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## Requirements imposed to criminal procedure decisions

Activities for criminal case consist of legal proceedings and the decisions made by their results. Achievement of the called purposes directly depends on justification and motivation of criminal proceeding decisions. The requirement that the decision was not only reasonable, but also motivated, follows from the fact that the motivation increases justification of the decision, gives it internal and external credibility, facilitates the participants' understanding of process of essence of the made decision. The actual circumstances testimonial of availability of the bases established on case with which the law connects a possibility of adoption of this decision shall be the cornerstone of each decision. The article is devoted to requirements imposed to criminal procedure decisions. The purpose of the article is a theoretical and legal analysis of the requirements that are imposed on the criminal procedure decision. Achievement of the set goal is achieved by solving the following problems: theoretical substantiation of the concept of decisions taken in the criminal process, to determine the requirements for decisions. The legality of any proceeding decision is determined not only by observance of the standard instructions relating to content and a form of the decision but also observance of requirements of the law in the activities preceding decision. Justice characterizes not only the penalty imposed by court, but also all procedure of legal proceedings, and therefore due process violation are involved by recognition of the decision unfair. In this sense the concepts «material injustice» and «procedural injustice» are used. As a result of the study, the categories of reasonableness and motivation of procedural actions and decisions were analyzed. The motivation of a sentence, as well as many other types of decisions, is expression of their justification and therefore observance of the requirement of motivation of the decision gives the chance to check legality, justification and justice of the decision. Violation of the law requirements of on justification and timeliness of the made decisions shall involve responsibility of the state bodies and officials who broke the law, especially in cases when their actions (failure to act) led to violation of constitutional rights and freedoms of the person and citizen. The abovementioned demonstrates relevance and the practical importance of studying this problem.

*Keywords:* constitutional rights and freedoms of the person and citizen; criminal proceedings; decisions in criminal procedure; requirements imposed in criminal procedure to the decision; legality of decisions; justification; motivation of proceeding decisions; the requirement of justice; requirements of the law; need of rendering of reasoned decisions.

Decision making is one of the main components of any activities of officials, including the main basis of management process. Development and decision making is performed in each organization taking into account the features determined by nature and specifics of activity, an organizational structure, the operating system of communication. Criminal procedure decisions on the essence are the management decisions therefore provisions of the acceptance theory of management decisions in considerable amount extend to them. The criminal procedure relations are created and accepted by the same rules and on the basis of the same principles as management decisions, also the factors accountable in case of their forming are similar. Decision making — one of stages in development of purposeful activities. It is known that in the course of investigation there is a movement from incomplete, probable knowledge to knowledge proved, reliable. Mostly in case of initiation of legal proceedings at the disposal of the investigating officer there are only data specifying essential elements of offense but then in a course of production of investigative actions it obtains new data on the researched event, on its nature, on persons, involved in it, their guilt or innocence, on a form of fault and the spendthrift crime willows, about the circumstances commuting or aggravating a penalty, about nature and the extent of damage, about the data characterizing the guilty person; about victim's identity; about the reasons and conditions promoting crime execution. Thus, i.e. by way adequate reflection in case papers of the taken place events in the procedural form established by the law, the truth is reached.

Carrying out investigative actions and organizational actions is directed to complete, comprehensive and objective establishment of all essential facts of the case on the basis of what the investigating officer in the order established by the law makes the relevant proceeding decisions.

Criminal proceeding is connected with making of certain legal proceedings and acceptances by their results of specific decisions. The legislator determines the proceeding decision as the decision made by court, the prosecutor, the investigating officer, the investigator in the order established by the Code of Criminal Procedure of RK. At the same time in article 10 Code of Criminal Procedure RK devoted to the principle of legality in case of production on criminal cases it is highlighted that determinations of court, the judge's rul-

ing, the prosecutor, the investigating officer, the investigator shall be legal, reasonable and motivated. Importance of the specified provisions constituting content of the principle of legality allows to speak about increased requirements to such type of procedural activities of bodies of criminal trial as acceptance and pronouncement of decisions on criminal case.

The criminal procedure law doesn't contain the regulation expressing general legal properties to which all proceeding decisions shall answer. In the Code of Criminal Procedure there is no single formulation expressing requirements to which the decisions passed in a form of the resolution and determinations shall answer.

