

## NEWS

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JEL [340.115.17](#)Z.K.Ayupova<sup>1</sup>, D.U. Kussainov<sup>2</sup><sup>1</sup>Kazakh national agrarian university, Almaty, Kazakhstan;<sup>2</sup>Kazakh national pedagogical university named after Abai, Almaty, Kazakhstan[zaure567@yandex.ru](mailto:zaure567@yandex.ru), [daur958@mail.ru](mailto:daur958@mail.ru)NOVELTIES IN PROVIDING OF LEGALITY IN THE  
LEGAL POLITICS OF THE REPUBLIC OF KAZAKHSTAN

**Abstract.** The most democratic Constitution, which provides the broadest rights and freedoms of the population, the separation of powers, the rule of law, etc., will turn into a simple Declaration, in spite of developed, comprehensive, hierarchically constructed, consistent legal system, based for its implementation. The Constitution gives a special role to the Prosecutor's Office, with the main purpose of the Supreme supervision of the legality in the territory of the state. The amendments to article 83 of the Constitution, introduced in 2017, clearly defined the functions of the Prosecutor's office. Now it exercises the Supreme supervision, represents the interests of the state in court and prosecutes on behalf of the state.

At the same time, the main mission of the Prosecutor's office remains the provision of human and citizen rights in all spheres of life, active participation in the legal reforms. The Republic of Kazakhstan is gradually implementing judicial and legal reform, in accordance with which the criminal process has changed the trend from repressive, accusatory to human rights. Since 2015, the Institute of the Investigative Judge was introduced, which strengthened the judicial control. The actions of the investigators, affect the rights and freedoms of the person, authorizes the investigating judge. Earlier it was the competency of the attorney's office. Now the exemption from liability in connection with the reconciliation became the responsibility of the criminal prosecution body.

**Keywords:** legality, legal politics, legal system, office of public prosecutor, law-enforcement activity, state guarantees, courts, mediation, novelties, human rights.

Democratic processes, taking place in the modern society, have influenced on the implementation of profound reforms in all spheres of life. They concerned the sphere of state structure and legal policy of our country. In the framework of these reforms, the new Criminal Code, the Code of Criminal Procedure and the Code of Penal Enforcement of the Republic of Kazakhstan have been adopted. In accordance with the new Criminal Code, the practice of early release has changed radically in the Republic of Kazakhstan. Now the court is obliged to release the prisoner, if he served a certain term, made amends and does not violate an order in imprisonment places. The logical continuation of the consistent policy of humanization was the adoption on December, 21, 2017, the Law "On the modernization of the procedural fundamentals of law enforcement". Its peculiarity was the increase in the adversarial nature of the parties in the criminal process, the expansion of the powers of lawyers and the reduction of the detention of suspects from 72 to 48 hours.

From that moment the procedural sanctions, including secret investigative actions, which were previously given by the Prosecutor's office, were finally transferred to the investigating judge. The authorities are obliged to notify those, who were followed and listened to about the conducted secret events. If they are unfounded, the citizen has the right to restore the freedoms and rights, and moreover to receive compensation through the court. Another novel was the electronic investigation of criminal cases. This format minimizes the falsification of evidence and various violations of the law. The investigation was completed by 2.5 thousand citizens, sent to the court 1.8 thousand cases. The courts were considered to 1.3 thousand cases.

The next step was the adoption on June 21, 2018 the Law “On humanization of Criminal and Criminal Procedure Codes of the Republic of Kazakhstan”. According to this concept, only those, who are really dangerous to the society, are subject to isolation. Others, who have committed non-violent serious crimes, are subject to penalties not related to isolation from the society. Of course, such systemic measures have significantly strengthened guarantees for the protection of human rights in the criminal proceedings. Fortunately, Kazakhstan has risen to 78-th place among more than 220 countries in the prison population Index.

Since the beginning of 2017, four types of probation have been introduced in Kazakhstan for the resocialization of convicts. Citizens in this situation, the state provides social assistance from the first days of the investigation of the crime. But if they do not draw conclusions and break the law, their punishment will be replaced by imprisonment. By the way, the Republic has earned a Fund for compensation of harm to victims. Now the state pays monetary compensation to the victims of torture. The ongoing reforms have not spared the administrative process. All administrative offences, the sanction of which provides for the restriction of constitutional rights, are transferred to the jurisdiction of the court. Previously, such cases could be considered by other state bodies. Administrative responsibility cannot be brought for violation of by-laws, which was previously possible and went against the Constitution, according to which, human rights and freedoms can be limited only by laws. A reduced procedure for bringing to justice those, who agree with the offense and plead guilty, has been introduced. It became possible to pay only half of the fine in seven days. In order to reduce corruption risks, a fixed fine has been introduced. Now it is impossible to manipulate the size of the fine in sentencing. A Unified Register of administrative proceedings has been introduced. Now administrative production is conducted in electronic format, and fines can be paid on the spot by credit card.

