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COMPARATIVE LAW ANALYSIS OF LEGISLATIVE REGULATION OF LAW ENFORCEMENT ACTIVITY IN TURKEY AND KAZAKHSTAN



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Considering the legislative regulation in the sphere of law enforcement activity the specialists emphasize that effective and qualitative regulation is the basis for state and public law and order protection. The authors of this article draw attention to the important aspect: comparative law analysis of legislative regulation of law enforcement Turkey and Kazakhstan. Carrying out of such analysis allowed finding out advantages and some disadvantages in legislation, regulating the activities of law enforcement bodies of the Turkish Republic and the Republic of Kazakhstan.

It is noted that the Kazakh legislation on the law enforcement service is exemplary in the post-Soviet countries, but taking into account the events, taking place in the world, first of all it is necessary to improve the legislation, based on positive international experience and also constantly improve the practices of law enforcement bodies themselves.

This article considers the legal framework of activities of basic and special law enforcement services of Turkey and Kazakhstan, compares the positive experience, which can be taken in order to improve the legislation. Consideration of the regulatory and legal framework of the Turkish law enforcement bodies allowed making one of the most important conclusions – the similarities with the legal framework of Kazakhstan's law enforcement system can be traced.

Basing on generalized analysis of the regulatory framework of The Turkish Republic and the Republic of Kazakhstan and existing theoretical views, the author worked out proposals aimed at improving the legislation and which can be taken into account in the legislative process of Kazakhstan and Turkey.

Key words: *legislation; regulations; analysis of legal regulation; comparative law analysis; law enforcement activity.*

Түркияның және Қазақстанның құқық қорғау қызметін заңнамалық реттеудің салыстырмалы-құқықтық талдауы

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Кез келген мемлекеттің құқық қорғау қызметі саласындағы заңнамалық реттеуді қарастыруда мемлекеттік және қоғамдық құқықтық тәртіпті қорғау үшін негіздеме тиімді және сапалы құқықтық реттеу болып табылатынын мамандар атап кетеді. Аталмыш мақаланың авторлары Түркия және Қазақстанның құқық қорғау жүйелерінің заңнамалық базаларын салыстырмалы-құқықтық талдаудың маңызды аспектісіне назар аударады. Осындай талдауды жүргізу барысында Түркия Республикасы және Қазақстан Республикасының құқық қорғау органдары қызметін реттейтін заңнаманың артықшылықтарын және кейбір кемшіліктерін айқындауға мүмкін болды.

ТМД елдерінің кеңістігінде құқық қорғау қызметі туралы Қазақстанның заңнамасы үлгілі болып саналады, бірақ әлемде болып жатқан оқиғаларды ескере отырып бірінші кезеңде заңнаманы жетілдіру үшін халықаралық тәжірибеге сүйеніп, сонымен қатар құқық қорғау органдарының практикалық қызметін әрдайым жетілдіру қажет.

Мақалада Түркия және Қазақстанның негізгі және арнайы құқық қорғау органдары қызметінің құқықтық базасы қарастырылады, заңнаманы жетілдіру мақсатында қолдануға мүмкін болатын оң тәжірибенің салыстыруы көрсетілген. Түркия құқық қорғау органдары жүйесінің нормативтік құқықтық базасын қарастыру барысында маңызды бір шешім қабылдауға мүмкін болды – Қазақстандық құқық қорғау жүйесінің құқықтық негізімен ұқсастығы айқын көрінеді.

Түркия Республикасы және Қазақстан Республикасының нормативтік құқықтық базасын жалпы талдау мен белгілі теориялық көзқарастарға сүйеніп, автормен Түркия және Қазақстанның заңшығармашылық процесте назарға алуға болатын заңнаманы жетілдіруге бағытталған ұсыныстар әзірленді.

Түйін сөздер: заңнама; нормативтік құқықтық актілер; заңнамалық реттеуді талдау; салыстырмалы-құқықтық талдау; құқық қорғау қызметі.

Сравнительно-правовой анализ законодательного регулирования правоохранительной деятельности Турции и Казахстана

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Рассматривая законодательное регулирование в сфере правоохранительной деятельности любого государства, специалисты отмечают, что эффективное и качественное нормативное регулирование является основой для охраны государственного и общественного правового порядка. Авторы данной статьи обращает внимание именно на такой важный аспект сравнительно-правовой анализ законодательных баз правоохранительных систем Турции и Казахстана. Проведение такого анализа позволило определить преимущества и некоторые недостатки в законодательстве, регулирующие деятельность правоохранительных органов Турецкой Республики и Республики Казахстан.