The feasibility of the accepted this or that decision on case is depending on a stage of investigation and is caused by the character and content of information which the specific official has by this time, competent to make the relevant proceeding decisions. «In criminal trial, — M.I. Bazhanov notes, — the knowledge of objective reality happens in process of movement of criminal case, and the procedural acts, the following one after another, reflect stages of achievement of an objective truth» [1; 217].

The essence of separate decisions, the purposes for which they are taken out, their place in all system of legal proceedings, a condition in case of which the law permits to make specific decisions, demonstrate difference in a circle of the facts which shall be established on case for decision making, and in degree of validity of these facts. Together with what, all decisions passed in criminal procedure shall answer to general legal properties — they shall be legal, reasonable and motivated. These general properties of proceeding decisions follow from the principle of legality in legal proceedings and the nature of proceeding decisions as acts of application of the right.

Decision making is result of the cognitive activity preceding it (prove) therefore the data received during these activities shall constitute a decision basis, its actual, objective base and in this or that form to find the reflection in the act of the decision.

Need of making reasoned decisions is caused by the valuation principle of proofs requiring that the internal belief was created as a result of comprehensive, complete and objective research of all body of evidence, and would be based on body of evidence.

In spite of the fact that the legality and justification are properties to which all proceeding decisions shall answer, the legislator specifies these properties of the decision only in relation to a sentence (Art. 388 of the Code of Criminal Procedure). Concerning other decisions instructions on the fact that they shall be motivated or that its bases shall be given in the decision most often occur in the law. Sometimes the law is limited only to the list of circumstances, which shall be reflected in a descriptive part of the decision, without special instructions on properties of this decision.

The first condition of legality of the made decisions — availability in regulations of a procedural law of instructions about a certain conduct. Thus, a legal basis for adoption of proceeding decisions are the provisions of the law.

«The main requirements which are imposed to acts of application are in that they: a) strictly corresponded to standardly legal acts on the basis of which they are accepted; b) were published within competence of law-enforcement body or the official; c) contained deep and comprehensive motivation; d) had all necessary details officializing acts of application (the name of the act, time and the place of its acceptance, the name of the body which issued this act, availability of the corresponding seal, the signature etc.)» [2; 69].

S.S. Mailyan divides requirements imposed in criminal procedure to the decision as to a type of management decision, into the following primary groups:

- the requirements following mainly from managerial essence of the decision: scientific justification and competence of the decision; its relevance and timeliness; succession, both separate parts of the decision, and decision in general in relation to the system of decisions in the field the public relations. Non-compliance with the designated requirements doesn't allow to consider management decision as the conscious act of the subject of management including particular purposes, clarification of resources and the choice of methods for its achievement;

- the requirements following mainly from the legal nature of management decisions: the legality including compliance of the made decision not only to a law letter, but also spirit of the legislation and the right in general; the competence and authoritativeness following from the corresponding characteristic of the subject of management; coordination when the decision reflects the interests of several subjects of management. Without observance of these legal requirements it is impossible to speak not only about the regulation, but also about management decision in general, so far as concerns the social sphere, especially in the sphere of public administration;

- the requirements following mainly from functional purpose of the decision expressed as command to action: consistency, symmetry and logicity, clarity and simplicity, concreteness and laconicism. Violation

of the listed formal and logical requirements can lead to the fact that the decision can be misunderstood and, so, won't achieve the objectives [3; 79].

N.G. Muratova carries requirements imposed to criminal procedural acts not only to the certifying, documentary party of these acts, but also to their substantial party, that is to conditions and an order of actual production of the most legal proceeding. The author considers that these acts shall meet the requirements of legality, justification, timeliness, motivation, justice, comprehensiveness, completeness and definiteness of the procedural act and also the high culture of their production and literacy of documentary registration. The requirement of legality means that in case of the solution of a specific case the law-enforcement body shall be based on a certain rule of law (their set) having to a case in point direct reference strictly and to strictly follow its exact sense, to work within the competence, to strictly observe the order of consideration of the case, and decision, the established form of application of the right provided by the law [4; 17].

