

**Kazakhstan:
The Concept of Legal Policy
for 2010-2020**

**Казахстан:
Концепция правовой политики
на 2010-2020 гг.**

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1. Introduction

The Concept of Legal Policy of the Republic of Kazakhstan, adopted in 2002, established the main directions for the development of country's legal system for the period ending 2010. In the past several years a number of important legislative acts was adopted, all of which were conducive to progressive development of governmental and non-governmental institutions, ensuring sustainable social and economic development of Kazakhstan.

Implementation of the Concept resulted in substantial renewal of the major branches of the national legislation (constitutional, administrative, civil, banking, tax, fiscal, customs, ecological, criminal, criminal-procedural, and correctional legislations).

New unified legislative codes were developed and adopted: Forestry Code, Land Code, Customs Code, and Water Code in 2003; Labor Code and Ecological Code in 2007; Fiscal Code and Internal Revenue Code (Tax Code) in 2008. The government adopted measures that allowed bringing the legislative process to a new quality level, some of which include: long-term planning of legislative activity; introduction of the process of expert evaluation (legal, anti-corruption, criminological and other evaluations) of draft legislation; comprehensive financial support of adopted laws.

At the same time those fundamental transformations that occur in the world economy and politics, globalization processes, as well as internal dynamics of the country do not allow stopping at the currently achieved level. In order to ensure the compliance of national legislation with the present challenges it is important to further improve legislative and law-enforcement practices in the country.

In Kazakhstan the first decade of the 21st century was marked by the new phase of constitutional development. On May 21, 2007 the Law on Introduction of Changes and Addenda to the Constitution of the Republic of Kazakhstan was adopted, introducing amendments that were critically important for the country. At the same time the basic parameters of Kazakhstani model of state structure were maintained, given that they stood the test of time.

During the process of constitutional reform and in the framework of this model the government initiated modernization of the system of relations of power. It allowed increasing the role and influence of the chambers of Parliament, which since then held greater responsibility for the state of affairs in the country.

Owing to the general direction towards the comprehensive development of civil society institutions, harmonization of relations between the government and society, many constitutional bans and limitations were removed, allowing for greater interaction between governmental and non-governmental institutions. The system of local governance was modernized, which nowadays fully corresponds to the needs and current conditions of our country.

At the constitutional level a new stimulus was given to the new phase of judicial reform, aimed at reinforcement of the independence of courts in the administration of justice. The area of application of death penalty was reduced and limited to the crimes of terrorism aggravated by death of people, or especially grave crimes committed in the time of war, which, in the conditions of Kazakhstan, means the actual abolition of death penalty. The concept of habeas corpus was introduced; and the constitutional ban on investigations held by the court and prosecutor's office was removed.

Therefore, the implemented reform was aiming at further democratization of state and public institutions. All these systemic decisions that received constitutional recognition should find their further realization in the existing legislation of the Republic of Kazakhstan.

In order to increase the effectiveness of legislative activity it is important to continue the work on systematization of existing legislation, further consolidation by branches of legislation. It is necessary to remove outdated and repeated articles from the legislation, to fill in the gaps in legal regulation, to exclude internal contradictions present in the existing law, as well as to minimize the use of legal references in current laws and increase the practice of adopting directly applicable laws within the scope of issues that can be dealt with by adopted laws according to the Constitution.

Special attention should be given to forecasting and analytical support of legislative activity, which would be based on continuous monitoring of trends in the development of legislative branches and legal systems, as well as on analysis of law enforcement practice.

This will allow establishing a modern regulatory system vividly reflecting all phases of legislative and law enforcement practice for each adopted law: its development, adoption, enforcement, introduction of amendments and supplements, ceasing to be in force or development of a new law. These procedures and mechanisms assist to optimization and systematization of legislative activity of governmental structures. Extensive application of sociological methods in legislative monitoring will provide for increased consideration of public opinion in the course of implementation of legal policy.

International standards of legislative expertise and analysis will be introduced, which will allow for comprehensive consideration of interests of civilians, society, and the state, as well as ensure effectiveness, efficiency, and rationality of legislative norms.

It is necessary to provide legislative grounds for all types of legal expert evaluations, by defining their criteria, objectives, as well as the phases of their execution. Such an approach to expert evaluations will allow ensuring complete consideration of financial-economic and socio-political consequences of adoption of legislative and regulatory acts.

There is a need to apply expert evaluations in relation to the drafts of international treaties of the Republic of Kazakhstan.

Therefore, the development of expert evaluation system will help resolve the issue of development of drafts of regulatory and legislative acts corresponding to actual situation and perspectives in the development of society and the state. At present there are 17 identified branches of legislation, regulation of which shall be executed by relevant codes. At the same time unification or codification of laws is not the only instrument of systematization of legislation. It is expedient to use other instruments, such as consolidation, which represent the combination of legal norms regulating certain relationships in one single legislative act.

In this connection there is a long-term objective to introduce and legally establish the concept of “consolidated” or “comprehensive” laws that would regulate legal relationships of complex nature. As for unification or codification of laws, this supreme form of legislative systematization should be used with caution and limitations, and mainly towards the well-established branches of legislation, in those spheres of legal relationships where it would be impossible to achieve any effective regulation without such codification.

Adoption of any code should be preceded by large legislative and law enforcement practice, its rigorous monitoring, analysis and evaluation, exercise on systematic basis. The branch of law should “ripen” to the level of codification.

Any society has a complex system of socially important interests. Advocacy of such interests is implemented through various means, including official and unofficial lobbying of these interests during the legislative process. Due to this fact it is necessary to consider the lobbying of interests as the present phenomenon and to supply it with legal framework and regulate any relationships related to propaganda, development, discussion and adoption of draft laws by the Parliament.

It is important to continuously involve in the legislative activity the representatives of general public, non-governmental organizations, and associations representing the interests of private businesses. It is necessary to continuously improve and increase the level of legislative techniques that determine the quality of legislative processes in particular and the documentation processing efficiency in the state apparatus in general.