Отмечается, что Казахское законодательство о правоохранительной службе является образцовым в странах постсоветского пространства, но учитывая события, происходящие в мире в первую очередь необходимо совершенствовать законодательство, опираясь на положительный международный опыт, а также постоянно совершенствовать практику деятельности самих правоохранительных органов.

В статье рассматривается правовая база деятельности основных и специальных правоохранительных служб Турции и Казахстана, приводится сравнение положительного опыта, который можно применить в целях совершенствования законодательства. Рассмотрение нормативной правовой базы системы правоохранительных органов Турции позволило сделать один из важных выводов – прослеживается сходство с правовой основой казахстанской правоохранительной системы.

Исходя из обобщенного анализа нормативно-правовой базы Турецкой Республики и Республики Казахстан и существующих теоретических взглядов, авторами выработаны предложения, направленные на совершенствование законодательства, которые можно приять во внимание в законотворческом процессе Казахстана и Турции.

Ключевые слова: законодательство; нормативные правовые акты; анализ законодательного регулирования; сравнительно-правовой анализ; правоохранительная деятельность.

Main part

In one of his scientific researches [2, p. 52] the author expressed the opinion that in Turkey there is no comprehensive normative legal act, such as the Law of the Republic of Kazakhstan «On law enforcement service»¹ in Kazakhstan that would define general principles and rules of regulation in the field of law enforcement. However, in the course of the thorough analysis of the legislation in the field of law enforcement it was found that the current Law of the Republic of Turkey № 3201 «On security organizations»², which was adopted in 1937, has an amazing resemblance to the Law of the Republic of Kazakhstan «On the Law enforcement service» adopted in 2011.

In the table number 1 the author tried to make the comparative analysis of the structure of the Law of the Republic of Kazakhstan «On law enforcement service» with the content of legal rules and articles of the Law of Turkey number 3201 «On security organizations».

As the analysis showed, the structural parts and sections of both laws have almost identical wordings and contain substantially similar legal provisions. Of course, the Law of the Republic of Turkey № 3201 has undergone numerous changes and additions, and today is one of the major laws in the regulation of law enforcement service in Turkey [3, p. 14].

One important aspect of the Law № 3201 is that in Article 3 the division of the security bodies into the public and private (special) was enshrined in law. Common law enforcement bodies include the armed forces of the police and gendarmerie, the special include other law enforcement bodies, which perform their functions in accordance with the legislation (customs, forest protection, traffic police, etc.) [3, p. 15].

It should be noted that this legal provision is similar to Article 3 of the Law of the Republic of Kazakhstan «On law enforcement service», according to which legislators have determined that the *prosecutor's agencies, internal affairs bodies, financial police, state fire service, the customs bodies of the Republic of Kazakhstan, carrying out their activities in accordance with the laws of the Republic of Kazakhstan, refer to the law enforcement bodies*. This allowed to delineate legal powers of law enforcement structures, as well as an understanding of law enforcement in general, that was not quite legitimate before and significantly affected

various aspects of legal regulation related to social, material and legal support of law enforcement officers.

In Kazakhstan, the adoption of the Law «On law enforcement service» was the fact that in the legislation there were norms that contributed to duplication of legal provisions, moreover, the law expected to merge several regulations, which was also one of the mechanisms for improving the legislation. Of course during the development of the bill, along with positive aspects, there was much critic from the scientific community, international experts, as well as law enforcement structures themselves. However, immediately after the adoption the law has proved the effectiveness of its actions [4].

As a result, in 2011, Kazakhstan was the first CIS country who adopted the Law «On law enforcement service», which *regulates the social relations associated with admission to law enforcement service to the Republic of Kazakhstan, its passage and termination, as well as determines the legal status, economic security and social protection of law enforcement officers of the Republic of Kazakhstan*.

The next important legal instrument in the field of law enforcement is the Law of Turkey № 2559 «On authorities and duties of the police», which, despite the fact that was adopted in 1934, has legal force to the present day, as well as some of the positive aspects of the legal regulation of police. This law in its structure, as well as the previous law, has no sections, chapters, parts, includes a little more than 35 articles.

