

**THE MAIN STAGES OF THE DEVELOPMENT OF THE LEGISLATIVE
FRAMEWORK FOR THE RECOGNITION OF EVIDENCE AS
INADMISSIBLE IN KAZAKHSTAN**

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Annotation: The article traces the development of legislation on the admissibility of evidence in criminal proceedings in chronological order. The main stages of development of the legislation with characteristic features and designation of the normative legal acts adopted in the specified period of time are defined. The author reveals the content of these normative legal acts on the recognition of evidence as inadmissible.

Keywords: inadmissible evidence, proof, criminal proceedings, development of legislation.

The Republic of Kazakhstan asserts itself as a democratic state, which guarantees the implementation of the constitutional rights and freedoms of citizens [1]. Achieving the strategic goal of becoming one of the 30 most developed countries in the world by 2050 places high demands on the national legal system, which should effectively ensure the country's policy of improving the quality of human life, society and strengthening statehood.

Ensuring fair justice, and, in general, the development of the judicial system in Kazakhstan is given special attention. In the Strategy «Kazakhstan-2050» within the framework of the direction» Further strengthening of statehood and development of Kazakhstan's democracy", the most important issue of legal

policy is the realization of the right to judicial protection by citizens, which is guaranteed by the Constitution [2]. In the National Plan «100 concrete steps to implement Five Institutional Reforms» [3], 11 measures are devoted to improving the judicial system.

It is also important to note that the ongoing reform of criminal and criminal procedure legislation in Kazakhstan is aimed at its further humanization. The Concept of Legal Policy of the Republic of Kazakhstan until 2020 notes that the judicial and legal reform «is aimed at further democratizing the institutions of the state and society» [4].

The improvement of criminal legislation is designed to modernize the criminal justice system and ensure its rational and relevant response to modern challenges and trends.

And one of the important issues in criminal proceedings, which requires the development of the legislative framework, is proving. In the development of the legislation of Kazakhstan on the admissibility of evidence in criminal proceedings is divided into three main stages.

The first stage (since 1995) is characterized by the establishment of a guarantee of the realization of citizens' rights and freedoms, the regulation of the basic norms of recognition of evidence as inadmissible.

Paragraph 3 of Article 77 of **the Constitution of the Republic of Kazakhstan** states: "evidence obtained by illegal means has no legal force. No one can be convicted solely on the basis of his own confession", "the accused is not obliged to prove his innocence". The main law of the country guarantees the citizens of the country the realization of their rights and freedoms in court proceedings.

Article 78 of the Constitution of the Republic of Kazakhstan establishes the following provision: "Courts are not entitled to apply laws and other

normative legal acts that infringe on the rights and freedoms of a person and citizen enshrined in the Constitution. If the court perceives that a law or other normative legal act subject to application infringes on the rights and freedoms of a person and citizen enshrined in the Constitution, it is obliged to suspend the proceedings in the case and apply to the Constitutional Council with a proposal to declare this act unconstitutional."

The Law of the Republic of Kazakhstan of December 21, 1995 «**On the Prosecutor's Office**» establishes in Article 28, as the tasks of supervision, ensuring the rights and freedoms of man and citizen, compliance with the legislation of legal acts and actions of bodies, organizations, officials and citizens; taking measures to identify and eliminate any violations of the law, causes and conditions that contributed to such violations, restoration of violated rights. It is also important to note the legally established powers of the prosecutor to ensure the legality of investigative activities and covert investigative actions. That is, the prosecutor has the right to conduct his own assessment of the legality of the pre-trial investigation process and on this basis can determine the admissibility of evidence in court proceedings.

In 1997, the Criminal Procedure Code of the Republic of Kazakhstan was adopted. It consolidated the procedure of criminal proceedings in the country. Section 3 of the Act was devoted to evidence and proof. A list of circumstances entailing the recognition of evidence as inadmissible was established by law. One of the points stated that factual data obtained through the use of torture could not serve as evidence in the case.