Perspectives in the development of legal regulatory mechanisms are largely connected to a wide-scale introduction of information technologies in legislative and law enforcement process. In this connection and in order to establish the basic components for the infrastructure of e-government, to develop and effectively introduce the database of legislative acts it is considered optimal to implement the Reference Bank of Regulatory and Legislative Acts in electronic format. At the same time it is necessary to supplement our legislation with provisions envisaging the electronic format of a regulatory legal act, which will become an important step in the process of informational support of the national law.

Implementation of further measures is required for improvement of the existing legislative practice. The content and the quality of laws responsive to the transformations undergoing in the country will be ensured through effective functioning of the institutes of government, as well as through assurance of constructive and dynamic interaction between legislative and executive branches of power.

Therefore there is a need for a unified legal policy based on the current trends in societal development, on acquired experience and scientifically proven fundamental views of short-term and long-term perspectives in the development of Kazakhstani state and society.

2. Main directions in the development of the national legislation

It is important to continue the implementation of legal ideas and principles of the Constitution of the Republic of Kazakhstan, which should manifest themselves in legislative, organizational, and other measures of the state.

The efforts of governmental and non-governmental institutions should be centered on the realization of constructive potential of the country's Basic Law, which is present in all constitutional provisions. Throughout the process of legislative reforms and in the course of law enforcement activities it is necessary to consistently follow the principles of the supremacy of the Constitution and the accordance of secondary legislations with the provisions of primary legislation.

Systemic measures are required to establish the rule of law and legal stability in the country, as well as to assist the gradual development of national legislation in the framework of current Constitution. Comprehensive approach to legal policy will allow for modernization of the entire legislative base in the context of general state development strategy. This will include the establishment of a brand new model of state governance based on the principles of effectiveness and accountability, ensuring protection of human rights and freedoms, as well as protection of interests of the state and the society.

2.1. Constitutional law

Constitutional law serves the foundation for the national system of legislation. Its progressive development is based on the principles and norms of the existing Constitution of Kazakhstan, which was significantly improved as a result of the constitutional reform that took place in 2007.

Ideas and principles anchored in the Constitution set long-term directions and mechanisms for development of the national legal system, including the constitutional law. Therefore the primary goal is to implement the principles and provisions of the Constitution in the activities of state bodies and its officials, ensuring direct effect of the Constitution, as well as realization of its potential through the current legislation and law enforcement practice.

Observance and implementation of fundamental principles of country's development proclaimed in the Constitution (such as social harmony and political stability, economic development for the benefit of entire nation, Kazakhstani patriotism, resolution of the most important political issues using democratic methods) will allow ensuring sustainable socio-economic and political-legal development of the country.

Foundations of the constitutional order of the Republic of Kazakhstan, sovereignty and unity of the state will be strengthened through improvement of constitutional law and its enforcement practices. Progressive development of constitutional law is related to improvement of current constitutional laws determining the structure of governance, the unity of state power, the mechanisms of functioning of its branches and their interaction and inter-relation guided by strategic leadership, control, and arbitrage by publicly elected President of the Republic of Kazakhstan.

Increasing the effectiveness of the activities of Constitutional Council and comprehensive practical implementation of its regulatory provisions in country's legal policy is one of the most important mechanisms in maintaining the climate of constitutional order and rule of law, setting directions for development of national legislation and law enforcement practice.

In the process of further establishment of principles of state governed by the rule of law, on one hand, it is necessary to strive for ensuring the exercise of constitutional rights and freedoms of citizens, and, on the other hand, to guarantee unconditional and comprehensive implementation of constitutional liabilities by all state bodies, public officials, citizens, and organizations.

To secure the exercise of human rights and freedoms it is of outmost importance to create necessary conditions guaranteeing the equality of rights and freedoms regardless of origin, social, professional, or financial status, gender, race, ethnicity, language, religious affiliation, beliefs, place of residence or any other circumstances, as envisaged in our Constitution.

Within this context there will be an increase in the role of legal mechanisms designed to maintain and support interethnic concord, to ensure unity of multinational people of Kazakhstan.

Kazakhstan is a secular state enjoying inter-confessional peace and harmony, where rights of believers and non-believers are equally respected and observed. The state does not interfere into the area of religious activity, though it should secure relevant interaction with existing confessions and protect the right of citizens to freedom of religion. This requires establishment of effective state policy in this sphere.

Legal system requires further improvement, observance and unified implementation of legislation on freedom of religion and belief, especially in regards to regulation of missionary activity, distribution of religious materials, and registration of religious associations. In present conditions an increased role will be played by the observance of gender equality in public and social life, as well as ensuring of equal rights and opportunities for men and women.

Consistent and sustainable development of Kazakhstan as a dynamic, modern country with high living standards are only possible on the basis of promotion of human potential, growth of entrepreneurship, and capacity building of civil society institutions.

In this connection the state system requires legal instruments giving additional stimuli to the development of civil society institutions and to the possibility of implementation of civil initiatives. It is necessary to increase the status of non-governmental organizations; mechanisms of legal regulation should consider the specifics of activities of non-governmental organizations, as well as be supplemented by governmental support of public associations.

It is also necessary to improve the system of regulation pertaining to the area of information. In general this area and the mechanisms of its legal regulation should be aimed at promotion of freedom of speech, free acquisition and distribution of information using any mean not forbidden by law, with due consideration of constitutional rights for inviolability of private life,

family secret, secrecy of correspondence, telephone communications and other messages, as well as the observance of legal requirement towards state secrets.

Development of civil initiatives is closely related to the issues of local governance. This institution placed at the junction of state and civil society also required support and development. In particular, given the acquired experience it is important not only to distinguish between state government and local governance, but also actively involve the bodies of local self-governance to participation in the execution of state functions that have local significance. In order to establish an effective system of state governance and local self-governance this work should be carried out simultaneously with further delimitation of spheres of activity, functions and responsibilities among different levels of state power.