«The legality of each decision taken out in the course is determined by its following lines: the decision shall be passed by the competent person or body timely, the investigative and judicial actions which are carried out according to the law which lead to establishment of circumstances under which the decision can be passed shall precede decision; in case of qualification of act, assignment of punishment, permissions of the civil action correctly applying the material law; the decision shall be expressed in the procedural form established by the law, contain necessary details». P.A. Lupinskaya emphasizes that «in the constitutional state the discretion can take place only within legal regulation when the law represents the right to detect, to see, to establish any circumstances in specific case taking into account that the law enforcement official has the right to choose the decision answering overall objectives of activities and the purpose [5; 73].

The following legislative requirement to the judgments is the requirement of justification. The explanatory dictionary of modern Russian opens a concept «reasonable» as confirmed with the facts, serious arguments, convincing. Justification of law-enforcement acts means that identification of all relevant facts, in-depth and objective examination and recognition their reliable, a deviation of all unproven and doubtful facts.

«Justification of the decision is compliance of the conclusions stated in it about the actual facts of the case to proofs which are available in case and which are received as a result of the activities for collecting, check and assessment of proofs preceding the decision».

Yu.V. Manayev, L.M. Repkin in relation to decisions of the investigating officer determine justification of proceeding decisions as «the standard requirement interconnected with their legality consisting in validity, motivation and, as a result of it, in the validity of the facts and circumstances which need to be established in case of initiation of legal proceedings and at various stages of a stage of preliminary inquiry» [6; 18].

P.A. Lupinskaya emphasizes that «degree of validity of the actual circumstances constituting the basis of the decisions relating to merits of case can be various and to procedural legal issues «the legality and justification of decisions depend on whether those actual circumstances which are provided in a hypothesis of a regulation are established and whether we will observe the law in case of establishment of these circumstances. These standard rules include a circle of circumstances which shall be established, and level of knowledge of these circumstances which shall be reached at the time of decision making. The body of evidence shall be reasons for the decision, which according to the law should be established at the time of decision making».

According to us, a condition of adoption of proceeding decisions is availability of sufficient set of admissible, attributable and mathematical evidences. As only by means of set of sufficient evidences it is possible to draw a conclusion on availability or lack of the circumstances which are the bases of adoption of proceeding decisions but to criminal cases. Interconnected and interdependent with the requirement of justification is the motivation of decisions. At the same time these categories aren't identical. The motivation of the decision, according to P.A. Lupinskaya, «represents the system of the arguments proving decisions as well as parts of establishment of the actual circumstances and concerning all legal conclusions on case. The motivation of the decision is expressed not only in the analysis of proofs, but also in reduction in the solution of both the actual, and logical and legal argumentation proving qualification of crime, the chosen measure of punishment and weight other decisions accepted on points of law».

Further P.A. Lupinskaya notes that «the law requires reduction of the analysis, proofs and motives, but where one proofs are accepted and others are rejected, not in all decisions, and, as a rule, only in those from them which are based on the finished process of proof in this stage when the person or persons making the decision have all body of evidence that gives them the chance in details to explain what proofs and why formed the basis for conclusions on case and to give motives by which the other proofs are rejected» [7; 153].

We are of the opinion that, all made decisions shall meet the requirements of motivation. It is necessary to fix determination of motivation of decisions: «The proceeding decision is motivated if the conclusions containing in it are based on a comprehensive investigation of the circumstances necessary for decision making, and contains arguments on which the court, the judge, the prosecutor, the investigating officer, the investigator chose a certain version of the decision».

The requirement of justice of law-enforcement acts reflects the idea about social justice of democratic society, means awareness of correctness of the solution of case from the point of view of the interests of the people and the state, conviction of the person applying the right and also people around that the made decision accords with the principles of morals, universal values, meets requirements and the interests of certain citizens, their collectives, the entities, organizations. Justice of the act of application of the right assumes compliance of the made decision to public opinion, coordination of its content with moral beliefs of people and societies in general and also impartiality of the person or body applying the right, objective approach to a research of the facts of the case to the persons participating in it, to the final decision.

