

# Criminal Law as the Most Effective Tool for Influencing Crime and Criminals

Talgat Kurmanovich Akimzhanov<sup>1</sup>

<sup>1</sup>Research Institute of Law, Turan University, Almaty, Republic of Kazakhstan

**Keywords:** Criminal law, criminality, personality of an offender, a criminal offense, a crime, a misdemeanour offense, punishment.

**Abstract:** The article reveals the role of criminal law as the most effective and important tool for combating crime and influencing the personality of an offender. The author used statistical data of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan for a period of 2015-2020, the results of the analysis of the Criminal Codes of the Republic of Kazakhstan in 1959, 1997 and 2014, as well as empirical information obtained during the analyses conducted in 2018-2020 by the Research Institute of Law of Turan University. The purpose of the study was to substantiate the conclusion about criminal law as an important and effective tool for influencing criminality and criminals, as well as to develop proposals and recommendations for improving measures of criminal law to increase the effectiveness of criminal penalties by reducing their negative social consequences. The objectives of the study were the desire to prove the importance of criminal law in combating crime; to reveal the content of the punishment, its correlation with the criminal policy pursued in the country; identifying problems in law enforcement practice in the imposition and execution of sentences and making proposals for improving the criminal legislation in terms of ensuring its positive impact on criminality and criminals.

## 1 INTRODUCTION

The significance of criminal law lies in the fact that its one of the main institutions, as a punishment imposed only by a court and on behalf of the state, carries a certain kind of restrictions for a convicted person who has committed a criminal offense, and includes various types of criminal punishments, and in the most special cases even the death penalty.

Following the principles on the highest values of a person, his life, rights and freedoms proclaimed in Art. 1 of the Constitution of the Republic of Kazakhstan, the Kazakhstan (hereinafter – RK) not only introduced an unlimited moratorium on the execution of the death penalty on December 17, 2003 by the Decree of the President of the Republic of Kazakhstan, but also planned to completely abandon this type of punishment.

Thanks to the functions of the Criminal Code of the Republic of Kazakhstan (hereinafter referred to as CC of the RK), the state succeeded in its development from the moment of the adoption of the Criminal Code of the Kazakhstan SSR (hereinafter referred to as the Kazakh SSR) in 1959 and until the adoption of the Criminal Code of the Republic of Kazakhstan in

1997 and the Criminal Code of the Republic of Kazakhstan in 2014 and in maintaining the necessary balance, public safety and stability in society by increasing the effectiveness of combating crime with criminal law methods, especially in the difficult 90s. Criminal penalties have the great importance in the crime prevention. However, the problems of general and private prevention of criminal law, its role in combating crime are not sufficiently developed and remain relevant at the present time.

## 2 MATERIALS AND METHODS

The study covered the current criminal and penal legislation of the Republic of Kazakhstan, other laws of the RK, regulating the issues of combating crime, the imposition and execution of punishment in Kazakhstan. A comparative analysis of decisions taken by courts in relation to convicted persons in the Republic of Kazakhstan has been carried out. The author of the article used the results of the study (interviewed 100 employees of the penal system, 100 convicts, studied 50 sentences for 2019-2020).

The statistical reports of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan for the period from 2015 to 2020 were studied, the articles of the Special Part of the Criminal Code of the Republic of Kazakhstan of 2014 were analysed for their categorization in comparison with the CC of the Kazakh SSR of 1959 and the CC of the RK of 1997.

### 3 RESULTS AND DISCUSSION

Much attention was paid to the development of the criminal legislation of the Republic of Kazakhstan in the message of the President of the country K.K. Tokayev on September 1, 2020. He noted that we have frequent adjustments to it, often without proper analysis and forecasting, based on the convenience of law enforcement officers.

Kazakhstan was one of the first states of the post-Soviet space, at the legislative level, began to implement a preventive mechanism in the fight against crime by adopting the Law of the Republic of Kazakhstan on April 29, 2010 No. 271-IV "On the prevention of offenses."

The study of law enforcement practice has shown that the measures of criminal law impact (punishment) on persons who have committed criminal offenses do not achieve the goal set by the legislator in Part 2 of Article 39 of the CC of the RK, since the convicted person becomes not better, but worse during the execution of the sentence.

We obtained data on the presence of negative consequences of the execution of sentences in the course of a survey of employees of the penal system, convicts, and a study of a number of works by criminologists (Kudryavtsev, 2003; Khokhryakov, 1999; Yeskendirov, 2008). It is necessary to eliminate the gap formed in theory and practice between crime prevention and general and private prevention of criminal legislation of the RK, since criminology and penal law were once integral parts of criminal law. Unfortunately, we should agree with those scientists who believe that the current criminal legislation and the law enforcement system do not pay attention to the final result of sentencing, whether the convicted person has corrected himself or not. A.D. Nechaev rightly stated that modern domestic criminal policy really does not have a concept for its implementation. It is situational, sometimes haphazard. However, it cannot be argued that conceptuality remains entirely outside the field of vision of scientists (Nechaev, 2018).