2.2. Development of the system of public administration in Kazakhstan is inseparably linked to the legislative support of administrative reform aimed at establishment of effective and compact state apparatus, introduction of new administration techniques, as well as improvement of administrative procedures. They do belong to the branch of law called administrative law, which bears a purpose of ensuring effective functioning of the governmental apparatus at all levels of state power. In this connection administrative law should be targeted at the following: improvement of rational and clear authority distribution among state bodies; in the conditions of market economy the prevention of excessive state regulation of economical sector, including its control and review functions; regulation of conditions and procedures for the exercise of state functions by bodies and structures belonging to the executive branch of power; support and organization of interaction between the system of public administration and individual citizens and entities.

At the same time in current conditions of the increased role of state regulation of the economy it is necessary to consider expanding the scope of application of administrative law and extending its regulative potential towards new public relations.

Further developing the administrative law it is necessary, where possible, to move away from existing traditional approaches to relations between the state, its citizens, and non-governmental organizations, based on single-power principles. It is impossible to refuse completely from the principles of "power and subordination". However, it is necessary to extend the area of application of partnership, cooperative, functional, and purely protective principles.

In this regard it is of outmost important to continue the work on simplification of registration and licensing procedures, establishment of barriers for unlawful interference of state bodies into activities of business and non-business structures. It is necessary to further develop the mechanisms of citizens' communications to state bodies and state officials, as a form of their participation in state governance and as means of protection of their rights and freedoms. This includes the sector of public services provided by the state through *e-government*.

At the same time it is required to regulate the relationships arising from citizens' communications with non-governmental organizations on the issue of protection of their rights and legitimate interests, including the observance of terms for consideration and establishment of liability of organizations and their officials for consideration of appeals from individual consumers of their services.

Therefore in the current conditions administrative law not only embraces the sphere of state and power relationships. Administrative law also covers the relationships between state structures and individual citizens or entities at the provision of public, i.e. state services. Legal nature of state/public services differs from regular state functions, which was mentioned in the relevant decision of the Constitutional Council.

In fact it is a whole new institution of administrative law, regulating relations arising from the provision of public services to individual citizens and entities. Successful functioning of this institution requires relevant legislative base. Comprehensive implementation of public service standards will require adequate legal and administrative regulation. It is necessary to enhance the list of available public services, to introduce effective external controls over their provision using latest technologies.

Development of administrative law should be viewed not only from the point of view of traditional vertical relations of power and subordination, but also from the angle of social interests, which are oftentimes varied. Administrative law helps individual citizens and legal entities to exercise their rights guaranteed by the state, since the observance and protection of these interests is a public interest of the state.

The subjects of administrative law (state bodies and state officials, bodies of local self-governance) are the carriers of public interest, whose goal is to protect and ensure the implementation of rights and legitimate interests of individual citizens and legal entities. In other words, observance and protection of rights and legitimate interests of individual citizens and legal entities taken to the level of public interest, is in itself the modern content of human right function of administrative law.

In current circumstances, conditioned by multiple complication of public life, we often observe complex relations, which required resolution of issues related to the scope of application of administrative law, its relations with other branches of law, in particular between administrative and civil law in the occurrence of mixed (administrative-civil) legal relationships.

Review and control exercised by the state bodies, being one of the functions of public administration, in one hand, and methods of ensuring observance of law, on another hand, are both urgent issues in administrative law.

Relevant resolution of the Constitutional Council cleared the issue of correlation between control functions and oversight authority of state bodies. It was corroborated that our country had no constitutional limitations regarding entitling state bodies, within the scope of their authority, with control and oversight functions. Therefore the oversight and review functions can be entrusted other state bodies, not only the Prosecutor's Office.

Therefore, the prosecutor's oversight is equally lawful and legal as the administrative oversight, executed by the authorized executive officials towards non-subordinate subjects, such as individual citizens and organizations, with a view to ensure compliance with legislation in those areas of activity that are regulated by administrative law, using legally envisaged means of administrative enforcement. That is the task of administrative supervision is to support strict observance of the rights and lawful interests of citizens and organizations ensuring compliance with the administrative law.

Potential directions for improving state control and supervision are as follows: optimization of state monitoring and oversight; streamlining and reducing control and oversight not only over entrepreneurs, but also over other entities; increasing legal regulation of administrative and supervisory activities.

The subject of regulation of administrative law is the relations arising in the sphere of public service. Priority directions of its development would include: a clear distinction between political and administrative civil service; formation of new and upgrading existing institutions; human resource management in public service sector; introducing new methods of selection for civil service based on professional and personal characteristics; introduction of new principles of compensation and motivation; introduction of modern results-oriented systems for evaluation of public servants.

An important part of administrative law is the tort law, and the prospects of its improvement are linked to renewal of legislation on administrative violations. The legislation on administrative violations, on another hand, should be based on the recognition direct effect of constitutional norms on human rights and freedoms. These norms should be considered as having direct action, defining the meaning, content, and application of laws.

Legislation on administrative violations shall be directed to restoration of violated rights, prevention of legal conflicts in society using administrative and legal measures. Thus the formation of legal and administrative sanctions should proceed in strict observance of the principle of proportionality, the degree of public danger and nature of the offense.

It is necessary to develop a clear concept of separation of powers between the court and extra-judicial bodies to hear cases on administrative offenses: that is, the relationship between judicial and extra-judicial review of administrative cases. Remaining urgent is the issue on the possibility of expanding the powers of courts to impose administrative penalties, as well as the development of the adversarial principle in administrative proceedings.

The following issues are topical for administrative and tort law: clearly defining the circle of relationships regulated by tort law, and, accordingly, setting clearer distinction between administrative law and criminal law sanctions.

Another important direction is the development of administrative-procedural law, where the highest possible goal to achieve would be the adoption of Administrative Procedural Code. Here it is very important to clearly define the subject of regulation of administrative-procedural legislation. In this context still topical are the issues of legislative regulation of procedure for resolving cases on administrative violations.