The system of civil proceedings is being optimized. The structure of justice has become three-level. Before that, it was a five-level. Conciliation procedures through mediation, judicial mediation, and participatory procedure were significantly expanded. In light of the ongoing reform, the lawyers by themselves produced evidence in the case. The participation of the Prosecutor in civil disputes has been drastically reduced. The Prosecutor does not participate in disputes on private matters, but only in three categories of cases: in cases, where the interests of the state, society and citizens, who cannot protect themselves, are affected. Recently, the Prosecutor’s appeal was replaced by a motion. Until the judicial act enters into the force, the Prosecutor may not request the case or suspend the execution of the decision as before. The Attorney General may bring a cassation appeal only in cases of compulsory category.

According to some scholars, this has led to a “broad” understanding of the law, which was the first serious alternative to the concept of law as a set of rules only. But this “broad” understanding of law, according to S.S. Alekseev, did not mean the distinction between law and order [1, P.300]. In his view, law is order, but not only regulation. From these positions, the criticism of the current legislation, the accusatory bias of the judicial system began to be carried out; combining in the Prosecutor’s office the functions of prosecution and control over the legality of criminal cases, limiting the activities of the bar, the lack of legislative consolidation of the presumption of innocence, etc. All this has played a significant role in the democratization of the legal system. But disputes about the normative understanding of law, the relationship of law and order, natural and positive law and many other problems, appeared at the turn of 1950-1960 years, do not stop until now.

As the Executive Director of the Public Fund “Transparency Kazakhstan” S.M. Zlotnikov emphasizes, “legitimacy should not be confused with legality”. “Legitimacy of power” is a more fundamental concept; it gives an answer to the question: is power justified from the social side and from the point of view of human rights, obligations and freedoms” [2, P.7]. This means that the public law of the state should be based on the natural law of the society; and the people, man and citizen should find the natural link of the entire legal system.

By exemption from excessive politicization and partisanship of the right of legal science, according to Professor V.N. Kudryavtsev, is the adoption of the relations to the law-abiding state, ideological principle of “socialist rule of law”. The rule of law is defined as “the strictest, direct implementation of all norms, the principles of humanistic law, first of all, the basic inalienable human rights, and, in addition, also associated with them a number of other institutions... including General democratic legal principles of private law, independent justice” [3, P.11-12].

The functioning of civil society requires the legislative regulation, which establishes rules of conduct for the subjects and the implementation of political and legal interaction of various forces. But again, in our opinion, greatly exaggerating the role of the state, the state establishes the legitimacy of individuals, political institutions and itself. Hence the idea of the rule of law, such that operates within the legal framework, i.e. limited right. In turn, civil society allows mediating the realization of freedom by political institutions, and this is obviously the key semantic advantage.

In the heat of controversy in recent years, the approval of the status of natural and private law, the priority of law over the order, in the literature of the CIS countries was underestimated the authority of the law. This, of course, was facilitated by the level of legislative activity of the parliaments of the CIS States, either urgently "baking" laws, or unreasonably delaying the adoption of urgently needed laws. But there are already voices in defense of the rule of law, even without the use of the updated term "legality".

Thus, V.V. Lazarev, S.V. Lipen, A.Kh. Saidov emphasize: "The idea of legality is an important social value" [4, P.7]. The value of legality, as we can see, is carried out by authoritative scientists, even beyond the legal sphere and is interpreted very broadly as a social value. Further, they note: "Standards (models) of legal behavior should be normatively fixed by the legal system". It is no accident that instead of the seemingly familiar concepts of "system of law" and "model of law", we are talking about the legal system, i.e. the legal family. Laws and the rule of law are considered in the broad context of all legal phenomena. At the same time, factors and results of cultural and value character are explicitly and implicitly contained in this judgments.

