About the Need of Libel and Slander Liberalization in
The Legislation of the Republic of Kazakhstan

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Abstract: The article reveals the problematic issues of criminal responsibility for libel and slander. This article briefly examines the criminal legislation of the Republic of Kazakhstan. Currently, more and more countries move towards complete abolition of the legal provisions involving prosecution of the criminal law procedure. The author believes that this problematic issue is to be resolved only by way of adhering to the principle of gradualism. In the near future the dispositions and sanctions in accordance with Art. 129, 130 of the Criminal Code, providing liability for libel and slander, should be reconsidered towards liberalization. The arguments presented in the paper give reason to raise the issue of decriminalization of offenses under Part 1 of Art. 129, Part 1 of Art. 130 of the Criminal Code and transfer them to the section of administrative and civil offenses. The author offers to enshrine the legal provisions on libel and slander as an aggravating circumstance in the current criminal legislation of the Republic of Kazakhstan in case of committing any crime, regardless of its severity, as well as the corruption crimes and the extremist crimes.

Key words: Libel • Slander • Liberalization • Humanization • Corruption crimes • Extremist crimes

INTRODUCTION

Recently, there have been active discussions among scientists, law enforcement officers and judges on expediency of the provisions in the criminal legislation of the Republic of Kazakhstan which provide liability for libel and slander [1]. While discussing the issue, the supporters and the opponents of these legal provisions both give quite strong arguments. More and more countries continue on the path to total abolition of these legal provisions, involving prosecution of the criminal law procedure. For a long time the criminal codes of the developed countries have been interpreting the defamation provisions as a vestige of the past. The UK can be considered as an example of the decriminalization for libel and slander provisions, where in 2009 there was initiated the process to eliminate the following articles from the criminal code. [2]

Within the CIS, this process proceeds quite effectively [3]. Such countries as Georgia, Ukraine and Moldova have already decriminalized libel and slander [4]. In the State Duma of the Russian Federation, there is a document introduced in July 2009, which aims decriminalization of libel and slander [5]. As for the countries of the Central Asia, the civil society of Kyrgyzstan and Tajikistan regularly raises the issues on decriminalization [6].

In general, our research shows that the opinion of the civil society and international organizations supposes that libel and slander should not lead to criminal liability, as the social danger of the act is incommensurable with incurring criminal liability. [7]

In our view, the necessity to preserve criminal responsibility for libel and slander looks justified. Indeed, libel and slander in the structure of the minor crimes are of little importance, but our studies, according to the Committee on Legal Statistics and Special Records of the General Prosecutor of the Republic of Kazakhstan, found that cases of libel and slander show a tendency to rise. In addition, the compliance with the provisions of the Constitution on the inviolability of human dignity must be ensured, including the threat of criminal punishment, which would deter people from spreading slanderous and insulting information. Citizens should be able to initiate
judicial proceedings in the event of suffering gross violation of the principle of inviolability of personal dignity. Therein, in accordance with Art. 17 of the Constitution of the Republic of Kazakhstan, human dignity is inviolable. The inviolability of human dignity means recognizing the value of every person, his or her way of thinking and behavior based on moral principles. The State guarantees the inviolability of dignity of its citizens and, therefore, gives them the right to defense. The degree of its coherence and effectiveness is the highlight of the dispute nowadays. [8]

We believe that this problem can be approached using the principle of gradualism. In the near future, the dispositions and sanctions of Art. 129, 130 of the Criminal Code of the Republic of Kazakhstan, which state liability for libel and slander, should be revised towards liberalization [9].

The Concept of Legal Policy of the Republic of Kazakhstan approved by Presidential Decree as of 20th September 2002 states that criminal policy should develop towards humanization, primarily with respect to the persons who committed misdemeanors and crimes of medium gravity for the first time as well as the vulnerable groups- pregnant women, single women with dependent minor children, minors and elderly people [10].

Analysis of existing penal laws and opinions of researchers and practitioners leads us to conclude that penal laws concerning the crimes, which infringe upon the honor and dignity (Art. 129, 130 of the Criminal Code of the Republic of Kazakhstan), need to be improved. The research on the law enforcement shows that, in most cases, courts usually inflict a penalty for libel and slander, which is widely applied and which constitutes 61% of cases. Secondly, it should be noted that there is a large percentage of discontinued criminal proceedings for libel and slander: 60% of them are discontinued due to reconciliation of parties (Article 67 of the Criminal Code) and to withdrawal of charges by private prosecutors. Acquittals constitute 16% and convictions equal to 24% [11].

This all gives a reason to raise the issue of decriminalization of offenses stipulated by Part 1 of Art. 129 and Part 1 of Art. 130 of the Criminal Code and transfer them to the section of administrative and civil infractions. Our suggestion was supported by the overwhelming majority of questioned judges in all regions of the Republic of Kazakhstan. For example, positive responses to the question “Do you consider it appropriate to decriminalize Part 1 of Art. 129 and Part 1 of Art. 130 of the Criminal Code?” constituted 70% of questioned judges and 51% of scientists where 18% of judges and 21% of scientists were against it and the undecided group constituted 12% of judges and 28% of scientists. The question “Do you think it reasonable to transfer Part 2 of Art. 130 of the Criminal Code to the basic structure, namely to Part 1 of Art. 130 of the Criminal Code?” was responded positively by 66% of judges and 55% of scientists; 16% of judges and 21% of scientists took a stand against the proposal; and the undecided group came to 18% of judges and 24% of scientists. As seen from our suggestion, we are not talking about the need to abandon the criminal responsibility for libel and slander completely. The criminalization of denigration of honor and dignity should most preferably take place when they are committed in a public speech or in a publicly demonstrated piece of work, or in mass media and if the act was committed within another crime, for which the person is charged and these crimes were consolidated. [12]

We would also like to note our disagreement with the fact that the legislation states “libel accompanied with accusation of a person in committing corruption, grave, or extremely grave crime” as an aggravating circumstance. Our disagreement bases on the following: firstly, such an approach, in our opinion, violates the principle of legality and justice, as recognition of a grave or extremely grave crime as an aggravating circumstance for libel violates the disposition logic. It would be better to establish criminal responsibility for libel in the case of committing any crime of any gravity. It does not seem quite logical to treat corruption offense as an aggravating circumstance. This brings up the question why the legislation does not provide the same responsibility for extremist crimes along with the corruption ones.

The changes suggested in the article perfectly fit the concept of legal policy approved by the President of the Republic of Kazakhstan and at the same time, they are consistent with the modern criminal policy of our state aimed at further liberalization of the criminal law.

REFERENCES