Also in the context of improvement of administrative and procedural law it is necessary to consider the issue of administrative justice, resolving disputes about the rights arising from publicly-legal relations between state and citizen (or organization). This means that it is urgent to consider the possibility of procedurally isolating and legitimating the procedures for resolving disputes of publicly-legal nature.

Therefore, administrative proceedings should become a full-fledged form of the administration of justice, along with criminal and civil proceedings.

2.3. Tax law requires further improvement. Well-developed and clear tax law is one of the most important conditions assisting to the formation of favorable investment climate, to attracting local and foreign investments. In this connection the tax law should be directly related to the country's industrial and innovative strategy: it should help our country develop manufactures and introduce new technologies.

Reduction of tax burden is a global trend. In the improvement of tax law it is expedient to consider progressive foreign experience, which is based on the following generally accepted principles of taxation: taxes should minimal; expenses related to collection of taxes should be minimal, too; taxes should not prevent or hinder competition; taxes should correspond with the structural policy of the state in the sector of economics; taxes should be aimed at fair distribution of revenues; taxation system should avoid and exclude double taxation.

Consideration should be given to the possibility of introducing the institute of the consolidated taxation when one or more taxes paid by “parent” company on behalf of a group of interconnected companies, and such a group of related companies is considered as a single taxpayer under this tax.

Further work is needed to simplify tax reporting, to reform certain types of taxes, to provide tax incentives for certain categories of taxpayers. Customs legislation should evolve in the direction of simplification and harmonization of customs procedures in order to eliminate discrepancies in customs rules and procedures that may hinder the development of international trade and exchange, and reduce international cooperation.

It is important to continuously improve and enhance the efficiency of customs rules and procedures to reduce unnecessary administrative barriers; ensure predictability, consistency and transparency in the application of customs rules and procedures; provide all necessary information to the interested parties; apply modern methods of customs administration, such as control based on risk management and audit techniques; use information technologies as much as possible; and implement international standards related to customs.

One of important tasks of a national legislation is to ensure the modernization of public financial controls, because state control in the finance sector is one of the most effective tools to ensure the effectiveness of state assets management, and state financial resources in particular. At that it is necessary to reinforce legal, especially procedural foundations for the activities of state bodies of financial control.

Effective public policy in the area of natural monopolies and regulated markets is largely dependent on the regulatory framework, which should be aimed at promoting financial and economic activities of regulated subjects of natural monopolies, the creation of conditions for increased capital investments in assets of such entities, and also should be aimed at motivating them to increase productivity and reduce costs, improve quality of services.

We should also improve the legal foundations defining the framework of state regulation and control over the activities referred to a state monopoly, as well as the foundations of state protection and support of fair competition.

2.4. The Civil Law of Kazakhstan has passed several stages of development. The current Civil Code, as the largest Code in the Republic, had absorbed the ideas of modern civil law. The Code laid down the basic principles of regulation of commodity-monetary relations: the equality of ownership and its inviolability, freedom of contract, equality of parties of civil relations. On the basis of the Civil Code, was formed the basic package of laws that have created the conditions for the development of a market economy.

At the current stage of development of civil law the primary role is played by the issue of relationship between state and private methods of regulation of public relations, and, therefore, the restrictions on state interference into private sector activities.

It is necessary to optimize the relationships between civil law and other branches of law in the light of public and private interests, having firmly determined that the relations that affect national security issues are within the scope of public relations and cannot be governed by the instruments of contract law.

Consideration should be given to continuing the work on expanding the application of the principle of discretionary, meaning the opportunity of persons involved in any transaction to exercise their material procedural rights at their own discretion. Application of the principle of discretionary should not apply to civil relations involving public interests.

Consideration is required for the question of the statutory definition of the concepts of «waiving a right» and «waiving the exercise of a right», and the consequences of each type of waiver. This is important to address the issues of civil law.

One of the pressing problems is the legal significance of concerted action by participants of business activities that affect public interests or the interests of third persons that are not involved directly in such activities.

It is important to define the general concept of affiliated transactions, while stressing that they are not prohibited, but in cases prescribed by law shall be subject to screening. Establishing the fact of affiliation should be the basis for the possibility to declare any transaction null and void at the request of a person whose legitimate interests were violated by such transaction.

Consideration should be given to the issues of status of joint-stock companies, taking into account their legal nature and complexity of issues to be resolved, including the issue of so-called “public corporations”. It is necessary to resolve the issue regarding the possibility of using a legal form of joint-stock company as a non-commercial organization.

We also need to consider the issue of listing the full spectrum of financial securities used in the Civil Code.

The practice of civil law shows a lack of completeness of the definition of composite types of damages caused by violation of civil rights. In this regard, it is urgent to define procedures for determining the real damage.

It is necessary to improve the system and mechanisms for voiding certain transactions. It is important to conceptualize the applicability of bilateral restitution in case of void transaction, if the buyer side of transaction is acting in good will, and may not be liable for returning the object of transaction in certain legally defined cases.

Thus, there is a need to clarify the concept of transactions, their composition and the consequences of default transactions. The methods of civil law should ensure the balance of interests of the owner of property that has lost the right to property because of wrongful acts of third parties, and a bona fide purchaser. Practice shows the need for a legislative expansion of types of property rights, while incorporating the concept of easement.

It is also necessary to consider expanding the grounds of property rights. This requires not only clarification of property rights, but also the application mode of their individual types.

Further elaboration is required regards the issues of state participation in civil relations and waiving immunity in the area of private relations, while maintaining state immunity in the exercise of public functions, which corresponds to international requirements.

With a view to give stimuli to entrepreneurial and business activity it is necessary to consider the expediency of introduction of agents as subjects of civil law, and to regulate the issues of agent agreement. It is important to take relevant measures to improve general and specialized provisions on liabilities of the Civil Code. We need to pay close attention to bringing provisions on intellectual property in accordance with international standards in this area, with due consideration of national interests.