The same was stated by V.S. Nersesyants: "The right becomes such only having absorbed the ideas of true justice. Therefore legality is a formal principle on the Contrary, justice is a substantive principle (the principle of activity), since it determines the very content of the rule by itself" [5, P.93]. The above-mentioned issues concerning the General problem of the degree of openness and closeness of the legal system and the legal family need the special scientific research and attention of the legislator. Many of the declared scientific provisions require more specific legal content. In particular, such as the current law can so limit, bind our constitutional state, as far as its norms will not contradict the Basic Law, or they must be changed and intensively changed today, in accordance with its provisions and norms; constitutional norms - the mandatory basis of the system of current law in the Republic of Kazakhstan; the Constitution brings into unity the system of law in force in the country, and first of all, directly derived from its legislation; the legal meaning of the Constitution - constitutional legality.

Analysis of this statement suggests that the "conformity with the Constitution" refers to the systemic unity and interaction of the Constitution and constitutionalism, the Constitution and all law-making, law enforcement. It is noteworthy that earlier the word "law-making" was used instead of "law-making" often used by officials. This once again emphasizes the higher level of constitutional requirements for legislators. At the same time, traditionally using the concept of "legality and the rule of law", in a state governed by the rule of law, a more precise and unified concept of "legality" is widely used. Although the law enforcement system of the Republic is still under reform, however, the constitutional principle of the Department of inquiry and the preliminary investigation by the court and the Prosecutor's office remains unshakable and is reflected in all legal acts, regulating the activities of law enforcement agencies. We have already mentioned this above. The main content of this principle is, on the one hand, to ensure the independence and objectivity of prosecutorial supervision and judicial control over the legality of the activities of the inquiry and investigation by means of legislative regulation, and, on the other hand, to create the legal conditions for the procedural independence and objectivity of the bodies of inquiry and investigation in the implementation of the preliminary investigation.

It should be noted that, according to the criminal procedure legislation of the Republic, the Prosecutor, the investigator, the body of inquiry, the investigator are the bodies of the criminal prosecution, but the forms, methods and content of the powers exercised by them, differ significantly. In organizational terms it is, first of all, the absence in the structure of the Prosecutor's office of specially created apparatus for carrying out the functions of inquiry and investigation, in legal terms - the lack of authority to carry out this procedural activity, despite the permission of the law to produce separate prosecution bodies, strictly specified investigative and procedural actions that allow to carry out criminal prosecution without the procedure of inquiry and investigation. Thus, a new kind of law enforcement system has been formed.

State power must be legitimate, i.e. legally justified and recognized. This basis is expressed in the legal system - the Constitution, laws, international legal acts... As noted by S.M. Zlotnikov, "legitimacy should not be confused with legality". "Legitimacy of power" is a more fundamental concept; it answers the question, whether power is justified from the social side and from the point of view of human rights, obligations and freedoms.

The law-abiding state should contribute to the maximum convergence of private and public law in a single legal system[6, P.17].

The elevation of private law should not be at the expense of public law. The private interest, both individual and collective, needs not only to be protected by the state and society, but also to ensure the social orientation of the state legal policy. The boundaries of private law are expanding to the limits - public in the region, the country, the world, as evidenced by the human rights problems that have become the subject of regulation at the international level. Negatives of statehood and public law can be minimized, among other factors, in the systemic functioning of legal mechanisms and means. One of the way of liberation from excessive politicization and ideologization of law is the establishment of the relations of legality, instead of the former principle of "socialist legality and the rule of law".

We should not forget the Latin saying: "Summum Jus, Summa Injuria" (the highest lawfulness is the highest lawlessness). And only the systemic effect of legal phenomena can often neutralize the trend of alienation in a legal state, without the predominance of political or other foreign interference.

The legal system is a complex, extremely broad concept that includes numerous legal elements: the system of law, legal consciousness, legal relations, acts of law enforcement, legality, law and order, etc. These constituent elements of the legal system are organically interconnected with each other, so much so that they predetermine and as if "follow" from each other [7, P.48].

"There is a new legislation, radically different from the one that was in force earlier. The rapid pace of legislative activity is characteristic of each country. The process of formation of the new law will take quite a long historical period, at the end of which it will be possible to draw conclusions about the features and peculiarities of the new legal systems of the States of socio-democratic orientation" [8, P.19].

In the conclusion, we would like to note that legal phenomena, which include only some fragments of the content of the legal system, some of its substrate elements, links, processes, development trends and do not have the main features of the element, are listed as components of such system. Among the components stand out the legal activity in various types, good behavior, rule of law, legal practice, legal policy, legal technique, legal symbolism and legal acts, the legal system, legal science, etc. Components of the legal system are also recognized and parts of its elements: industry, institutions, sub-sectors of law; private and public law; legal ideology and legal psychology; legal personality; subjective rights and legal obligations.