The modern police of Turkey and internal affairs bodies in general believe that the effective legal mechanism in their activities is precisely this law, as he laid the foundation of the regulation of legal relations in the field of public order and public safety, thus fixing the powers and duties of the police in carrying out its functions and responsibilities [5, p. 180].

I consider the nature and content of the Law № 2559 «On authorities and duties of the police», pay attention to its main legal aspects. So according to Article 1 of the Law № 2559 *police duties in ensuring public safety and public order include compliance with laws and other legal acts in accordance with government policy, along with mandatory compliance with the rules of criminal procedure legislation*. In general, this law contains the legal rules and regulations that govern the activities of the police (*apply to all bodies of internal affairs, including the gendarmerie, traffic police, coast*

¹ Law of the Republic of Kazakhstan «On law enforcement service» № 380-IV of January, 06th, 2011;

² Law of the Republic of Turkey «On security organizations» № 3201 of June, 12th, 1937;

³ Law of the Republic of Turkey «On authorities and duties of the police» № 2559 of July, 14th, 1934

Table № 1

Law of the Republic of Kazakhstan «On law enforcement service» 06.01.2011. № 380-IV	Law of the Republic of Turkey «On security organization» 12.06.1937 № 3201
The Chapter №1. General provisions (articles 1-5)	General provisions (articles 1-12)
The Chapter №2 The admission to law enforcement service (articles 6-13)	The procedure for admission to the service after the special educational institutions (police academy and colleges), as well as civil servants under the contract (articles 26-54)
The Chapter №3. The legal status of employees (articles 14-21)	The functional responsibilities of security officers (articles 16-22)
The Chapter №4 The special ranks or class ranks (articles 22-28)	The class ranks and ranks of security officers (articles 13, 15)
The Chapter №5 Appointment to office, transfer and promotion in law enforcement (articles 29-46)	The procedure and conditions of appointment and promotion (articles 55)
The Chapter №6. The validation (articles 47-53)	The assessment of efficiency of staff work (article 85)
The Chapter №7 The service discipline in law enforcement (articles 54-58)	The procedure for disciplinary and penalties (articles 68-84)
The Chapter №8 The use of firearms and other weapons, special means and physical force by employees (articles 59-62)	<i>It is regulated by the Law Republic of Turkey «On authorities and duties of the police» 14.07.1934. № 2559³</i>
The Chapter №9. The social security (articles 63-70)	The material and financial support for security officers (articles 86-96)
The Chapter №10. Holidays (articles 71-78)	
The Chapter №11 The termination of service in law enforcement (articles 79-82)	The procedure and conditions of termination, resignation or dismissal from service (articles 56-67)
The Chapter №12. The final provisions (articles 83-85)	The additional articles 1-31 (the separate numbering of the main articles); The preliminary articles 1-23 (the separate numbering of the main articles); The final provisions (articles 97, 98)

guard, and others), connected in particular with their following powers and duties:

- to conduct fingerprinting and photographing of criminals and offenders;
- to conduct investigation in public entertainment places, to inform the municipal bodies on conducted activities;
- to identify persons who have not reached the appropriate age to visit entertainment places, as well as to carry out the arrest of those who violate the public order and in a state of alcohol/drug intoxication;
- to use firearms or other special means;
- to apply security measures for vehicles;
- to apply measures to eliminate fire, flood and other natural disasters;
- to take appropriate measures to prevent from the abuse of authority by the police officers.

Of course, this is only one part of the

duties and tasks of the internal affairs bodies, which are regulated in detail in the Law, and other laws, which will be discussed later. The analysis of the rules of the Law № 2559 allows us to formulate a conclusion that the internal affairs bodies in their activities are guided by the principles, established by the legislation: to ensure and protect public order, security of persons and their property; to work towards the prevention of crimes and offenses; to detect, to arrest and transfer the offenders and the evidence to the appropriate legal authorities; to exercise other powers prescribed by laws and other normative legal acts [6, p. 125].

The Law of Turkey № 3152 «On organization, duties and authorities of the Ministry of Internal Affairs»⁴ adopted in 1985 was criticized during the study. As a matter of fact the Law regulates the mission, tasks, functions and structure of the Ministry of Internal Affairs (hereinafter – the

⁴ Law of the Republic of Turkey «On organization, duties and authorities of the Ministry of Internal Affairs» № 3152 of February, 23rd, 1985;

MIA) and its structural units and subordinate organizations, which is not acceptable for the legislative activity of any state. For example, in Kazakhstan the same provisions are regulated at the level of the decision of the Government (Regulation of MIA of the Republic of Kazakhstan)⁵. If it is necessary, the faster way to change the legislation will be making changes and additions in the decision of the Government, rather than in the law.

