PROSPECTS OF DEVELOPMENT THE JUDICIARY AND PHASED EXPANSION OF THE SCOPE OF JUDICIAL CONTROL IN PRE-TRIAL PROCEEDINGS

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Introduction

All civilized nations that have embarked on the path of democratic development, the self-proclaimed government in a free society, human rights, namely freedom is the most important factor in ensuring the recognition and human and his life, as well as the rights and freedoms the supreme value of the civilized world. All this sets the country's judicial system and great challenges. Kazakhstan's ratification of the International Covenant on Civil and Political Rights – a document aimed at a civilized solution to the problem of relations between the state and the citizen and between citizens living in this society, is of great importance. Over the past two decades since the acquisition of the state independence, political and economic sovereignty, the question of guarantees to ensure its citizens to life, social benefits, political freedom, including the guarantees of legal authorization of the dispute in conflict situations. Consequently, Art. 13 of the Constitution guarantee that everyone has the right to judicial protection of their rights and freedoms[1].

That the Constitution of the introduction of judicial review was provided as one of the most effective and appropriate measures to protect the rights and freedoms of citizens in all spheres of public life. The Criminal Procedure Act provides for a separate chapter (13) on the implementation of this judicial review. Although other provisions of these rules as it does not involve the use of direct judicial review at this stage of pre-production, but in the final stages of again not exclude such. For example, during the preliminary investigation, or even the primary side of the trial denied the forensic examination of an experiment with the opinion of the parties is essential in resolving the case, and it is again subjected to judicial review. Take, for example, Art. 150 Criminal Procedure Code, according to part 1 which, the judge, having considered the petition, as a preventive measure may elect arrest. In the following case goes to trial and, again, according to Part 1 of claim 10, wherein the resolution of the sentence the court is obliged to discuss the issue of the defendant as a preventive. Therefore, the arguments that the court (judge) is connected with its original opinion, in our opinion, should not be an obstacle itself. If we go further, even the same judge has every right to consider the merits of the case, to make this or that sentence, even move away from their initial decision and the request of the parties, in the presence of bases to him to change the preventive measure to the more humane. Then it could be regarded as the credibility of the court[2].

From the meaning of the law, it follows that this procedure also applies to other activities that, in general, is aimed essentially at enhancing judicial review as a whole at this stage. Part 3 of this provision of the law requires the judge all cases that fall under this category should be considered in a closed court session. The same is provided and the criminal procedural legislation of the Republic of Kazakhstan (Article 220). In

our view, this is contrary to the general principle of openness of court proceedings, transparency of the judicial activities and the administration of justice. The need for a closed court session should be addressed in this case individually, based on the views of the parties[3].

In addition, it should be noted that the complaints of the parties on any violations, if any, come to court very small amount. Article 139 Criminal Procedure Code provides for a comprehensive list of grounds for the application of preventive measures, in particular if it has reason to believe that the accused may evade an inquiry, preliminary investigation or trial or obstruct objective investigation and proceedings before a court, or will continue to engage in criminal activity, and to ensure execution of the judgment. Documentary evidence of these grounds for a preventive measure lies with the investigating authorities. However, in practice these grounds in the petitions are declarative, without submitting to the court any evidence of evasion, obstruction, etc. The predominant base sanctioning the measure of restraint in the form of arrest are still committing crimes face, which carries a prison sentence of more than 2 years. According to Clause 1 Part 1 Article. 150 Code of Criminal Procedure, in exceptional cases, the measure of restraint in the form of arrest can be used against the accused, suspected of offenses for which the law prescribes a penalty of imprisonment for a term not exceeding two years, if he has no permanent residence in the territory of the Republic of Kazakhstan. Thus, the absence of registration, for example, in Astana, its presence in another city of the republic does not constitute grounds for arrest. In practice, the registration of the suspect, the defendant in another city for the bases of the arrest. This requirement is contrary to the provisions of the Constitution on freedom of movement[4].

Similarly, such grounds as hindering the objective investigation and proceedings before a court or the continuation of criminal activity should be supported by materials sanction or criminal case materials[5].

