm another prerequisite - an indication of the absence of the actions of the perpetrator of a crime.

By functional properties notes were classified on descriptive (notes concepts), specifying (notes exceptions) and standard (the amnestying or other notes).

All notes which are available in the existing Criminal Code of Kazakhstan extend the action only to concrete norm and contain special conditions of release of the person from a criminal responsibility.

Thus, the improvement of quality of the criminal law provided with set of the requirements making the legislative equipment as system the developed theory and practice of rules, receptions and effective remedies

in a form and the laws made according to contents is the priority direction of modern criminal policy of law of the Republic of Kazakhstan. At the same time further researches at the level of branch of the right are necessary, the technical aspect of ensuring completeness and consistency of the criminal law is subject to independent complex studying. Knowledge acquisition about legislative technology and the nature of legal receptions and means has to take the worthy place in system of science of criminal law.

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Д.О. Өзбеков, А.Т. Жұмашева

Қазақстан Республикасының жаңа Қылмыстық кодексінің заң техникасы

Мақала Қазақстан Республикасының 2014 ж. Қылмыстық кодексінде қолданылған заң техникасын тәсілдерін талдауға арналған. Құқықтық актілердің заң техникасын заң шығарушы тұрғысынан анықтау заң шығарудың динамикалық жетілдіру тенденциясымен шарттасқан, ол заң шығарушы шығармашылық жұмыстың ретсіздігін азайтуды, келісушілік деңгейін жоғарылатуды, қолданыстағы заң шығарушылықты жүйелендіруді қажет етеді. Заң техникасының тарихи даму жолын талдау көрсеткендей, онда құқық нысанасы саласында, құқық жүйесінде құқықтық көрініс тәсілдерінде және амалдарында, нормативтік нормаларды сырттай рәсімдеуде сабақтастық бақыланады. Қылмыстық-құқықтық нормалардың мазмұны мен нысанына қатысты ережелер авторлармен қарастырылған (араласқан формалды-бағалаушы тәсіл, ҚК Жалпы және Ерекше бөлімдерін шектеу, ҚК Жалпы бөлімі шарасында қылмыстық әрекеттерді саралауды құру, рецепция тәсілдері, халықаралық стандарттарға байланысты ратификациялау және сілтеу). Заң шығарушының еркін білдіру ерекшеліктерінің ішінде атап өтілгендері: бөлімшелерді белгілеуін өзгерту; жеке-дара терминдердің түсіндірмесі болатын өз бетінше құрылымдық-композициялық элементін бөліп көрсету (ҚР ҚК 3-б.); ҚК Ерекше бөлімінің баптарына ескертулердің саны мен сипаттарын өзгерту.

Кілт сөздер: 1997 ж. Қазақстан Республикасының Қылмыстық кодексі, 2014 ж. Қазақстан Республикасының Қылмыстық кодексі, заң техникасы, заң шығарушы техникасы, Қылмыстық кодексте берілген анықтамаларға түсінік беру, ҚК Ерекше бөлімнің бабына ескерту.

Д.О. Озбеков, А.Т. Жумашева

Юридическая техника нового Уголовного кодекса Республики Казахстан

Статья посвящена анализу приемов юридической техники, использованных в Уголовном кодексе Республики Казахстан 2014 г. Законодательное определение юридической техники правовых актов обусловлено тенденциями динамичного совершенствования законодательства, требующими минимизировать стихийность законотворческой работы, повысить уровень согласованности, системности действующего законодательства. Анализ исторического пути развития законодательной техники показал, что наблюдается преемственность в области формы права, в способах и средствах правового выражения в систематике права, во внешнем оформлении нормативного акта. Авторами рассмотрены правила, относящиеся к содержанию и форме уголовно-правовых норм (смешанный формально-оценочный прием, разграничение Общей и Особенной частей кодекса, создание классификации преступных деяний в пределах Особенной части УК, методы рецепции, ратификации и отсылки в соответствии с международными стандартами). В числе особенностей выражения законодательной воли отмечены: изменение нумерации пунктов; выделение самостоятельного структурно-композиционного элемента, содержащего толкование отдельных терминов (ст. 3 УК РК); изменение количества и характера примечаний к статьям Особенной части УК.

Ключевые слова: Уголовный кодекс Республики Казахстан 1997 г., Уголовный кодекс Республики Казахстан 2014 г., юридическая техника, законодательная техника, разъяснение понятий, содержащихся в Уголовном кодексе, примечание к статье Особенной части УК.

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