The Government of Turkey for several years has discussed the issues of reform of the law enforcement system, improvement of legislation, bringing it into accordance with modern conditions of legal, economic and social situation [7, p. 57]. During the great legislative work on the development of a package of bills (Law № 2559 «On authorities and duties of the police», Law № 3201 «On security organizations», Law № 2803 «On authorities and duties of gendarmerie», Law on amendments to certain laws) aimed at the modernization of internal security systems the experience of law enforcement bodies of Turkey and foreign countries, as well as the results of the research work of educational institutions of law enforcement bodies have been used. As a result, MIA of Turkey in November of 2014 introduced to parliament four bills providing for the amendment of the legislation in the area of law enforcement⁶.

Analysis of the Law on MIA of Turkey showed that more resembles it has with the Regulation on MIA of the Republic of Kazakhstan. Moreover, I believe, that a comparative analysis of this part of the study can be carried out with the Law of the Republic of Kazakhstan «On the Internal affairs bodies of the Republic of Kazakhstan»⁷. Thus, in accordance with Article 3 of the Law of the Republic of Kazakhstan «On law enforcement service» one of the major law enforcement structures in Kazakhstan are the internal affairs bodies, whose activities are regulated by the Law of the Republic of Kazakhstan № 199-V. Internal affairs bodies of the Republic of Kazakhstan are the law enforcement body intended to protect the life, health, rights and freedom of man and

citizen, interests of society and the state from illegal encroachments, protection of public order and public safety. In turn, the internal affairs bodies, designed to serve the people of Kazakhstan, as well as to ensure public safety, carry out the following tasks:

- the crime prevention;
- the protection of public order;
- the combating delinquency;
- the execution of criminal penalties and administrative sanctions;
- the prevention and liquidation of the emergency situations, fire safety, the organization of civil defense.

Based on the tasks established by the legislation, the internal affairs bodies in accordance with Articles 5 and 6 of the Law «On the Internal affairs bodies of the Republic of Kazakhstan» exercise the rights and duties within their competence. It should be noted that the competence and powers of the internal affairs bodies meant in these articles are regulated clearly and in great detail.

In accordance with Article 8 of the Law № 3152, the structure of MIA includes six major service units: General directorate of regional administration; General directorate of population and citizenship affairs; General directorate of local authorities; Department of data collecting on smuggling and exploration; Department of associations; Department of external relations with the European Union. In this regard, based on the provisions of the Laws «On unions of local governments»⁸, «On the provincial administrations»⁹, it can be concluded that MIA is involved in the activities of local authorities, moreover, the ministry oversees the activities of local government. For example, the affirmation of new administrative-territorial units and provincial governors is accepted after the mandatory approval and consent of the Minister of MIA.

In Kazakhstan legislation the competence of local executive bodies¹⁰ is carried out similarly, local executive bodies are competent to joint functions with the international affairs bodies, besides, MIA doesn't have any control and supervisory powers in relation to the local

⁵ Decision of Government of the Republic of Kazakhstan «The issues of the Ministry of internal affairs of the Republic of Kazakhstan» № 607 of June, 22nd, 2005;

⁶ http://www.yeniasya.com.tr/politika/ic-guvenlik-paketi-meclis-e-gidiyor_304279 (access date: 25.11.2014); <http://www.taraf.com.tr/haber-emniyeti-sifirlama-yasas-167733/> (access date: 25.11.2014);

⁷ Law of the Republic of Kazakhstan «On the Internal affairs bodies of the Republic of Kazakhstan» № 199-V of April, 23rd, 2014;

⁸ Law of the Republic of Turkey «On unions of local governments» № 5355 of May, 26th, 2005;

⁹ Law of the Republic of Turkey «On the provincial administrations» № 5442 of June, 10th, 1949;

¹⁰ Refer to footnote 7, Art. 12;



executive bodies¹¹.

The important event for Kazakhstan police was that the Law «On introducing amendments and addenda to some legislative acts of Kazakhstan on the activities of the local police force»¹² adopted in November 2015. This law defines the powers, the competence of the local police, regulates the interaction of internal affairs with the local executive authorities. The main task of the local police is to protect public order, crime prevention, crime and others.