Legal regulation is required in the sphere of bankruptcy procedures, in particular the bankruptcy of private entrepreneurs.

2.5. Financial legislation should provide an enabling environment for the development and functioning of the national financial market and protect the rights of consumers of financial services, and promote the creation of equal opportunities for the activities of financial institutions, as well as support fair competition in the financial market. However, given the trends in both global and domestic economy, the priorities of financial legislation should be linked with the improvement of the oversight process, based on monitoring the financial soundness of banks, assessing the potential risks of creating a flexible regulatory regime, promptly responding to problematic issues in banking, as well as bringing the oversight system as close as possible to the international standards.

Legal regulation of financial securities market will be aimed at further development and increasing competitiveness of the national securities market, creating favorable conditions for its stakeholders, increasing the number of issuers and expanding the list of financial instruments, developing investor base and protecting the interests of investors. In order to assist the development of collective investment schemes, while protecting the rights and legitimate interests of holders of shares of investment funds, it is necessary to improve legislation regulating the activities of investment funds.

Another important aspect of the securities market development and protection of rights and legitimate interests of investors is to create a stable and transparent functioning of the organized market of securities. The legislation is designed to provide favorable conditions for the functioning and development of domestic financial markets, protect the rights of consumers of financial services and to promote fair competition in financial market.

A modern system of mandatory and voluntary insurance has been formed in our country; a full-fledged insurance services market has been established. Nevertheless the universal context of development of this market requires adequate legal responses to it at the national level, considering the existing international insurance systems and domestic law enforcement practice. In the framework of resolving legal issues pertaining to insurance sector and in light of rapid development of e-commerce, there is a need to develop Internet-insurance and provide for its legal regulation.

Valuation activities also represent an important tool in the market economy, and its legal regulation also requires constant attention and improvement. In this context, it is necessary to introduce a set of organizational and legal measures aimed at: setting the state standards of valuation; adapting valuation activities in line with international standards; improving the system of state regulation and self-regulation of valuation activities.

2.6. Social rights and policy

The Constitution of Kazakhstan establishes basic social rights and principles for development of a social state. In this connection one of the main objectives is to further develop effective mechanisms for ensuring social rights and implementing an up-to-date social policy.

Social legal policy of the state, being of a complex and multi-branch nature, is aimed at resolving the entire spectrum of socially significant issues. These issues include, but not limited to the legal regulation of education and healthcare systems, ensuring employment and social security of population, protection of environment and prevention of emergencies.

In the conditions of market economy, the availability of labor market and employment problems are topical issues of labor relations. In this context, there is a need for continuous improvement of labor laws through systematic analysis its application practice and with due consideration of international experience in this field.

Further elaboration is required in the issues of differentiation between labor and social legislation, depending on the nature of work and working conditions of employees, as well as broadening the scope and instruments of social partnership.

Social legislation should be flexible considering the dynamics of priorities in the state social policy, expansion of the list of social benefits provided by the state, creation of new forms of citizen participation in defining sources of funds directed at social work. The level of social protection and social security will be systematically corrected depending on the growth of financial capacities of the state, which entails continuous legislative process in this sphere.

Some of potential directions of development of social legislation are the following: the use of existing and creation of new secure financial instruments that are used for investing retirement funds; improvement of social security system for certain categories of citizens, including persons who use welfare payments as the only source of income.

Some regions of Kazakhstan experience certain environmental problems, so the development and further improvement of environmental legislation is quite urgent, in particular in light of its harmonization with international standards and commitments.

In order to increase the effectiveness of activities on environmental protection it is necessary to set clear distinction between the mechanisms of legal regulation of the use of natural resources, and the protection of those resources. Legislation on environmental protection should stimulate rational use of nature and observance of ecological requirements, development of ecologically friendly enterprises and promote ecologically friendly behaviors and attitudes of citizens.

Improvement and consolidation is required by numerous normative acts regulating relations in the area of natural and human-born disasters, fire and industrial safety, civil defense, which will allow increasing the level of legal regulation of public relations in these areas.

2.7. Civil Procedural Law is intended to provide access to justice, to ensure maximum exercise of the rights of parties to civil proceedings, to support timely protection and restoration of violated rights and freedoms of the individual, as well as the interests of society and the state.

With these goals in mind, the measures to improve civil procedural law could be directed at the following:

- 1) Identification of ways and means to ensure access of justice, providing citizens with opportunity to fully exercise their right to protection by court;
- 2) Regulatory and legal consolidation of the principles of fairness, impartiality; expansion of the principles of competition, as well as restoration of the principle of continuity of civil proceedings;
- 3) Definition of jurisdiction of cases to specialized courts on the basis of transition from a purely subjective definition of the principle of jurisdiction to the subjective-objective basis, that is, with due consideration of categories of parties involved in proceedings, depending on the nature of the relationships;
- 4) Further expansion of the simplified procedure for civil proceedings, as well as facilitation of court proceedings on cases under the jurisdiction of specialized courts;
- 5) Optimization of stage of case preparation for court hearing, with the purpose of rapid consideration and resolution of civil cases;
- 6) Providing the courts of appeal with the authority to issue new decisions on cases (re-consideration of cases) for the purpose of accelerating the issuance of final decision, and in order to ensure the exercise of right to appeal;
- 7) Reduction and elimination of excessive formal nature of court proceedings on civil cases, in particular in regards to types, structure, and content of decisions made;
- 8) Introduction of a variety of ways and means to reach a compromise between the parties to private law conflict (mediation and other) in both judicial and extrajudicial procedures, including mandatory discussion of the possibility of using measures of reconciliation procedures in preparing cases for trial, as well as development of extrajudicial forms of protection of civil rights.

2.8. Criminal law and policy

Criminal policy is the most important component of the legal policy of the state. Improvements and developments in criminal policy are introduced through a complex, coherent correction of criminal, criminal procedural and criminal executive legislation, as well as law enforcement practice.

