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## Motivation of decisions in criminal proceedings

The Code of Criminal Procedure of the Republic of Kazakhstan, widely using the term «motivation» in relation to various proceeding decisions, does not give its legal interpretation. In common sense the motivation is understood as availability of rather convincing reasoning, motivations. The most important part of criminal proceedings in informative and logical aspect is reasoning of the choice of the legal standards which are applied in the handling of particular criminal case and also those proofs and arguments of the parties which become a basis for reaching a court verdict. All criminal procedure decisions have to be motivated, it is the universal requirement imposed to the decisions made during the criminal proceedings. The purpose of article is a consideration of motivated decision features, determination of structure of motivation and its necessary elements. The research purpose consists in the analysis of the legal nature of motivation of legal proceedings and decisions in modern criminal proceedings of Kazakhstan. According to the purpose the following tasks are set: the analysis of a concept of proceeding decisions, consideration of motivation as a guarantee of legality and justification, definition of criteria of legal proceedings motivation and decisions, analysis of their essence and value. The methodological basis of a research is introduced by doctrinal provisions of the general theory of knowledge. As a result of a research conclusions are drawn that the motivation is the property of legal proceedings and decisions determining respect for the principle of legality by subjects of proof in the course of implementation of criminal procedural activity by them.

*Keywords:* criminal proceeding, problems of criminal proceeding, reasoning, motivation, decisions in criminal proceedings, the judgment, justification of the criminal procedure decision, proof, legality of decisions, requirements imposed to the decision, regularities of the criminal procedure decision.

### Introduction

*Relevance of the research:* The decision made in criminal proceedings represents the act of «managerial character», a certain authoritative command the result of which can be a significant restriction of legitimate rights and personal freedoms provided with the compulsory force of the state. Similar restriction, without being motivated, does not accord with the principles and the ideas of democracy, the constitutional state, rule of law according to which «an individual, their rights and freedoms belong to the highest values» (Article 1 of the Constitution of RK). The legislator submitted requirements of justification and motivation of the proceeding decisions made by subjects of proof. It dictates the need of more detailed consideration of the principle of legality value in general and also determinations of that place which is taken by justification and motivation in relation to this idea in criminal proceedings.

The legality and expediency define the motivational and strong-willed moment in a method of development, movement of process. Investigative understanding of legality will quite be approved with value of publicity as public expediency of proceedings. Characteristic of the investigative mechanism of proceedings finds the final end in understanding of the principle of legality as source of the movement of criminal proceedings: the public interest purposes are achieved by legal methods, on the basis of the law. Unilateral public activity, not considering the interests of the protection party, being an essence of investigative legal proceedings in pure form has no internal source for the self-development. Therefore it is not effective and is not capable to provide public interest basically. In this regard, there is a need for impact on development unilateral public criminal procedure activity of a pre-judicial part of criminal proceedings (a judicial part is quite competitive).

*Research purpose.* The research purpose consists in the analysis of the legal nature of motivation of legal proceedings and decisions in modern criminal proceedings of Kazakhstan; determination of contents and the place of motivation of legal proceedings and decisions in structure of proof and also in the ratio of the legality and justifiability with the principle of legality; in development of a complex of offers and recommendations about improvement of the existing regulations of the criminal procedure legislation, law-enforcement practice.

*Research methods.* Methodological basis of a research is the dialectical-materialistic method as a general scientific cognition method. By preparation of article private and scientific methods of a research of the legal and social phenomena were used: logical and legal, system-based.

*Results of a research.* The motivation of decisions in criminal proceedings means reduction in the judgment of the decision-making mechanism on the basis of forming of inner conviction and judgement, with an obligatory information component.

*Short conclusions.* In our opinion, for assessment of motivated decision in criminal proceedings, the following criteria are important: completeness of a research of the facts of the case important for qualification of act and the solution of a question of punishment which is expressed in total conclusions and arguments, a reinforcement of each conclusion by a complex of proofs, consistency of conclusions to each other, availability of «motives» — the explanations, connecting the facts and conclusions, structured, logical and consecutive order of the text.