In 1998, the Law of the Republic of Kazakhstan «**On the Accession of the Republic of Kazakhstan to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment**» was adopted [5]. The Convention establishes the concept of torture: "torture" means any act by which

severe pain or suffering, physical or mental, is intentionally inflicted on a person in order to obtain information or confessions from him or a third person, to punish him for an act that he or a third person has committed or is suspected of committing, as well as to intimidate or coerce him or a third person, or for any reason based on discrimination of any nature, when such pain or suffering is inflicted by a public official or other person acting in an official capacity, or at their instigation, or with their knowledge or tacit consent [6].

The second stage (since 2002) is characterized by detailed legislation on the recognition of evidence as inadmissible.

In the regulatory decision of the Supreme Court of Kazakhstan «**On the judicial sentence**» of 15 August 2002 stated that "courts should keep in mind that the sentence is legal if it is rendered lawful composition of the court with observance of rules of jurisdiction, in strict accordance with the requirements of criminal procedure law on litigation procedure on the basis of the adversarial principle and equality of the parties by ensuring their access to research evidence on an equal footing, with proper application of the law. The validity of the sentence means that it is based on the evidence collected in compliance with the requirements of the law and in the court fully, objectively and comprehensively investigated, given their analysis and given a proper assessment, and the findings of the court motivated" [7].

Regulatory decision of the Supreme Court «**On practice of application of criminal-procedural legislation regulating the right to protection**» of 6 December 2002 notes that during a pretrial investigation and in the administration of justice complied with the constitutional norms and requirements of the criminal procedure law on the right to protection are observed. It is also added that there are cases when the bodies conducting criminal proceedings allow violations of the norms governing the right to defense, and lawyers do not fully use the

opportunities provided to them to carry out defense. This Decision was adopted to eliminate the shortcomings and violations of the criminal procedure law, the proper and uniform resolution of questions arising in judicial practice to ensure the witness entitled to protection, suspect, accused, defendant, convict, acquitted person the right to protection [8].

Order of the Minister of internal Affairs from 1 June 2002 «On approving the internal Regulations of temporary detention facilities of internal Affairs bodies», states: in the presence of suspected injuries and obvious signs of injury to on duty finds out the reasons of their occurrence, report in writing to the head of the detention center, the chief of the internal Affairs, which, in accordance with the legislation of the Republic of Kazakhstan are taking measures and are responsible for the concealment of violations of the law in relation to the contained entities. The order clearly and in detail regulates the procedure for finding people in temporary detention facilities in the interests of ensuring the safety of the life and health of the suspect or accused [9].

The order of the Prosecutor General of the Republic of Kazakhstan from January 7, 2003 «**On approval of the Instruction about the organization of prosecutorial supervision over the legality of preliminary investigation and inquiry**» states that "the supervision over the legality of preliminary investigation and inquiry shall provide implementation of tasks of criminal procedure law on the protection of rights, freedoms and legitimate interests of man and citizen, fast and full disclosure of crimes, exposure and bringing to justice those who committed them, a fair trial and the correct application of the criminal law, and also contribute to the strengthening of law and order, the prevention of crimes, the formation of a respectful attitude to the law."

The order of the Prosecutor General of the Republic of Kazakhstan dated 19 may 2004 «**On approval of the Instruction about the organization of**

prosecutorial supervision over legality of investigation and inquiry» contains the following rules that supervision shall be organized so as to ensure the legality taken by the bodies of investigation and inquiry of procedural decisions and actions of officials carrying out criminal prosecution [10].

The regulatory decision of the Supreme Court of the Republic of Kazakhstan dated November 26, 2004 «On forensic analysis in criminal cases» states that significant violations of the criminal procedure law committed during the detection, seizure and fixation of objects of expert research, appointment and conduct of expertise may lead to the recognition of the expert's conclusion as inadmissible evidence.

