

On approval of the Instruction on the organization of prosecutor's supervision over legality of execution of criminal penalties and application of other measures of the state coercion

Invalidated Unofficial translation

Order of the Prosecutor General of the Republic of Kazakhstan dated September 13, 2017 No. 104. Registered with the Ministry of Justice of the Republic of Kazakhstan on October 4, 2017 No. 15840. Abolished by the Order of the Prosecutor General of the Republic of Kazakhstan dated October 21, 2021 No. 137

Unofficial translation

Footnote. Abolished by the Order of the Prosecutor General of the Republic of Kazakhstan dated October 21, 2021 No. 137 (effective after ten calendar days after the date of its first official publication).

Guided by subparagraph 4) of Article 37 of the Law of the Republic of Kazakhstan "On Prosecutor's Office" I hereby ORDER:

1. To approve the attached Instruction on the organization of prosecutor's supervision over legality of execution of criminal penalties and application of other measures of the state coercion.

2. To invalidate:

1) Order No. 7 of the General Prosecutor of the Republic of Kazakhstan dated January 6, 2015 "On approval of the Instruction on the organization of prosecutor's supervision over observance of legality in the execution of penalties, detention of persons in special institutions and monitoring of persons released from places of detention" (registered in the Register of State Registration of Regulatory Legal Acts under No.10202, published in the legal information system "Adilet" dated February 27, 2015);

2) paragraph 3 of the list of some orders of the General Prosecutor of the Republic of Kazakhstan, which are amended and supplemented, approved by order No. 172 of the Prosecutor General of the Republic of Kazakhstan dated November 15, 2016 "On introduction of amendments and additions to some orders of the General Prosecutor of the Republic of Kazakhstan" (registered in the Register of State Registration of Regulatory Legal Acts under No. 14554, published in the legal information system "Adilet" dated December 30, 2016).

3. The Department for supervision over legality of judicial acts that entered into force and their enforcement shall:

1) provide the state registration of this order with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days after the state registration of this order with the Ministry of Justice of the Republic of Kazakhstan, direct its copy in print and electronic forms for official publication to the Republican State Enterprise with the Right of Economic Management “Republican Center of Legal Information” of the Ministry of Justice of the Republic of Kazakhstan for official publication and inclusion in the Reference Control Bank of Regulatory Legal Acts of the Republic of Kazakhstan

3) place this order on the Internet resource of the General Prosecutor's Office of the Republic of Kazakhstan.

4. This order shall be directed to the heads of structural units of the General Prosecutor's Office, departments, institutions and educational organizations of the prosecutor's office, regional, district and equated to them prosecutors.

5. Control over the execution of this order shall be entrusted to the supervising deputy General Prosecutor of the Republic of Kazakhstan.

6. This order shall be enforced upon expiry of ten calendar days after the date of its first official publication.

*General Prosecutor
of the Republic of Kazakhstan*

Zh. Asanov

Approved
by order No. 104
of the General Prosecutor
of the Republic of Kazakhstan
dated September 13, 2017

INSTRUCTION

on the organization of prosecutor's supervision over legality of execution of criminal penalties

and application of other measures of the state coercion

Chapter 1. General Provisions

1. This Instruction on the organization of prosecutor's supervision over legality of execution of criminal penalties and application of other measures of the state coercion (hereinafter -the Instruction) details the implementation of supervisory activity:

in the departments of internal affairs (hereinafter - the DIA) on exercising control over behavior of the persons released on parole from serving a sentence (hereinafter referred to as ROP) and persons in respect of whom the court established administrative oversight;

in the national security and DIA bodies for execution of criminal penalty in the form of expulsion from the Republic of Kazakhstan;

in the penal enforcement system (hereinafter - the PES) for criminal sentences execution;

in the authorized state body implementing the state policy and state regulation of activities in the field of providing executive documents on execution of criminal penalties in the form of a fine and property confiscation;

in local executive bodies for the implementation of competencies stipulated by the Penal Code of the Republic of Kazakhstan;

in special institutions that legally provide temporary social isolation of the persons suspected and accused of committing a criminal offense.