Reasoning of own choice of the rules of law is the most important part of judicial activity in informative and logical aspect which is subject to use by a certain criminal case production and also those proofs and arguments of the parties which become a basis for adoption of the judgment is considered. This process in jurisprudence is traditionally considered as motivation of the judgment, and the property of the judgment reflecting this type of activity is called motivation. Along with legality and justification, the motivation can be considered as criterion of quality of judgments. N.A. Tuzov understands the motivation as «proceeding from an equally competitive identification, selection, selection and availability due to completeness of certain legal grounds for resolving ... disputes, evaluative, legally complete and systematic — reasoning (convincing) documentary presentation by courts of their authoritative final conclusions (conclusions) on the ones they considered cases in the form of operative parts of their judicial acts» [1; 8].

Despite some divergence in determination of motivation, position of authors, concerning the essence of this category, are similar. If the motivation is a property of the judgment, then its motivation is a process of achievement of this property. The specific contents of motivation and its objects in jurisprudence are defined differently. Content of motivation seems in the obligatory list of issues of system and estimated reasoning of court conclusions on the cases in substantive provisions of decisions and answers to these questions in motivation parts considered by the court. V.A. Ponomarenko considers motivation components as matters of fact, matters of law (material and procedural) and motives concerning them [2; 5]. Analyzing the aforesaid, it is possible to draw a conclusion that authors include the phenomena of a non-uniform order in the content of motivation: the facts, the choice, selection and availability due to completeness of a certain legal basis the dispute resolution estimated explaining, legally complete and system based — the reasoning (convincing) documentary representation of the authoritative total conclusions by vessels on the cases in a type of substantive provisions of their judicial acts considered by them.

P.A. Lupinskaya notes that the motivation of decisions can be expressed in reduction of the established circumstances and proofs on which conclusions are based, with an explanation why some proofs are accepted, and others are rejected and also in the actual, logical and legal argument of rather established facts and legal essence, in reduction of the arguments explaining the choice of one of versions of the decision and its expediency [3; 87]. Apparently, researchers in general agree in opinion that the motivation assumes availability of the reasoned conclusions about an algorithm of adoption of the judgment. In fact, motivation means the logical and convincing answer to a question of why the court made this or that decision. The concept of motivation is closely connected with a concept of reasons. P.A. Lupinskaya considers the reasons as the most important element of a form of the proceeding decision and notes that justification of the made decision is expressed in reasons. The reasons of the decision adduce the system of arguments, the reasons of the actual, logical, legal character leading to certain conclusions on case [4; 158]. According to E.V. Hakhaleva, the motivation is intrinsic characteristic of contents of the judgment, connecting legal conclusions of court with the dispositive facts established in judicial proceedings and consistently reflecting process of forming of belief of the judge about a legal essence of the permitted case [5; 8].

The reasoning of the judgment depends also on a type of the decision, degree of its importance, the essence of the case and also the content of the precepts of law regulating the corresponding relations. It is necessary to agree with authors who believe that the level of motivation of the decision is in direct dependence on the applied rule of law. The regulations containing estimated categories, such as rationality, importance and conscientiousness, etc. demand interpretation and a specification in relation to specific circumstances that attracts forming of the discretion of the court and reflection of motives of decision-making in its text. P.A. Lupinskaya allocates several types of proceeding decisions reasoning depending on whether demands

the law of reduction in the solution of the established circumstances and proofs on which a conclusion about availability of these circumstances is based, or limits motives of the decision only to reduction of the established circumstances. To the types of motivation, it was carried: the reduction of the actual bases of the decision; the reduction established in the matter of circumstances and the analysis of proofs on which conclusions are based; the reduction of the actual bases and motives explaining why this option of behavior is chosen. At the same time presence of the above-stated elements and their ratio at reasoning will be different depending on the nature of the decision and its concrete type.

National courts have to give motives of adoption of the decisions but are not obliged to give the detailed answer to each argument of the party, for example, in cases when the party abuses the right, giving insignificant, unreasonable arguments or arguments which on sense of the law or the settled judicial practice are insolvent. Abuses of the participants of process on promotion of numerous obviously vicious arguments in this case are capable to complicate process of motivation of judgments unreasonably.