The Law of the Republic of Kazakhstan «**On Jurors**» of January 16, 2006 established the right of jurors to evaluate evidence based on inner conviction [11]. The regulatory decision of the Supreme Court of the Republic of Kazakhstan dated April 20, 2006 «On certain issues of evaluation of evidence in criminal cases» was adopted for the purpose of uniform application of the Criminal Procedure Law on evaluation of evidence in criminal cases. It clarifies the details of Criminal Procedure Code on the evaluation of evidence. Paragraph 2 states that the correct resolution of the case should be based only on factual data established by the testimony of the suspect, the accused, the defendant, the victim, the witness, the witness entitled to defense, the expert opinion, material evidence, protocols of procedural actions and other documents.

The third stage (since 2015) has consolidated the trend for further humanization of legislation. The new Criminal Procedure Code of the Republic of Kazakhstan entered into force on January 1, 2015 [11].

Consideration of the Criminal Procedure Code of the Republic of Kazakhstan from 1997 and 2015 allows us to highlight the following innovations:

* The obligation to specify by the inquest body, the inquirer, the investigator, the prosecutor or the judge in each case is fixed to find out in what exactly the committed violation was expressed and to make a reasoned decision.

* The norm that along with other circumstances in a criminal case, the circumstances confirming that the property subject to confiscation in accordance with Article 48 of the Criminal Code of the Republic of Kazakhstan is obtained illegally, including as a result of committing a criminal offense, are subject to proof, or is the proceeds of this property, or was used or intended to be used as an instrument or means of committing a criminal offense or financing or otherwise providing for extremist or terrorist activities or a criminal group.

* Indicated that the confession of guilt in the commitment of a criminal offense by a suspect may be the basis of a charge only if his guilt is confirmed by the set of all the available evidence.

* Factual data directly perceived by a person providing confidential assistance to law enforcement or special state bodies may be used as evidence after interrogation of the specified person with his consent as a witness, victim, suspect, accused.

* The concept of "expert testimony" was introduced. Expert testimony is the information provided by the expert during the interrogation conducted after receiving the conclusion, in order to explain or clarify the conclusion given by him.

* The concept of "conclusion and testimony of a specialist" was introduced. Conclusion of a specialist is an official document drawn up in accordance with the requirements of Part three of this Article and submitted in writing, reflecting the content of the study and conclusions on the issues put to the specialist by the person conducting the criminal proceedings or the parties.

* The norm is fixed, according to which the issue of material evidence must be resolved when making a decision on the termination of a criminal case or sentencing.

* It is established that the materials containing factual data on illegal actions obtained in compliance with the requirements of the Laws of the Republic of Kazakhstan «On Operational Search activities», «On Counterintelligence activities», are documents and can be used in criminal proceedings as evidence.

* Regarding the documents, a provision is introduced according to which when removed and attached documents are required for the current accounting, reporting and other lawful purposes at the request of the legitimate owner, they can be returned or loaned, including electronic media, if it is possible without damage to the case or handed over their copies, if necessary attested by the notary. The costs associated with copying, notary witnessing of fidelity of copies of documents shall be borne by the proposer of the motion. Documents that are not relevant to the criminal case are returned to the rightful owner.

The provision that proof is made only for criminal offenses for which a pre-trial investigation has been initiated in accordance with the procedure provided for in Chapter 23 of this Code is fixed.

Thus, the development of Kazakhstan's legislation on the admissibility of evidence in criminal proceedings is divided into three main stages. The first stage (since 1995) is characterized by the establishment of a guarantee of the realization of citizens' rights and freedoms, the regulation of the basic norms of recognition of evidence as inadmissible. The second stage (since 2002) is characterized by detailed legislative norms on the recognition of evidence as inadmissible. The third stage (since 2015) has consolidated the trend for further humanization of legislation. To ensure the effective implementation of human rights and freedoms, it is necessary to further develop criminal procedure legislation on evidence.

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