



Promoting penal reform worldwide

Proposals to improve penal enforcement system relating reduction of prison population

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Proposals submitted by e-mail: Anara Ibrayeva, PMC of Astana
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| Legislative reforms | | |
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| 1. | To designate articles of the Criminal Code of Kazakhstan, which provide for reduction of maximum sentence | Ardak Zhanabilova |
| 2. | <p>The following articles should be excluded from the part 1 of the Criminal Code: Article 192 -1. Commitment of transaction by subject of private business without intention to be engaged in business activities; Article 193. Legalization of Monetary Funds or Other Property Obtained Illegally; Article 194. Illegal Receipt and Non-Designated Use of a Loan; Article 196. Monopolistic Actions; Article 198. Deliberately Fraudulent Advertising; Article 200. Illegal Receipt and Divulgation of Information Constituting a Commercial or Banking Secret; Article 202. Violation of the Procedure for Issuance (Emission) of Securities; Article 202-1. Persistent decline to provide information or provision of the deliberately false information of issuer by officer; Article 204. Providing Deliberately False Information on Securities Transactions; Article 205. Violation of the Rules for Conducting Securities Transactions; Article 206. Manufacture or Distribution of Counterfeit Money or Securities; Article 207. Manufacture or Distribution of Counterfeit Payment Cards or Other Payment and Settlement Documents; Article 208. Violation of the Procedure and Rules for Marking of Excisable Goods with Excise Duty Stamps, Counterfeit and Use of Excise Duty Stamps; Article 209. Economic Contraband; Article 213. Non-Return of Funds in Foreign Currency from Abroad; Article 214. Evasion of Making Customs Payments and Levies; Article 215. Illegal Actions in Bankruptcy; Article 216. Deliberate bankruptcy; Article 216-1. Force into insolvency; Article 217. False bankruptcy; Article 219. Submission of Deliberately False Information Concerning Banking Transactions; Article 220. Illegal Use of Monetary Funds of a Bank; Article 221. Evasion by a Citizen of Payment of a Tax; Article 222. Evasion of Payment of Taxes by Organisations; Article 222-1. Illegal use of property limited to satisfy taxpayer's debt; Article 224. Receipt of Illegal Remuneration ; Article 226. Coercion to the Commission of a Transaction or to a Refusal to Commit It; Article 226-1. Raiding crime; Article 227. Illegal Access to Computer Information, and the Creation, Use, and Distribution of Harmful Programmes for Computers.</p> <p>Decriminalization of these articles providing for the restriction of freedom and imprisonment would lead to a "domino effect" which is said to reduce prison population including the persons against whom criminal proceedings were</p> | Almas Kanatov |

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| | instituted, persons held in pre-trial detention facility, or deprived of their liberty | |
| 3. | <p>Create conditions for increased use of preventive measures alternative to the arrest including the pledge.</p> <p>It's necessary to consolidate rule of not using arrest as a preventive measure for severe crimes in article 151 of the Criminal code as well as economic crimes provided in the part 1 of the code.</p> <p>There is a need to include "personality of the subject of a crime" instead of the "subject of a crime" in article 14 of the Criminal code of Kazakhstan as article 141 of the Criminal Procedure Code of Kazakhstan provides for the «Circumstances, Which Are Taken into Account When Selecting a Measure of Suppression» "when deciding of the issue of the need to apply a measure of suppression and what measure exactly, aside from the circumstances indicated in Article 139 of this Code" and measures of suppression indicated in Article 140, "also the gravity of presented charges, the individuality of the defendant, his age, condition of health, family status, type of occupation, property status, availability of a permanent place of residence, as well as other circumstances must be taken into account".</p> | Almas Kanatov |
| 4. | <p>It's necessary to include in article 14 of the Criminal Code of Kazakhstan « personality of the subject of a crime », instead of «the subject of a crime». It will bring into law established long ago practice of the term. Thus at the stage of preliminary investigation, at trial, as well as during the "post-trial" proceedings "social face" of the person convicted or suspected of committing a crime is of paramount importance. For the first turn the matter is on special category of identities: persons committed petty or less serious crimes, vulnerable groups of population – pregnant and single women with children, the elderly persons.</p> | Almas Kanatov |
| 5. | To revise Articles 360 and 361 of the Criminal Code, to decriminalize offenses or to introduce other regulating measures on the whole | Ardak Zhanabilova |
| 6. | To enhance list of punishment measures not related to deprivation of liberty, besides correction works, as well as to create necessary conditions of their execution | Almas Kanatov Anara Ibrayeva |
| 7. | To set drafting the new version of the Criminal Code for overcoming difference between the criminal executive legislation and the current penitentiary system | Kuat Rahimberdin |
| 8. | To draw up an inventory of the legal acts providing execution of punishment consisting of imprisonment in order to include these acts in the process of drafting the new version Code of Criminal Procedure of the Republic of Kazakhstan. | Kuat Rahimberdin |
| 9. | <p>In recent years the legislator has noted the gradual introduction of new institutions of the restorative justice based on reconciliation and compensation; also the opportunity to expand category of cases in which criminal prosecution and the prosecution in court can be carried out in private, as well as in private -public order. Thus it's necessary to introduce «3-fold compensation». This postulate corresponds to the regulatory aspects of criminal procedure policy specified in the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 and approved by Presidential Decree dated from August 24, 2009. At the same time 3-fold compensation comprises the following: One share is provided to the victim, another share is transferred to the state and some percentage goes to the insurance fund.</p> <p>It's clear with a share for victim. Furthermore a share for the state is clear enough as it shall provide funding of the law enforcement system, costs for damages caused to state organs, organizations, companies, public officers, including persons and legal entities.</p> <p>As for the third percentage is granted to victim in case of a crime committed. However an offender or criminal is not usually found. It implies that person whom damage was caused to becomes an "injured person" instead of getting a status of "victim". Because injured person is usually lack of adequate compensation for damages caused to him/her</p> | Almas Kanatov |
| 10. | To improve law on procedure of mediation. | Kuat Rahimberdin |
| 11. | Necessary to incorporate into legislation the following institutions as public assistant of probation service officer, as well as to determine mechanism of | Kuat Rahimberdin |