The structure of motivation represents the set of elements which are with each other in interrelation determining the level of motivation of various type of judgments in each case. Necessary elements of structure of motivation are its subjects, subjects of motivation and their activity and also criteria of made decision motivation. As objects of motivation it is necessary to consider those elements to which motivational activity of court is directed. In our opinion, it is necessary to carry the actual circumstances, proofs to those (and also other criminal case file), the legal treatment of circumstances which is in indissoluble logical relationship with the previous objects, arguments of the parties.

The main subject of motivation at adoption of judgments is the court, however the activity of participants of criminal proceedings, which are the parties, work with a certain activity rate, adduce the arguments on a case in point, in many cases has significant effect on motivational activity of court. Motivating the decision in these cases, the court has to disclose compliance between these circumstances and conditions expressed by the legislator in estimated concepts. The reasoning has to convince, as in these cases the decision is dictated not by subjective state, but requirements of the law. In some decisions process of explanation by court the sense of rules of law is not reflected, the courts, having specified regulation, do not explain it, draw a conclusion about the facts of the case automatically presuming applicability of this regulation to them. In this case there is no explanation, bringing this sense to data of other interested persons. In other decisions courts resort to interpretation of rules of law, pointing to it in the text of the decision.

O.B. Muravin allocates three types (levels) of proceeding decisions motivation. The first type consists in reduction of the actual circumstances, arguments, motives and determination of legal qualification without reduction of proofs. The second is in reduction of set of actual data which contain considerably the bigger volume of information; proofs, as a rule, are not provided, but their existence is supposed. The third type of motivation is characteristic of the decisions completing a certain stage of criminal proceedings, all actual data and proofs established and collected on case have to be stated in them and also their careful analysis and procedural justification of the made decision are provided [6; 69].

As one of the components of the proceeding decision motivation the motives of its acceptance are considered traditionally. The motive of the judgment is understood as the judgment given by court in a motivation part of the decision in justification of a conclusion on each of the questions which are subject to permission during decision-making. At the same time it is possible to mark out the actual, legal and moral motives of the judgment. It should be noted that motives and the bases have to conform to certain requirements — accessory and sufficiency. Accessory of motives and the bases are their direct link with concrete criminal proceedings, and the sufficiency means, such their set, which gives the chance to make the lawful decision. The completeness of motives is a completeness of means by means of which motivation, sufficiency of the proofs necessary for justification of conclusions is performed. The objectivity of motives is that, on the one hand, they have to express internal belief of the person making the decision, and on the other hand — to correspond to the facts of objective reality.

As requirements for the motivation of the court decision, the science considered: the adversarial completeness of the reflection in the judicial acts of all the presented circumstances, arguments and evidence supporting them, necessary and sufficient for the correct resolution of the case; reflection in the motivational parts of judicial decisions of an assessment of the conformity of the full extent of the circumstances established by the court, the evidence and arguments of the parties to the procedural requirements of their relevance and admissibility, reliability and sufficiency; consistency and consistency in the presentation of the above in the court decision, completeness, evidence and persuasiveness.

The activity of the court as a subject of motivation from the point of view of the motivation process includes two elements: an algorithm of actions for motivating the made decision and the motives of the made decision. The algorithm of the court's actions to motivate the decision reflects the epistemological and thought-logical activity of the court to make a decision and includes the consistent resolution of questions about what factual circumstances were established; what evidence or materials they prove to be true and whether the evidence presented meets the requirements of relevance, admissibility and reliability; what is the legal qualification and significance of the established circumstances, what are the positions and arguments of the parties regarding the factual character of the evidence and their legal qualification; whether the established circumstances in their totality constitute grounds and conditions for making a decision on the issue under consideration; what are the attendant factors in the case that may influence the decision-making (personality characteristics of the person in respect of whom the relevant decision is made, his living conditions, state of health, factors of a technical and organizational nature, etc.); which decision is made taking into account the above circumstances.

#### *Methods and Materials*

The methodological basis of the study is a system-logical, formal-legal, comparative-legal research methods in combination with a comprehensive analysis of the studied issues. In this study, the method of critical analysis of research results and the position of the theory of decision making was also used.