In the existing Code of Criminal Procedure of RK the requirement of justice of the decision is also specified concerning the court verdict. The sentence on which the penalty which isn't corresponding to weight of crime, the identity of the convict or punishment which though doesn't go — beyond the limits provided by the relevant article of the Special part of the Criminal Code of Kazakhstan, but by the form was imposed is unfair or to the size is unfair both owing to excessive softness, and owing to excessive severity. Determinations of court, the judge's ruling, the prosecutor, the investigating officer, the investigator (further — proceeding decisions) shall be legal, reasonable, motivated and fair.

1. The proceeding decision is legal if it is accepted according to requirements of the law.
2. The proceeding decision is reasonable if the conclusions containing in it about the circumstances of criminal case and (or) other circumstances important on criminal case are based on set of sufficient evidences.
3. The proceeding decision is motivated if the conclusions containing in it are based on a comprehensive investigation of the circumstances necessary for decision making, and contains arguments on which the court, the judge, the prosecutor, the investigating officer, the investigator chose a certain version of the decision.
4. The proceeding decision is fair if it corresponds to purpose of criminal trial, and the conclusions containing in it are made taking into account the circumstances characterizing the person, who committed the act».

Feasibility of the decision can be considered in two aspects. In — the first, the regulation from the point of view of the legislator in itself is reasonable, contains optimum requirements for regulation of the public relations, and therefore following to it there is the most reasonable solution of a question. Secondly, feasibility in temper this compliance of activities of bodies and persons within the law to specific conditions of the place and time, the choice of an optimum way of implementation of a regulation in a specific life situation, the choice of the decision, is the most full also correctly reflecting sense of the law and the purpose of legal regulation.

Humanity of the law-enforcement decision assumes fixed attention to the personality, his material and spiritual welfare, care and respect of advantage of the person, providing and protection of his rights and legitimate interests.

The requirement of professionalism means that the law-enforcement decision shall prepare and be accepted by the person (collective of individuals) having profound knowledge in the respective sphere of the public relations, ability and practical experience to resolve difficult questions of life on which the interests of the person and often his destiny depend. The official shall also possess a sufficient amount of legal knowledge in the sphere of implementation of the office powers, high professional and legal culture». In this regard it would be desirable to revenge that judges should pay attention not only to reasons for decisions, but also the process of their creation.

Thus, the legality of each of the decisions passed in criminal procedure is determined by its following lines:

- 1) the decision shall be passed by timely competent official or body;
- 2) the decision must be preceded by investigative actions carried out in accordance with the law, which lead to the establishment of circumstances on the basis of which an assessment can be made;
- 3) in case of qualification of act the material law is correctly applied;
- 4) the decision shall be expressed in the procedural form established by the law, contain necessary details.

The procedural requirement of justification of the decision in essence is manifestation of the nature of the decision as the act containing answers to the legal issues which arose on case and the determining action which shall be performed in connection with the established actual circumstances. As each decision is made in connection with certain actual circumstances, all procedural activities preceding decision making consist finally in collecting, check and assessment of those actual data based on which certain decisions are made and prove it.

In this sense it is possible to tell that the procedural requirement of justification of the decision is manifestation of information essence of made decision. For acceptance of each type of the decision it is necessary to obtain information allowing to establish a situation, provided by a hypothesis of the specific provision of the law that, respectively, will entail certain consequence in law.

Justification of the decision is compliance of the conclusions stated in it about the actual facts of the case to proofs which are available in case and are received as a result of the activities for collecting, check and assessment of proofs preceding decision making.

The actual circumstances testimonial of availability of the bases established on case with which the law connects a possibility of adoption of this decision shall be the cornerstone of each decision.

All statements containing both in descriptive and in substantive provisions of the decision shall be reasonable. At the same time actually the decision expressed in substantive provisions shall follow from the circumstances called established and reflected in descriptive (descriptive motivation) parts of the document.

In the broadest sense usually understand compliance of the conclusions containing in the proceeding decision, to the actual facts of the case taking place in fact and established on the basis of a research of the obtained evidence as justification. The called requirement extends to any procedural acts, but, in relation to acts of pretrial investigation, to our opinion, requires a certain specification. Thus it is reasonable to pay attention to a problem research about a ratio of justification and validity. It is indisputable that the conclusions which are in the indictment and the adjudication shall reflect an objective truth. Respectively, justification of these acts at the same time means also their validity. In this situation it is represented inexpedient to claim about the validity of all adopted acts of criminal procedure including acts of pretrial investigation.