In accordance with Article 29 of the Law № 3152 «On organization, duties and authorities of the Ministry of Internal Affairs» the system of MIA includes such subordinated organizations as the General directorate of security (*general police*), General command of gendarmerie, Coast guard command, the Agency of public order and safety, as well as the General directorate on migration issues.

In the structure of the General directorate of security there are intelligence units, units for combating terrorism, contraband and organized crime, crime labs, traffic police officers, as well as special units (*departments of President,*

Prime Minister and members of parliament protection.)¹³.

The structure of the General command of gendarmerie includes criminal department, units of national security, the environment protection, services for combating terrorism and drugs, ensuring traffic rules, search and rescue services, border guards, as well as the control system of correctional institutions¹⁴.

Areas of the police and the gendarmerie activities are carried out exclusively within their competence, if the legislation does not contain provisions when law enforcement bodies are entitled to exercise joint operations and actions (*Article 10 of the Law № 2803*)¹⁵. According to Article 4 of the Law № 2803 «On authorities and duties of gendarmerie», General command of gendarmerie is the part of the Turkish Armed Forces, which reports to MIA. Moreover, according to Article 8 of this Law with the introduction of martial law, the entire block of gendarmerie is transferred to the subordination of the General headquarter of the Ministry of Defense. Thus, it is the hallmark between gendarmerie and police, despite the

¹¹ Refer to footnote 7, Art. 11;

¹² Law of the Republic of Kazakhstan «On introducing amendments and addenda to some legislative acts of Kazakhstan on the activities of the local police force» № 388-V of November, 2nd, 2015;

¹³ Official website of the Directorate General of Security of Turkey /<http://www.egm.gov.tr/> (access date: 23.12.2014);

¹⁴ Official website of the General Gendarmerie Command of Turkey /<http://www.jandarma.gov.tr/> (access date: 23.12.2014);

¹⁵ Law of the Republic of Turkey «On authorities and duties of gendarmerie» № 2803 of March, 10th, 1983;

fact that these law enforcement bodies have similar functions.

In general, the law № 2803 regulates only the certain part of the legal relationships related to the duties and powers of the gendarmerie officers, as well as organizational procedures of their activities (*assignment/release on service, material, financial provision, etc.*).

Another distinctive feature between the gendarmerie and police is fact, that the last one acts according to the civil administrative system and performs its duties, obeying to the civil authorities (municipalities), i.e., the police work takes place under the supervision of the heads of cities and districts¹⁶.

To some extent, the analog of the Turkish gendarmerie in Kazakhstan is the Internal Troops of the Ministry of Internal Affairs, which operate on the basis of the Law of the Republic of Kazakhstan «On the Internal Troops of the Ministry of Internal Affairs of the Republic of Kazakhstan»¹⁷.

During comparative analysis of the systems of internal affairs of Kazakhstan and Turkey it has been identified a lot of the similar components. I think that for the Turkish audience the next part of the article will be more informative. In accordance with Article 7 of the Law «On

the Internal affairs bodies of the Republic of Kazakhstan», *the police, correctional system, military investigative bodies, the National Guard of the Republic of Kazakhstan, civil protection bodies form the unified system of law-enforcement bodies*¹⁸.

Kazakhstan's police consist of the criminal police, administrative police departments of investigation, inquiry, and others.

Criminal police consists of units for combating organized crime, extremism, illicit trafficking of drugs, psychotropic substances and precursors, and other units engaged in operational investigative activity.

Administrative police consists of police inspectors units, juvenile affairs units, units to protect women from violence, to control in the sphere of circulation of civil and service weapons, traffic police, migration, environmental police, specialized agencies and other units engaged in the protection of public order.

With the naked eye the similarity of structural units of law enforcement bodies of both countries can be traced, however, for more detailed analysis I will try to make the comparison of the structural units of internal affairs bodies of Kazakhstan and Turkey.

Continued in the next issue of magazine

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¹⁶ Refer to footnote 4, Art. 28;

¹⁷ Law of the Republic of Kazakhstan «On the Internal Troops of the Ministry of Internal Affairs of the Republic of Kazakhstan» № 1407-XII of June, 23rd, 1992;

¹⁸ Refer to footnote 7, Art. 7;