So, for example, in Kazakhstan, the legal policy pursued at the state level was carried out on the basis of three adopted Concept of legal policy of the RK, approved by decrees of the President of the country (Concept 1 – for the period from 2002 to 2010, Concept 2 – for the period from 2010 to 2020, 3rd Concept – for the period from 2021 to 2030). At the same time, despite the completeness of legal regulation in the field of combating crime (adopted by the CC of the RK, the CPC of the RK, the PEC of the RK in 2014), law enforcement practice and analysis of the current legislation indicate the existing unresolved problems in this area.

We agree with those scientists, who believe that the goals of punishment are clearly overstated in the criminal legislation. This statement was quite rightly pointed out by M.D. Shargorodsky in the distant past. According to him the function of restoration is alien to criminal law as a protective branch of law (Shargorodsky, 1973). The need to observe the balance of justness and punishment was rightly pointed out by Yu.I. Bytko, while noting that justice at all times should serve as a guideline in problem solution of reforming positive law (Bytko, 2017).

Another inconsistency with the life realities is inherent in what is written in Art. 39 of the CC of the RK in the requirement to punish "not causing physical suffering or humiliation of human dignity", which was successfully transferred from the CC of the Kazakh SSR in 1959, and then from the CC of the RK in 1997, and needs, following the example of Russia (Article 43 of the Criminal Code of the Russian Federation), in exception, since it complicates the work of the bodies executing punishment. B.K. Shnarbayev rightly points out that punishment always causes certain deprivations and suffering to a criminal (Shnarbayev, 2020).

Among scientists there is a point of view that criminal law norms do not have a restorative function; in their opinion, the restorative function is inherent only in the norms of civil law. So, A.L. Tsvetnovich believes that the restoration of social justice cannot correspond to criminal penalties. Criminal punishment is characterized only by compensatory functions, since in the course of the imposed criminal punishment, we can talk about compensation for the physical and moral harm caused to the victim by a criminal offense (Tsvetnovich, 1996). For example, in the process of isolating a criminal from society, the state satisfies the moral costs of the injured party, and in the process of applying a fine, corrective labour, and confiscation of property, it contributes to compensation for property damage caused to the victim.

According to S.I. Kurganov, the above mentioned arguments of scientists do not make it possible to establish how the recovery process takes place during the imposed criminal punishment, since until now, due to insufficient scientific development of this problem, it has not been possible to develop the necessary set of measures for applying indicators of the effectiveness of criminal punishments (Kurganov, 2008).

We adhere to the position that, during imposing a punishment, the restoration of social justice is allowed, but this process is ensured only partially, and not in full. For example, in Kazakh customary law there was not even such a type of punishment as imprisonment and, accordingly, prisons (Erkin Abil, 2000), and the issues of sentencing were resolved quite effectively.

The minimum task that should be solved during the execution of punishment is to prevent convicts from committing new, repeated crimes on pain of punishment, and the maximum is their adaptation and resocialization (Grant Duwe & Valerie Clark, 2017; Lacey Schaefer, 2018). In the modern doctrine of criminal law, more attention should be paid to the doctrine of punishment itself. So, when the CC of the RK was adopted in 2014, the provisions related to the sections of punishments in the General Part remained practically unchanged, although they needed to be rethought and adjusted.

Correction of a sentenced person presupposes the application of a set of measures to the convict, as a result of which the man must change for the better. To increase the role of criminal law influence on perpetrators, attention should be paid to the identity of the offender (Mark Jones, Samantha Coleman & Stephen Leierer, 2017). As our analysis of court sentences has shown, the scope of information about the personality of the convicted person is extremely scarce, although it is the study of the offender identity that is the key to success in imposing a correct and just punishment to the guilty person, as well as his subsequent correction.

At the same time, work on further improvement of the criminal legislation of the Republic of Kazakhstan as an effective tool for influencing crime and criminals requires constant reflection and continuation.

## 4 CONCLUSIONS

Taking into account the results of the study, the following measures are proposed for further improvement of the criminal legislation.

1. Criminal law and its institution of punishment, as an instrument of influencing criminality and criminals, especially in terms of their prevention, is not effectively applied in law enforcement practice.
2. The concept and goals of punishment, formulated in Article 39 of the CC of the RK, do not correspond to the realities of life, do not achieve their goals and need to be rethought and adjusted.
3. To continue the practice of reduction in the use of deprivation of liberty in the articles of the Special Part of the CC of the RK and imposing a number of restrictions on its application (by age, illness, etc.).
4. To revise the procedure for parole, by reducing the mandatory terms for serving a sentence established in Part 3 of Article 72 of the CC of the RC.

Taking into account the above mentioned circumstances, it can be stated that the proposed approach to rethinking certain aspects of crime prevention with the forces and opportunities of criminal law will contribute to solving many problems facing law enforcement agencies and civil society.

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