The motivation of decisions in criminal proceedings has been sufficiently studied in the legal literature in connection with the cumulative opinion of decisions (P.A. Lupinskaya, N.A. Tuzov, V.A. Ponomarenko). N.A. Tuzov names the circumstances of the case, the evidence, the arguments of the parties and the conclusions of the case, the rule of law and the existence of logical connections between them as objects of motivation. V.A. Ponomarenko includes in the notion of motivation the presence in the decision of a reference to clearly formulated factual and legal grounds for the decision and reflection in it that way on which the court came to the conclusions on the merits of the case. Also it was noted by Lupinskaya that the motivation of the decision includes reduction in it of established facts which are initial material for a conclusion. At the same time not only the description of the facts, but also some of their group is provided in the decision, their connection with legal concepts is established; in the decision communication of the facts, their value reveals, motives for which some are rejected, are given and other proofs are accepted. The requirement of the law on pronouncement of motivated decisions means the need of reflection for the relevant document of those incentive forces which caused the choice of this decision.

The theoretical basis of the article consists of monographic studies of criminal procedure and criminalistics on investigative and judicial actions, participation in criminal proceedings.

#### *Results*

The issuance of a motivated decision is available in a number of legal provisions relating to rulings, definitions made at various stages of legal proceedings. Indicating that a decision should be motivated, the law does not give a general concept of a motivated decision and, as applied to individual decisions, does not indicate what exactly their motivation should be.

The requirement that the decision was not only justified, but also motivated, arises from the fact that motivation enhances the validity of the decision, gives it internal and external persuasiveness facilitates the participants in the process of the essence of the decision made and thereby ensures the real implementation of their nature of defense against unlawful decisions. The motivation of the decision should be considered as one of the ways to further improve the level and quality of work of investigative, prosecutorial and judicial bodies, and to prevent possible mistakes in their work.

Considering the relationship between the validity and motivation of the decision, it should be born in mind that, despite the interconnection and interdependence of these properties of the decision, these concepts cannot be identified. According to the author I.T. Muratova's point of view objections raise, which imply that «the decision motivation means the most accurate and correct expression of the content of the decision taken». It seems that the motive is a motive reason, a reason for some action, and not an expression of the content or the content itself. Taking into account the circumstances of the case and the individual facts collected in the case, the follower weighs and analyzes them, interprets the situation, reasons, argues, the reasons for choosing a particular decision.

*Discussion*

In some cases the law demands that the adopted procedural acts were motivated. A ruling, a determination and a sentence must have this property. The motivation of the procedural act is the presence in it not only of the description of the act, the event, the circumstances, but also references to the evidence, their analysis and corresponding explanations. So, for example, the Code of Criminal Procedure along with introduction and resolutive parts (Articles 359, 361 Code of Criminal Procedure) provides for a descriptive-reasoning part of the conviction (Article 360 of the Code of Criminal Procedure). This part should contain: a description of the criminal act, indicating the place, time and method of its commission, form of guilt, motives, goals and consequences of the crime. The verdict provides evidence on which the conclusions of the court on the guilt of the accused and the reasons for which the court rejected other evidence are based. The main thing in the sentence is not the description of the acts, but the presentation of the evidence and their motivation.

The motivation of the procedural act is associated with an alternative decision. Officials have the right to choose a specific decision, and the motivation is an important means of self-control. The motivation of the decision should contribute to the supervision of the legality and validity of the procedural act, as well as to enable the accused, the suspect and other persons to understand the essence of the procedural act in order to properly protect their rights. Thus, procedural acts must be highly effective.

A procedural act must be such that all its goals (immediate, final) are achieved as soon as possible (without renewal), with the least material expenditures, without prejudice to the rights, freedoms and legitimate interests of the individual.