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| | participation of the public assistants at Probation Service. | |
| 12. | Taking into account the introduction of the new “criminal offence” into Criminal Code of Kazakhstan which doesn’t incur criminal record its necessary to check up persons, falling under the content and form of criminal wrongdoing. Therefore to stimulate offenders to good behavior and make amends to their victims | Almas Kanatov |
| Release from the place of imprisonment | | |
| 13. | Due to the fact that changes regarding early release affect the growth of prison population, the reasons of such increase should be analyzed and correlated with the necessity of isolation. As a result, it’s concluded to rule out such categories as the degree of correction (on the path ... etc.), to create conditions for repayment of claims (as it often prevents the adoption of the decisions), to exclude from the chain "convicted - court, "prosecutor’s instances”, providing the right to appeal to the court and etc. | Anara Ibrayeva |
| 14. | To revise/facilitate procedure of early- release: to exclude the rule considering the victim’s consent, as it involves corruption and prevents the release | Serik Tenizbayev |
| 15. | There is a high number of complaints about delayed release – release not in due time. This problem concerns the failure of early release procedure when Supreme court makes a decision to release a person, therefore sends a telegram (which is obtained within 10 days) through Kazakh Telekom agency and detention facility doesn’t perform release of a convict person awaiting decision of the court. It’s advisable to transmit the court decision to the Penal Committee; the latter transmits it directly to detention facility. | Anara Ibrayeva |
| 16. | It’s necessary to substitute unexpired part of a sentence (which is rarely used), to instruct prison administration on providing the opportunity for prisoners to be placed into colony-settlements | Anara Ibrayeva |
| Right and freedoms of prisoners | | |
| 17. | To revise conditions for release of persons infected with TB, as well as facilities for victims of torture. Today incompliance with these conditions results in decreased number of released persons with serious diseases. It’s necessary to expand a list of diseases in the result of which the release is required, to define stages of diseases | Evgeniy Golendukhin |
| 18. | To revise application of special means in correctional facilities: to prohibit application of special means for women and children under 18. | Ardak Zhanabilova |
| 19. | To revise laws providing the order of confinement, as well as the rights and freedoms of inmates. As for example to draft and adopt the rules of cell-type confinement in prisons of high security | Ardak Zhanabilova |
| 20. | To abolish punishment for the right to express and hold own opinions (self-harm protest, hunger strike and etc.), and do not consider it as a disobedience. | Ardak Zhanabilova |
| 21. | To expel combatant police units and special means (truncheons, gas cylinder and etc.) in correctional facility | Ardak Zhanabilova |
| 22. | To bring the law and practice on execution of punishment in compliance with international standards of human rights to improve health conditions for inmates | Kuat Rakhimberdin |
| Rehabilitation | | |
| 23. | The concerns on rehabilitation of ex-prisoners should be provided by the Criminal Code: to test various models of rehabilitation | Serik Tenizbayev |
| 24. | To establish rehabilitation services for those who released for 5 months earlier. It may be assigned to NGOs. | Alexander Mukha |
| 25. | The issues on prisoners’ employment should be considered. For this purpose it’s necessary to introduce system of jobs supported by government | Almas Kanatov |
| Civil control | | |
| 26. | To provide the right of NGOs for unimpeded access without preliminary notice as well as access without restriction of a time and number of visitors. | Ardak Zhanabilova |
| 27. | To draft law on “the National preventive mechanism in the Republic of Kazakhstan”, that shall comply with the provisions of the Optional protocol to the Convention against torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. | Kuat Rakhimberdin |
| 28. | To enhance constructive dialogue with civil institutions of Kazakhstan, to improve their legal bases, including non-institutional subjects of civil society | Aidarkhan Skakov Kuat |

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| 29. | To ensure transparency of the state agencies and criminal executive system bodies activity through implementation of public monitoring and other forms of cooperation with civil society. | Kuat Rakhimberdin |
| 30. | To ensure relations with Mass Media, to enjoy efficiently the opportunities of new media (to update web-site of the Penal Committee of the Ministry of Interior of the Republic of Kazakhstan, where the background information on agencies of the criminal executive system, statistics and analyzes of investigation has been provided) | Kuat Rakhimberdin |
| General aspects of the development of the Criminal Executive system | | |
| 31. | It's necessary to elaborate legal basis for Penal system complying with European standards | Aidarkhan Skakov Kuat Rakhimberdin |
| 32. | As soon as it's possible the Ministry of Interior should determine the methods, conduct census of prisoners and detainees in Kazakhstan, as well as census of public officers of the criminal executive agencies of the Republic of Kazakhstan. | Kuat Rakhimberdin |
| 33. | Make recommendations to the Penal Committee of the Ministry of Interior on elaboration of the qualified model of an executive of the penal system, which should be mentioned in the Concept on the development of the penal system of the Republic of Kazakhstan; To introduce the trainings for officers, executives of the penal system agencies into the concept of the penal system of the Ministry of Interior, taking into account international standards in the criminal justice, as well as national, culture, history, traditions and economic opportunities of the Republic of Kazakhstan | Kuat Rakhimberdin |