**З.К., Аюпова Д.Ө. Құсайынов**

### **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНЫҢ ҚҰҚЫҚТЫҚ САЯСАТЫНДАҒЫ ЗАҢДЫЛЫҚТЫ ҚАМТАМАСЫЗ ЕТУДЕГІ ЖАҢАШЫЛДЫҚТАРЫ**

**Аннотация.** Ең басты халықтың кең мағынадағы құқығын және билікті бөлуді, заңдылықты көздейтін басты демократиялық Конституция, егер оны іске асыру үшін дамыған, жан-жақты қамтитын, иерархиялық етіп жасалынған, қарама-қайшы келмейтін құқықтық жүйеге негізделмесе, қарапайым декларацияға айналады. Конституцияның басты мақсаты мемлекет аумағында заңдылықтың сақталуын жоғары қадағалау болып табылатын прокуратураға ерекше рөл берілген. 2017 жылы Конституцияның 83-бабына енгізілген түзетулер прокуратура функцияларын айқындады. Қазір ол жоғары қадағалауды жүзеге асырады, сотта мемлекет мүддесін білдіреді және мемлекет атынан қылмыстық қудалауды жүзеге асырады. Бұл ретте прокуратураның негізгі миссиясы адам мен азамат құқықтарының өмір сүруінің барлық салаларында сақталуын қамтамасыз ету, құқықтық реформаларға белсенді қатысу болып қала береді. Қазақстан Республикасында сот-құқықтық реформа кезең-кезеңімен іске асырылуда, оның аясында қылмыстық процесс репрессивті, айыптаудан құқық қорғаушыға еңістікті өзгертті. 2015 жылдың институты енгізілген тергеу судьясы, ол сот бақылауын күшейтті. Тергеушілердің адамның құқықтары мен бостандықтарына қатысты іс-әрекеттерін тергеу судьясы санкциялайды. Бұрын бұл прокурордың өкілеттігі болды. Енді татуласуға байланысты жауапкершіліктен босату қылмыстық қудалау органының міндеті болды.

**Түйін сөздер:** заңдылық, құқықтық саясат, құқықтық жүйе, прокуратура, құқық қорғау қызметі, мемлекеттік кепілдіктер, сот, медиация, жаңашылдықтар, адам құқықтары.

УДК [340.115.17](#)**З.К. Аюпова<sup>1</sup>, Д.У. Кусайнов<sup>2</sup>**<sup>1</sup>КазНАУ, кафедра права, г. Алматы, Республика Казахстан;<sup>2</sup>КазНПУ им. Абая, общеуниверситетская кафедра политологии и социально-философских дисциплин, г. Алматы, Республика Казахстан**НОВЕЛЛЫ В ОБЕСПЕЧЕНИИ ЗАКОННОСТИ  
В ПРАВОВОЙ ПОЛИТИКЕ РЕСПУБЛИКИ КАЗАХСТАН**

**Аннотация.** Совершенно очевидно, что самая демократическая Конституция, предусматривающая наиболее широкие права населения, разделение властей, законность и т.д., превратится в простую декларацию, если для ее реализации не будет основана развитая, всеобъемлющая, иерархически построенная, непротиворечивая правовая система. Особая роль Конституцией отведена Прокуратуре, главным предназначением которой является высший надзор за соблюдением законности на территории государства. Внесенные в 2017 году поправки в статью 83 Конституции четко определили функции прокуратуры. Ныне она осуществляет высший надзор, представляет интересы государства в суде и от имени государства осуществляет уголовное преследование. При этом основной миссией прокуратуры остается обеспечение соблюдения прав человека и гражданина во всех сферах жизнедеятельности, активное участие в правовых реформах. В Республике Казахстан поэтапно реализуется судебно-правовая реформа, в свете которой уголовный процесс изменил уклон от репрессивного, обвинительного к правозащитному. С 2015 года был введен институт следственного судьи, который усилил судебный контроль. Действия следователей, затрагивающие права и свободы человека, санкционирует следственный судья. Раньше это было полномочием прокурора. Теперь освобождение от ответственности в связи с примирением стало обязанностью органа уголовного преследования.

**Ключевые слова:** законность, правовая политика, правовая система, прокуратура, правоохранительная деятельность, государственные гарантии, суды, медиация, новеллы, права человека.

**Information about authors:**

Ayupova Z.K. - Doctor of juridical sciences, professor, chair of law, Kazakh national agrarian university, Kazakhstan, Almaty

Kussainov D.U. - doctor of philosophy sciences, professor, interuniversity chair of politology and socio-philosophy disciplines Kazakh national pedagogical university named after Abai, Kazakhstan, Almaty

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