The basis for the adoption of each court decision is the factual circumstances established by the court, the level of necessary proof determines the level due to motivation, which, in turn, determines the types of motivation of judicial decisions. It is possible to conditionally distinguish the following types (levels) of motivating court decisions: the motivation of the maximum level applied to final court decisions that allow a criminal case on the merits. It contains the maximum quantity of subjects to motivation: it represents the actual circumstances, proofs confirming them the legal treatment of circumstances which is in indissoluble logical relationship with the previous objects, arguments of the parties. The process of motivating of this type of decision is as complex as possible. In this regard, it seems appropriate to use the notion of criteria for the motivation of a court decision and to consider the consistency of the court decision, its certainty and completeness, as well as the conviction of the court decision resulting from the previous criteria as the main criteria. Logicity implies the existence of solid, stable connections between the established circumstances and the made conclusions, the absence of contradictions between them. Certainty implies clarity of this decision and the presence of a clear definite answer on the question under consideration.

Completeness presupposes the existence of all necessary arguments and explanations about the reasons for making a decision; convincing implies a high degree of evidence and sufficiency of the presented arguments, which exclude doubts about the correctness of the decision made. The motivation of the average level is applied when making decisions that less affect the most important rights and freedoms of participants in criminal proceedings (about conducting a search in a dwelling, the satisfaction of the petition for disqualifying a judge, about applying measures of custody for persons detained in custody, and to ensure the safety of his property, etc.). In this case the court has to establish availability of the actual circumstances acting as the basis for decision-making, the argument of court about the reasons of adoption of such decision, as a rule, is not brought, it is supposed that availability of the bases in itself explains the fact of adoption of such decision by court.

The need to motivate the decision on the recognition of evidence as inadmissible and on its exclusion from the list of evidence with specific indication of what exactly violated the law; the need to analyze and evaluate evidence in respect of each defendant and for each charge if the trial is conducted in respect of several defendants or the defendant is accused of having committed several crimes (while maintaining the possibility in cases where several defendants are accused of committing the same crime, give the circumstances of the crime and the evidence confirming the findings of the court, without repeating them in relation to each defendant); the need to disclose in the sentence the main content of the evidence; the inadmissibility of transferring to the verdict the content of evidence from the indictment or the indictment without taking into account the results of the trial, etc. Objects of motivation in the structure of this type of motivation are similar to the previous type, but instead of evidence in these cases, as a rule, the materials presented to the court and not having the status of evidence are used. Only with the observance of the requirement of motivation of the

judicial act will cause the confidence of the parties, and therefore motivation is a necessary requirement for a court decision.

Motives determine the mechanics of a judicial decision by relating the established circumstances with the applicable law.

In the case of two different conclusions of the courts, the motivation establishes the truth of such judgments, since the reasoning part of the decision contains conclusions substantiating the adoption of such decision, but not a different one.

The requirement to motivate judgments obliges judges to think over and explain once again the course and result of the reasonings. The motivation of the decision is expressed not only in the analysis of proofs on which it is based, but also in reduction in the solution of the actual, logical argument justifying the decision.

### *Conclusions*

The process of motivating decisions is not as complicated as that of final court decisions, but it requires bringing the court's convincing arguments about the availability of set of the bases for decision-making. Different decisions made during criminal proceedings may be differently motivated. It depends on the degree of proof of the factual circumstances of the case necessary for making a decision. Final court decisions resolving the criminal case on the merits should be motivated as much as possible. Decisions affecting the most important rights and freedoms of participants in criminal proceedings — on the application of the most severe measures of criminal procedural coercion, on parole, etc. — must have a high level of motivation, decisions of an irregular nature may have a minimum level of motivation. Technical nature — decisions to eliminate doubts and ambiguities in the sentence; on the transfer of the case; on the order of research evidence, etc. As a rule, only the factual circumstances that are the basis for making a decision are the objects of motivation, the court's algorithm of actions is minimized. Thus: motivation is the most important property of a criminal procedural decision, determining, along with legality and validity, its quality. The structure of motivation is a set of elements that are in relationship with each other, determining in each particular case the level of motivation of judicial decisions of one or another type. The necessary elements of the structure of motivation are its objects, subjects and their activities, as well as the criteria for the motivation of the made decision. Motivated can be considered such a decision, in which the conclusion set forth in the operative part of the decision follows with objective necessity. Motivation is the means by which the court decision becomes «transparent», and the decision is transferred from a subjective category to an objective one. Motivation must be convinced that the decision is dictated not by subjective state, but by legality and expediency.