The law does not oblige the courts to authorize a measure of restraint in the form of arrest and the arrest of the extension period to address issues of proof of guilt of the suspect or accused. A review of the materials shown on the existing problems when investigating authorities clearly overstate the bar of the charges, in order to obtain authorization of arrest. Evidence of groundless accusations are often seen in the study of materials. Commented on the judicial perspective of a particular criminal case, the court in authorizing the arrest is not allowed. Avoid unjustified infringement of the rights of citizens is one of the first tasks of the court under the authorization, extend the detention. In this connection reference in Part 4 of Art. 150 Code of Criminal Procedure on the possibility to request and get acquainted with the criminal case, and in Part 7 Limitations of the study materials of the case relating to the circumstances taken into account in the election of the said preventive measure materials, not entirely consistent with each other. It is necessary to focus on the following issue during the arrest of a suspect in the order of Art. 132 Code of Criminal Procedure[6].

In accordance with the Concept of the legal policy of Kazakhstan for the period from 2010 to 2020 one of the priority directions of development of the legal system of Kazakhstan is a criminal procedural law, which requires further consistent implementation of the fundamental principles of criminal proceedings, aimed at protecting the rights and freedoms as the main task of the criminal-proceeding legislation "is to establish such an optimum mode of application of criminal law to persons who have committed criminal offenses in the course of which is provided as the protection of individual rights and effective investigation into the activities of organs". The Republic of Kazakhstan has adopted a number of legislative acts on regulation of ensuring the constitutional rights and freedoms of man and citizen in the pre-trial proceedings in criminal cases, including those adopted by the Code of Criminal Procedure of 13 December 1997, the Act of December 5, 1997 "On Advocacy "The law of 5 July 2000" on state protection of persons involved in criminal proceedings" and other acts. In the course of reforming the legislation

governing the criminal law field, the traditional socialist criminal law legislation inquisitorial language acquired other, civilized constitutional and legal rhetoric. In this important role the bodies of constitutional control. According to Kazakh scientists Code of Criminal Procedure is a progressive and humane enough to significantly expand the rights of participants in the process and establishing procedural safeguards against arbitrary arrest and criminal prosecution[7].

In bringing the current criminal procedural legislation of Kazakhstan into conformity with the principles and norms of the Basic Law of the country it plays an important role, of course, the Constitutional Council of the Republic of Kazakhstan, the decisions of which are so weighty and significant in the constitutional and positive regulation of questions of the criminal justice system. Often it is the efforts of the Constitutional Council of the foundations of legal and law enforcement to ensure the constitutional rights of man and citizen in the criminal justice field. Questions of criminal proceedings occupy a significant place in the work of the constitutional jurisdiction, which have a real opportunity to influence both the legislation and the legal practice in the field of criminal justice, as illustrated by many facts related to the activities of the constitutional oversight bodies (control), CIS and abroad. When considering appeals on the constitutionality of laws and other normative legal acts of the Constitutional Council contributes to the creation and maintenance of constitutional order in the exercise of criminal prosecution bodies of their powers. This possibility arises from the implementation of the Constitutional Council as the preliminary and follow-up, that is controls on how not to come into force the laws, and entered into force laws and other normative acts. The Constitution establishes the range of issues, subjects which may include ensuring the constitutional rights and freedoms of man and citizen in the field of pre-trial proceedings in criminal matters[8].

Questions pretrial proceedings in criminal matters could be considered by the Constitutional Council at:

− the constitutionality of laws passed by Parliament before the signing of the head of state, that is in the order of the pre-control;

− the constitutionality of international treaties prior to their ratification;

− the constitutionality of laws and other regulations to be applied in the court proceedings on the treatment of ships;

− giving official interpretation of the provisions of the Constitution.