Justification of the decision shall find expression in the document in the form of motivation of the decision.

The requirement of pronouncement of the motivated decision is available in a number of the provisions of the law relating to the resolutions, determinations which are taken out in various stages of legal proceedings. Specifying that the decision shall be motivated, the law doesn't give a general concept of the motivated decision and in relation to separate decisions but specifies in what their motivation specifically shall consist.

The requirement that the decision was not only reasonable, but also motivated, follows from the fact that the motivation increases justification of the decision, gives it internal and external credibility, facilitates understanding participants of process of essence of the made decision and by that their temper on protection against illegal decisions provides real implementation. The motivation of the decision shall be considered as one of ways further increases in level and quality of work of investigating, public prosecutor's and judicial authorities, prevention in their activities of possible mistakes.

Considering a ratio of justification and motivation of the decision, it must be kept in mind that, despite interrelation and interconditionality of these properties of the decision, the specified concepts can't be identified.

The requirement of justice is undoubtedly important, but is applicable not to all proceeding decisions. So, for example, the resolution on familiarizing with case of the physical evidence can be «legal» or «illegal», «reasonable» or «unreasonable», but not «fair» or «unfair». It is represented that the requirement of justice is applicable only to those proceeding decisions which anyway limit or affect constitutional rights and freedoms of the person and citizen.

The constitutional requirements of fair justice and effective recovery in the rights applied to decisions of preliminary investigation agency and court obligation of reasons of the assumed decisions made by them.

It is necessary to pay attention that the law requires reduction of proofs in decisions and motives for which one proofs are accepted and others are rejected, not for all decisions, and, as a rule, only for those with which process of proof in this stage when the person making the decision has all body of evidence comes to the end, and the defendant and the victim had the right to get acquainted with the proofs which are available in case, participated in their research and therefore can express the judgments of reliability or falsehood of testimonies of witnesses, the victims, groundlessness of the expert opinion, etc. The resolution on the termination of criminal case, a sentence, cassation determination, etc. are required to be such.

Special attention shall be paid to motivation of the decision in case of application of the regulations providing the choice of the decision «at discretion», «in need cases», «taking into account circumstances of specific case». Motivating the decision in these situations, the executor of law shall open compliance between the established circumstances and conditions expressed by the legislator in estimative concepts. The motivation shall convince, as in these cases the decision is dictated not by a subjective discretion, but by requirements of the law.

Legal and reasoned decisions shall promote strengthening of legality and law and order, prevention of offenses, forming of respect for the right.

It is obvious that judgments of quality of the decisions passed in criminal trial require fixed studying of practice of decision making in various stages of legal proceedings. The shortcomings of legal regulation requiring change or addition of the law and also other reasons of objective and subjective nature interfering rendering of legal and reasoned decisions can be revealed by such way.

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### Қылмыстық-процессуалдық шешімдерге қойылатын талаптар