Assessing the current condition of criminal law we can see that on overall it was given a gradual development and improvement. The present Criminal Code is a quite effective tool in combating crime and protecting rights and freedoms of citizens, as well as interests of society and the state.

Further development of criminal law, as previously, should be carried out considering double-target nature of criminal policy. Humanization should mainly apply to first time offenders that committed minor and medium gravity offences, as well as to socially vulnerable groups, such as pregnant women and single women with dependent children, minors, or elderly people. At the same time it is necessary to implement strict criminal policy towards the people who committed especially grave crimes, who hide to avoid criminal proceedings, as well as those who committed crimes repeatedly.

The most important direction in the development of criminal law is to determine the possibility of gradually reducing the scope of the criminal repression by enhancing the conditions of release from criminal punishment, especially in relation to

persons who do not pose a great danger to society (minors, persons who have committed crimes through negligence, to other persons - in the presence of mitigating circumstances).

Another important aspect is bringing the criminal law in accordance with international treaties ratified by Kazakhstan. In particular, this concerns not only de-criminalization, but also the actual criminalization of certain types of offences, as well as the introduction of criminal liability of legal entities for certain categories of crimes, including ecological, economic, and corruption-related crimes.

Therefore the state criminal policy should be aimed at the following: further de-criminalization of offences that do not pose substantial public threat, transferring them to the category of administrative offences; re-assessment of the degree of gravity of certain offences by reducing punishments (de-penalization); introducing greater criminal liability for crimes committed against minors, their rights and legitimate interests, as well as for crimes committed in an organized criminal group or criminal association, with recidivism; increasing the scope of application of punishments not related to the deprivation of liberty, including abolishment of deprivation of liberty as punishment for certain offences, or reduction of maximal terms of imprisonment; establishing fines as one of effective methods of criminal punishments, and expanding the scope of its implementation; establishing the proportionality of punishments in the sanctions of the Criminal Code assigned to one category of severity, and their compliance with the principle of fair punishment; introduction of alternative criminal punishment measures; continuing the gradual decrease of the scope of application of death penalty; improving the institutions for exemption from criminal liability, punishment, parole, and imprisonment.

Further improvement of the criminal law is linked to improvement of the quality of legislation: a law restricting constitutional rights and freedoms must comply with the principles of legal certainty and predictability of consequences, that is, its rules must be formulated with sufficient clarity and based on clear criteria to precisely distinguish between legitimate and wrongful conduct, excluding the possibility of arbitrary interpretation of law.

2.9. Model of criminal proceedings

Effective criminal policy of the state cannot survive without an optimal model of criminal proceedings. That is why, speaking of perspectives of development of criminal procedural law, it is necessary to stress that the existing Criminal Procedural Code of the Republic on overall brought the system of criminal justice in accordance with the characteristics of a modern democratic state based on the principles of rule of law. The main objective of legislator was to form a criminal procedural law, based on the recognition of the fact that constitutional rights and freedoms of individual are in force; that they define meaning, content, and application of laws, protected by the system of justice.

That is why the priority in the development of criminal procedural law remains with further step-by-step implementation of the basic principles of criminal justice proceedings, aimed at protection of human rights and freedoms.

This requires development of optimal legal mechanisms envisaging effective enforcement of criminal procedural law and legislation on investigatory activities, which will assist in prompt and complete investigation and resolution of cases, identification of offenders and bringing them to justice, fair trials and adequate application of criminal law.

The legally established procedure in criminal cases must rigorously ensure protection from unwarranted prosecution and conviction, from unlawful restriction of rights and freedoms. In case of fraudulent charges or conviction of an innocent person the legally established procedure should ensure immediate and complete rehabilitation of an innocent person, as well as it should strengthen the rule of law, assist in prevention of crimes, and promote the respect for law.

An important task is the strict adherence to the rule of law, human rights and freedoms of citizens in the implementation of investigatory activities. It is necessary to strengthen the safeguards of rights and freedoms of citizens, ensure inviolability of private life, and establish liability for unlawful use of investigatory tools and methods.

It is necessary to take relevant measures to further develop the principle of equality of arms of defense and prosecution in the criminal proceedings. Thus, the main areas for improvement of criminal procedure are as follows: simplifying and improving the effectiveness of criminal proceedings, including the facilitation of pre-trial proceedings; setting legislative norms to regulate the process of investigation, defining of its limits and restrictions; creating conditions for increased use of preventive measures besides the arrest, including a pledge; gradual introduction of new institutions of restorative justice based on reconciliation and reparation of harm caused; possibility of expanding the categories of criminal cases in which the prosecution and the prosecution in court can be carried out following a private or public-private procedure; gradual increase of criminal cases considered by the jury; further improvement of mechanisms to provide competent legal assistance on criminal matters not only to the accused and suspects, but also to victims and witnesses.

2.10. Correctional system

This sphere requires the implementation of the following set of measures. In order to minimize the involvement of citizens in the sphere of criminal justice and to limit the measures of criminal repression it is necessary to create conditions for wider application of correctional measures other than isolation from society. Legislation and judicial practice should be

supplemented with approaches where the selection of type and kind of correctional measure would be based primarily on the anticipated effect on a specific offender.

At the same time in order to apply correctional measures other than imprisonment, it is necessary to improve the effectiveness of enforcement of such measures, which requires institutional development of a specialized body responsible for enforcing such correctional measures.

Given that the deprivation of liberty is still the main type of criminal punishment, it is necessary to take measures that increase the educational component of the deprivation of liberty. In particular, it is necessary to further develop the content, forms and methods of correctional impact on the convicts based on the principle of individualization of punishment.

It is still urgent to resolve the issue of employment of convicts: they can be involved in socially beneficial work/studies, social reconciliation programs, including substance and alcohol abuse rehabilitation programs, or other forms of social activities. In addition to maintaining and ensuring high standards of discipline and order in the correctional system, it is necessary to strengthen the measures on psychological and educational support of correctional process (imprisonment), to advance and promote socio-legal protection of the correctional system.