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## **Қылмыстық сот өндірісіндегі шешімдердің уәжділігі**

Қазақстан Республикасының қылмыстық процестік кодексі «уәжділік» терминін әртүрлі процессуалдық шешімдерге байланысты кенінен қолданғанмен, оның заңды талқылануын бермейді. Жалпы қолданылмалы мағынада уәжділік сенімді уәждің болуымен түсіндіріледі. Танымды-логикалық аспектіде қылмыстық процестің маңызды бөлігі анықталған қылмыстық істі қарастыру

үшін, құқық нормасының таңдап алынуының себебі мен тараптар ұсынған дәлелдемелерді сәйкестендіріп қолдана білумен және солардың негізінде соттық шешім қабылдай алумен байланысты. Барлық қылмыстық-процессуалдық шешімдер уәжді болуы тиіс, бұл қылмыстық іс бойынша шығарылатын шешімдерге қойылатын міндетті талаптардың бірі. Мақаланың мақсаты – шешімнің уәжділігінің ерекшеліктерін, уәжділік құрылымын анықтау және оның элементтерін қарастыру. Зерттеудің мақсаты – Қазақстандағы қазіргі қылмыстық процесте қабылданатын шешімдердің, процессуалдық әрекеттердің уәжділігінің құқықтық табиғатын саралау. Қойылған мақсатқа сәйкес келесі міндеттер анықталды: процестік шешімдердің анықтамасына саралау жүргізу, уәжділікті заңдылық пен негізділіктің кепілі ретінде қарастыру, процессуалдық әрекеттер мен шешімдердің уәжділігіне қойылатын талаптарды зерттеу, олардың мәні мен мағынасын ашу. Зерттеудің әдістемелік негіздерін жалпы таным теориясының доктриналдық ережелерімен берілген. Зерттеу қорытындысында келесі тұжырым жасалды, уәжділік — бұл қылмыстық процестік әрекеттерді жүзеге асыру барысында дәлелдеу субъектілерімен заңдылық қағидасын басым түрде қолдану кезінде процестік әрекеттер мен шешімдерге қойылатын талап.

*Кілт сөздер:* қылмыстық іс жүргізу, қылмыстық процесс мақсаттары, уәжділік, қылмыстық процестегі шешім, соттық шешім, үкім, қылмыстық-процестік шешімдердің негізділігі, дәлелдемелер, шешім заңдылығы, шешімге қойылатын талаптар, шешімдердің заңдылығы.

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### Мотивированность решений в уголовном судопроизводстве

Уголовно-процессуальный кодекс Республики Казахстан, широко используя термин «мотивированность» применительно к различным процессуальным решениям, не дает его легального толкования. В общепотребительном смысле мотивированность понимается как наличие достаточно убедительной мотивировки, мотиваций. Важнейшей частью уголовного процесса в познавательном-логическом аспекте является аргументирование своего выбора норм права, подлежащих применению при производстве по конкретному уголовному делу, а также тех доказательств и доводов сторон, которые становятся основой для принятия судебного решения. Все уголовно-процессуальные решения должны быть мотивированными — это универсальное требование, предъявляемое к решениям, выносимым в ходе производства по уголовному делу. Целью статьи является рассмотрение особенности мотивации решения, определение структуры мотивирования и ее необходимые элементы. Цель исследования заключается в анализе правовой природы мотивирования процессуальных действий и решений в современном уголовном процессе Казахстана. В соответствии с целью поставлены задачи: проведение анализа понятия процессуальных решений; рассмотрение мотивированности как гарантия законности и обоснованности; определение критериев мотивированности процессуальных действий и решений; анализ их сущности и значений. Методологическая основа исследования представлена доктринальными положениями общей теории познания. В результате исследования сделан вывод о том, что мотивированность есть свойство процессуальных действий и решений, детерминирующее соблюдение принципа законности субъектами доказывания в процессе осуществления ими уголовно-процессуальной деятельности.

*Ключевые слова:* уголовный процесс, задачи уголовного процесса, мотивированность, мотивация, решения в уголовном процессе, судебное решение, обоснованность уголовно-процессуального решения, доказательства, законность решений, требования, предъявляемые к решению, закономерности уголовно-процессуального решения.

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