Қылмыстық іс бойынша барлық қызмет іс жүргізушілік әрекеттер мен сол әрекеттердің нәтижесінде қабылданған шешімдерден тұрады. Қылмыстық процестің мақсатына жету қылмыстық іс жүргізушілік шешімдердің негізділігі мен уәжділігіне тікелей байланысты. Шешімдердің тек негізді ғана болмай, сонымен қатар уәжді болуы талабы, уәжділіктің негізділіктің күшейтетініне, шешімге ішкі және сыртқы сенімділікті беретіндігі және қылмыстық процеске қатысушылардың шешімді түсінуін жеңілдетумен байланысты. Мақала қылмыстық процестік шешімдерге қойылатын талаптарға арналған. Мақаланың мақсаты қылмыстық процестік шешімдерге қойылатын талаптарды теориялық-құқықтық талдау болып табылады. Аталған мақсатқа қолжеткізу үшін келесі міндеттер шешілді: қылмыстық іс жүргізде қабылданатын шешімдерді теориялық негіздеу, шешімдерге қойылатын талаптарды анықтау. Кез келген процессуалдық шешімнің заңдылығы тек шешімнің мазмұны мен нысанына қатысты нормативті алғышарттарды сақтаумен ғана емес, сонымен қатар шешім шығару кезінде барлық әрекеттердің заң талаптарына сәйкес келуімен де анықталады. Әділеттілік тек сотпен жаза тағайындау емес, толығымен сот өндірісінің заң талаптарын бұзбай орындалуымен байланысты. Мұндай жағдайларда «материалды әділетсіздік» және «процессуалды әділетсіздік» ұғымдары қолданылады. Шешімдердің уәжділігі олардың негізділігі талаптарын сақталуын және заңдылықтың орындалуын білдіреді. Зерттеу нәтижесінде процестік шешімдердің негізділігі мен уәжділігі санаттары талданды. Қылмыстық сот өндірісінде қабылданатын барлық шешімдер заңмен бекітілген негізділік және уәжділік талаптарына қарсы келетін болса және адам мен азаматтың конституциялық құқықтары мен бостандықтарын бұзатын болса, осы талаптарды бұзған мемлекеттік органдар мен лауазымды тұлғалар заңдық жауапкершілікке тартылуы тиіс. Әрбір шешімнің негізінде іс бойынша қалыптастырылған фактілік мән-жайлармен, заң шешім қабылдауға мүмкіндік беретін негіздердің болуы қажетті шарт. Аталаған жағдайлар тақырыптың өзектілігі мен тәжірибелік маңыздылығын көрсетеді.

Кілт сөздер: адам мен азаматтардың конституциялық құқықтары мен бостандықтары, қылмыстық іс бойынша өндіріс, қылмыстық процесс бойынша шешім, қылмыстық сот өндірісіндегі шешімдерге қойылатын талаптар, шешімдердің заңдылығы, процессуалдық шешімдердің негізділігі мен уәжділігі, әділеттілік талабы, негізделген шешім шығару, заң талабы.

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## Требования, предъявляемые к уголовно-процессуальным решениям

Деятельность по уголовному делу состоит из процессуальных действий и принятых по их результатам решений. Достижение целей уголовного процесса напрямую зависит от обоснованности и мотивированности уголовно- процессуальных решений. Требование, чтобы решение было не только обоснованным, но и мотивированным, вытекает из того, что мотивированность усиливает обоснованность решения, придает ему внутреннюю и внешнюю убедительность, облегчает понимание участниками процесса сущности принятого решения. Статья посвящена требованиям, предъявляемым к уголовно- процессуальным решениям. Целью статьи являются теоретико-правовой анализ требований, которые предъявляются к уголовно- процессуальным решениям. Достижение поставленной цели осуществляется путем решения следующих задач: теоретическое обоснование понятия решений, принимаемых в уголовном процессе, определение требований, предъявляемых к решениям. Законность любого процессуального решения определяется не только соблюдением нормативных предписаний, относящихся к содержанию и форме решения, но и соблюдением требований закона в деятельности, предшествовавшей вынесению решения. Справедливость характеризует не только назначенное судом наказание, но и всю процедуру судопроизводства, а потому нарушение этой процедуры влечет за собой признание решения несправедливым. В этом смысле употребляют понятия «материальная несправедливость» и «процессуальная несправедливость». Мотивированность приговора, как и многих других видов решений, является выражением их обоснованности, поэтому соблюдение требования мотивированности решения дает возможность проверить законность, обоснованность и справедливость решения. В результате исследования проанализированы категории обоснованности и мотивированности процессуальных действий и решений. Нарушение требований закона об обоснованности и своевременности принимаемых решений должно повлечь за собой ответственность государственных органов и должностных лиц, нарушивших закон, особенно в случаях, когда их действия (бездействие) привели к нарушению конституционных прав и свобод человека и гражданина. В основе каждого решения должны лежать установленные по делу фактические обстоятельства, свидетельствующие о наличии оснований, с которыми закон связывает возможность принятия данного решения. Сказанное свидетельствует об актуальности и практической значимости изучения данной проблемы.

Ключевые слова: конституционные права и свободы человека и гражданина; производство по уголовному делу; решения в уголовном процессе; требования, предъявляемые в уголовном процессе к решению; законность решений; обоснованность, мотивированность процессуальных решений; требование справедливости; требования закона; необходимость вынесения обоснованных решений.

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