In addition to that it is important to ensure personal safety in places of detention, and to guarantee the observance of rights and lawful interests of persons who are serving this type of punishment. Among the most promising directions in this field are the following: gradual transition to the individual cell system of imprisonment, when the convict has a possibility to move and socialize with other convicts during the daytime, while being isolated in his individual cell at night.

Established mechanisms of public oversight help maintain the balance between the interest of society and the state in relation to the punishment of offenders and observance of their rights and legitimate interests during the term of imprisonment. Special attention should be paid to the development of such public oversight mechanisms.

It is also necessary to increase the quality of healthcare in prisons, in particular the system of prevention of diseases among persons serving criminal sentences.

Systemic measures are required to ensure targeted state policy in the sphere of re-socialization of citizens that served various terms of imprisonment, as they are members of society enjoying equal rights and opportunities.

On overall the penal-correctional system should be further brought in accordance with the generally accepted international standards.

3. Main directions in the development of law enforcement, judiciary, and human rights institutions

3.1. Law enforcement system

During the years of independence of Kazakhstan there was formed a law enforcement system responding to the needs of democratic state governed by the rule of law.

At the same time the law enforcement activities of the state do require further development and improvement. In this regard the following should become headlining directions of activity in this area: combating crime, ensuring observance of law and public security; protecting rights and freedoms of citizens; ensuring swift and mandatory response of the state to any violations; prompt and complete investigation of crimes; identification and prosecution of violators, bringing them to justice; prevention of crimes; cooperation with general public in combating crime.

In order to achieve these goals it is important not only to enhance the capacity of law enforcement bodies, to improve forms and methods of their work, but also to ensure stability of staffing, increase the requirement to qualifications and discipline of law enforcement personnel.

Agencies of prosecution are the core of law enforcement system. It is necessary to increase the efficiency of oversight activities of the prosecutor's offices, being its major junction. Further improvement is also required by procedural foundations of activities of the bodies of prosecution. In the framework of this work it is necessary to increase the role and responsibility of prosecutors in pre-trial proceedings. This shall include the investigation of crimes representing special public threat and complexity by prosecutor's offices, as a component of criminal prosecution functions normally carried by prosecutor's office.

It is necessary to further increase the effectiveness of coordinative function of prosecutor's office in relation to law enforcement activities, including through relevant legal regulation of this function.

Agencies of internal affairs carry the following primary objectives: protection of public order and ensuring public security; combating crimes against human beings, property, and other general crimes. Effective activities of bodies of internal affairs play a great role in determining security and safety of citizens, the crime rate in the country. That is why the process of improvement of law enforcement bodies should be targeted at rapid and adequate responses to criminal acts and prevention of crimes.

Agencies of financial police, carrying the entrusted tasks on combating economic crimes and corruption, have fully justified their purpose and existence. However, in the conditions of market economy, financial police authorities need to constantly improve the forms and methods of their work to be able to effectively combat corruption and economic crimes. Financial police needs to systematically confront the economic and corruption offenses, identify and address the causes and conditions conducive to the emergence of corruption. One of the main goals of financial police is ensuring security of business activity, prevention unreasonable interference into business operations.

It is necessary to optimize the structure and functions of law enforcement bodies in order to establish more effective organizational and management mechanisms and effective distribution of the respective roles. In this regard the issue of liberating law enforcement bodies from carrying functions not specific to their area of work still remains urgent. At the same time during the administrative reforms it is important to consider the peculiarities and specifics of law enforcement activities, so that the measures undertaken neither reduce their law enforcement capacity, nor their capacity to combat crime.

Law enforcement officers need to have uniform legal standards and standards of service, including special qualifications similar to the qualification requirements in the categories of administrative positions in government; it is required to introduce a competitive procedure for recruitment to law enforcement agencies.

At the same time we should gradually take efforts towards demilitarization of the law enforcement bodies with preservation of military and special ranks for military and law enforcement officials performing basic tasks and functions assigned to these bodies.

In order to ensure effective activity of law enforcement bodies it is necessary to define clear criteria for assessment of their activity, not only using quantitative, but also qualitative parameters.

It is important to continuously work on improvement of effectiveness and organization of investigatory activity, including measures aimed at increasing the procedural status of an investigator.

It is required to improve the procedure for allocation of authorities and appraisal of district inspectors of police, taking into account the opinions of general public.

It is also necessary to continue the work on timely introduction and correct application of law, aimed at ensuring national security, including the prevention and suppression of terrorism, ethnic and religious extremism, illegal migration, drug abuse and trafficking, human trafficking, cyber crime, illicit manufacturing and selling of firearms, international crimes of corruption, as well as crimes related to money laundering.

An important task of law is to define the foundations of the national system of information protection, the main threats in this area, mechanisms for implementing a unified state policy in the sphere of information security.

3.2. The judiciary system of Kazakhstan on overall satisfies the needs of ensuring effective judicial protection of citizens' rights and freedoms, as well as legally protected interests of organizations and the state. Development of the judicial system will be based on continuity and gradualism, and is expected in the following areas. The main thrust of its development is the specialization of courts and judges, including the development of juvenile courts, the creation of specialized courts to hear criminal cases in the future, the formation of tax court and other specialized courts. In this regard juvenile courts should be a focal point created by country's juvenile justice system.

In the future it is necessary to establish the system of administrative justice on the basis of existing administrative courts. The system of administrative justice would deal with public disputes, transferring cases on administrative offences to the jurisdiction of general courts.

Improvement of the judicial system should result in elimination of duplication of functions carried by different courts. Prospects for the development of judicial system are also linked to the possibility of a phased expansion of the scope of judicial review in pre-trial proceedings.

The system of arbitration and courts of arbitration shall be further developed. The society is interested in a complete, objective and impartial coverage of the judicial power activities. For these purposes it is necessary to raise the level of openness and transparency of the judicial system, in particular by providing greater access to information on the activities of the courts.