Currently, the Constitutional Council has adopted a number of final decisions, establishing the supremacy of the constitutional principles of protection and promotion of the rights and freedoms of man and citizen in the pre-trial criminal proceedings. The Constitutional Council examines the provisions of the law or other normative legal act, which is the subject of applications received, in violation of the search direction of the Constitution (Constitution mismatch). When setting discrepancy Constitutional Council recognizes this legal provision unconstitutional (which means the loss of validity of the rules of law), and in the absence of such a fact produces positive suggestions (the legal position) to eliminate or removal of the existing problems. The impact of the Constitutional Council on the pre-trial proceedings is manifested in various forms. The main of them is the regulatory impact, carried out by the Constitutional Council regulations, which establish his legal positions with various aspects of the constitutional regulation of the rights and freedoms of man and citizen in the criminal investigation bodies' activities in the pre-trial process and to ensure the rights and interests of the participants of criminal procedure relations[9].

The effectiveness of this form is extremely high, due to the fact that the constitutional control virtually corrects the criminal procedure law, directing it into the mainstream of compliance Basic Law. Usually this is clearly manifested in the consideration of appeals on the official interpretation of the Constitution in relation to the rules on the constitutional regulation of criminal procedure relations in pre-trial proceedings. For example, in the Normative Resolution of 18 April 2007 № 4 "On the Official Interpretation of Paragraph 2, Article 12, paragraphs 2 and 8

of Article 62, paragraph 1 of Article 76, sub-paragraphs 3) and 5) of paragraph 3 of Article 77 of the Constitution of the Republic of Kazakhstan" is set, that in criminal proceedings the right to judicial protection is implemented in the manner prescribed by the Constitution and the corresponding laws, with criminal proceedings in court, as well as in the implementation of judicial review in the course of pre-trial proceedings in criminal matters.

Conclusion

In conclusion it must be said that the best-designed mechanisms and measures, among other things, related to the constitutional proceedings on the criminal procedure legal relations will not bring real results if they are not accompanied by the proper execution of the state bodies and officials of responsibilities for individual rights protection.

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Anotācija

Saskaņā ar Kazahstānas Republikas Konstitūcijas 1. pantu Kazahstāna ir demokrātiska, tiesiska, laicīga un sociāla valsts, kuras galvenās vērtības ir cilvēks, viņa dzīvība, tiesības un brīvības.

Rakstā aplūkoti tiesas kontroles pār pirmstiesas procesu diskutablie jautājumi, ievērojot tiesu varas sistēmu, tiesu varas īstenošanas formas un funkcijas. Pamatojoties uz viedokļu analīzi, izdarīti secinājumi saistībā ar tiesas kontroles, kā tiesu varas īstenošanas formas nozīmi tiesiskuma garantēšanā.

Kazahstānas 2009. gada 24. augustā apstiprinātajā Tiesību politikas koncepcijā 2010. – 2020. gadam norādīts, ka tiesu sistēmas attīstības perspektīvas ir saistītas ar tiesas kontroles pār pirmstiesas izmeklēšanu pakāpenisku paplašināšanu. Bet pirms tiesas pilnvaru paplašināšanas reformu uzsākšanas, svarīgi noskaidrot tiesas kontroles nozīmi pirmstiesas procesā un tiesu varas sistēmā.

Аннотация

Согласно статье 1 Конституции Республики Казахстан – основного закона государства – Казахстан утверждает себя демократическим, светским, правовым и социальным государством, высшими ценностями которого являются человек, его жизнь, права и свободы.

В статье рассматриваются дискуссионные вопросы определения места судебного контроля над досудебным производством в системе судебной власти через призму функций и форм реализации судебной власти. Сделан вывод, что судебный контроль над досудебным производством – это одна из форм реализации судебной власти.

В Концепции правовой политики Республики Казахстан на период с 2010 по 2020 годы, утвержденной Указом Президента Республики Казахстан 24 августа 2009 года, указано, что перспективы развития судебной системы связаны с возможностью поэтапного расширения пределов судебного контроля в досудебном производстве.

В этой связи, применяя формулу «прежде чем совершенствовать – познай то, что совершенствуешь», полагаем, что начало реформы по расширению полномочий суда на досудебном производстве должно начинаться с уяснения места судебного контроля в досудебном производстве в системе судебной власти.