Introduction of modern ways of judicial information recording will assist to implementation of adversarial principle in administration of justice. Gradually implemented computerization of the judicial system will provide for prompt availability of information and legal support to administration of justice, reduce the duration of court hearings, and increase the effectiveness of enforcement of court decisions.

Measures are needed to further improve the process of selection of judges. High urgency is attached to the issue of increasing the qualification requirements to proposed judges, because the professionalism and moral qualities of judges are the foundations of the formation of highly qualified and experienced judiciary.

It is also necessary to ensure strict control of the judiciary over the compliance of judges with the Code of Judicial Ethics, as well as adequate and prompt response to all the committed violations.

In order to strengthen the guarantees of judicial independence there remains a crucial issue of full implementation of the requirements of the Constitution that the financing of courts and provision of housing to judges «shall ensure full and independent administration of justice», which implies a gradual increase in levels of social protection of judges and technical supply of courts, taking into account the financial capacity of the state.

At the same time the legally established liability should be carried by those violators who interfere in the process of administration of justice, or by those who express disrespect towards the court.

The final stage of the proceedings is the enforcement of judicial acts, so we must take measures to ensure their strict enforcement. In this regard, the introduction of private marshals of the court, along with state judicial enforcement, would be a significant improvement in judicial proceedings.

There should be strict enforcement of judicial acts, including by strengthening the responsibility for failing to execute court decisions, further expanding the application of restrictive measures against debtors, increasing procedural judicial review of enforcement proceedings.

3.3. Human rights institutions

Development of state governed by the rule of law in Kazakhstan requires further improvement of specialized institutions working on protection of human rights and freedoms.

The Institute of Ombudsman for Protection of Human Rights has become an important mechanism in the system of protection of human rights and freedoms. Establishment of this governmental human rights institution was an important step in further development of democracy in Kazakhstan. Experience has demonstrated that it is necessary to look into the possibility to increase the effectiveness of this institute.

The Bar plays a leading role in the system of human rights protection institutes, since it is the core in provision of legal assistance. Exercise of the constitutional right of access to competent legal assistance is a pre-condition and a safeguard of access of justice. The mechanisms for exercising this right do require further improvement and development.

Introduction of the system of jury and habeas corpus had positive impact on the role of the Bar. However the procedural rights of lawyers as active participants of any criminal proceedings still require effective legal mechanisms of implementation.

The system of provision of legal assistance itself requires improvement. First of all it is necessary to improve the system of provision of legal assistance to low income groups. We should also gradually resolve the issue of uneven availability of legal services in urban and rural areas.

Corrections are also required in the system of administration of payroll to lawyers that provide free legal assistance. This system needs to be made consolidated and transparent, which will allow for more effective use of budgetary funds.

Considering the positive experience of countries that introduced mandatory lawyer liability insurance, it is necessary to review the possibility of introducing such system in our country.

One of important goals is the improvement of notary system. It is required to determine the role of the notary as part of legal infrastructure ensuing additional stability and legal security, quality protection of rights and legitimate interests of individuals and organizations. The national model of notary system should provide for accessibility and availability of notary assistance throughout the country.

4. Legislative support of foreign political and economic affairs

In the conditions of globalization the legal policy of the state has an increasing international legal aspect. In this connection the legislative support of foreign political and economic affairs is one of the most important directions of this policy.

Such an activity, aimed at protection of long-term national interests in foreign affairs, as well as the assurance of mutually beneficial cooperation on international arena in bilateral or multilateral formats, requires adequate international legal regulation.

It is necessary to continue the work on bringing the national legislation in compliance with the adopted international commitments and international standards. In this work it is primarily important to be guided by the internal needs and priorities in our country's development.

Achievement of set objectives in the country's foreign policy requires well-balanced and adjusted approach to the conclusion of international treaties and to the participation in the activities of international organizations, which must be preceded by rigorous work on forecasting of socio-economic, political, legal, and other consequences.

International legal institutions and organizations should be actively utilized for ensuring the consideration of Kazakhstani interests on international arena, including for the purpose of development of secure and stable Central Asia, for increasing investment appeal of the region.

5. Legal education and legal advocacy

An important component of legal policy is legal regulation of scientific and educational activities, which serves as predetermining condition for assurance of country's innovative and industrial development, enhancement of its intellectual capacities.

On the other hand an important component of scientific and educational activity is the legal education and legal advocacy, the issues related to legal awareness. In this connection it is necessary to continue the work on enhancement of legal awareness of population, including legal awareness among state officials. It is important to expand the volumes of legal awareness raising campaigns among population through mass media, including the Internet; to support scientific and academic research into the urgent issues in legislative and law enforcement process, especially in those branches of law that have greater demand in daily life of citizens.

One of the issues that are closely related to the activities of the legal nature, are matters of legal education. Society and the state needs the legal professionals of the new formation, who are patriotic and focused on protecting the rights and freedoms of man and citizen, as well as interests of society and the state. This approach should be the foundation of legal education system.

It is advisable to follow the path of consolidation capabilities of the state to address the issues of training of legal personnel in modern conditions. Such an approach would avoid the fragmentation of public resources and improve the quality of judicial training.

7. Conclusion

Implementation of the provisions of the Concept of Legal Policy will allow putting into practice the main ideas and principles of the Constitution in the context of new phase in development of rule of law in Kazakhstan.

Effectiveness in the execution of this Concept and therefore stability of the national legislation and overall impact from legal regulation all depend on constructive interaction between the branches of power, as well as on the quality of decisions made by state bodies and state officials.

Comprehensive improvement of Kazakhstani legislation and its effective enforcement in accordance with the main directions of legal policy established by this Concept will be conducive to further reinforcement of the rule of law, observance of constitutional human rights and freedoms, assurance of sustainable social and economical development of our country, as well as to strengthening of Kazakhstani nationhood.