2. Basic definitions used in this Instruction:

1) special institutions - pretrial detention facilities of the Ministry of Internal Affairs of the Republic of Kazakhstan (hereinafter –MIA of RK), the National Security Committee of the Republic of Kazakhstan (hereinafter – NSC of RK) and the guardhouses of the Ministry of Defense of the Republic of Kazakhstan (hereinafter – MoD of RK);

2) enforcement bodies - the Ministry of Justice of the Republic of Kazakhstan, its territorial bodies, private court bailiffs (hereinafter referred to as PCB) for the execution of criminal penalties in the form of a fine and property confiscation;

3) structural unit of the General Prosecutor's Office - a unit of the General Prosecutor's Office of the Republic of Kazakhstan (hereinafter referred to as the GP office of RK), which oversees legality of the execution of criminal sentences and application of other measures of state coercion;

4) recorded person - a person serving a non-custodial criminal sentence and registered with the probation service;

5) Republican state enterprise "Yenbek" - republican state enterprises "Yenbek", "Yenbek-Oskemen" and their branches of the penal-executive system of the MIA RK (hereinafter referred to as RSE "Yenbek");

6) Execution of criminal penalties - application of measures of state coercion provided for by Article 40 of the Criminal Code of the Republic of Kazakhstan (hereinafter referred to as the CC RK) and administered by court to persons found guilty of a criminal offense;

7) zone-subject principle of supervision - assignment to an officer of the structural unit of the GP office of RK the functions of controlling the activities of individual regional and equated to them prosecutor's offices in ensuring compliance with the requirements of this Instruction and conducting of analysis of the situation in legality and other issues of the penal legislation;

8) supervised person - a person in respect of whom the court has established administrative supervision, in accordance with the Law of the Republic of Kazakhstan “On administrative supervision of persons released from places of detention”;

9) supervising prosecutor - an employee of the structural unit of the GP office of RK, regional and equated to it district prosecutor's office, and equated to it office for supervision of the execution of criminal sentences and application of other measures of state coercion;

10) application of other measures of state coercion –holding of persons taken into custody on suspicion or on charges of a crime, and monitoring the behavior of persons, who are on parole and supervision;

11) disciplinary premises - solitary confinement cells, disciplinary cell;

12) an emergency - a natural or man-made disaster that threatens the life and health of persons held in special and penal enforcement system institutions, facts of crimes committed by officers of these institutions, persons in custody, convicted persons, the use of torture, violent death of a person remanded in custody or serving a prison term, group disobedience to the requirements of the administration of special and penal enforcement institutions, hostage-taking, riots (intentional destruction of property), mass disorders, evasion of serving a criminal sentence in the form of imprisonment, escape, collective refusal to perform work, hunger strike.

3. Supervision over legality in the execution of criminal penalties, holding of persons in penal enforcement and special institutions and monitoring of those released from places of detention ensures compliance with the rules of criminal, criminal executive, criminal procedure, other rules in the execution of criminal penalties, other measures of criminal justice response, protection of the constitutional rights, freedoms and legitimate interests of persons in custody, convicted persons, released on parole, as well as supervised persons, observance of the procedure and conditions of detention in special and penal enforcement system institutions, implementation of the legislation regulating the procedure for rehabilitation of repressed persons.

4. The priority areas of supervision are:

1) observance of constitutional rights, freedoms and legitimate interests of convicted persons and persons subjected to other measures of state coercion;

2) observance of legality in the activities of the authorized state bodies, local executive bodies, bodies executing criminal punishment, special and penal enforcement institutions;

3) observance of legality in the activities of local executive bodies and probation services on re-socialization and social adaptation of persons released from places of detention and registered with probation services.

5. Supervision over legality of the execution of criminal penalties and application of other measures of state coercion shall be provided by analyzing and checking of the state of legality, including with the use of the data base of law enforcement, special state and other bodies.

6. The prosecutor's powers in overseeing legality of the criminal penalties execution and application of other measures of state coercion are determined by the Criminal Procedure Code and the Penal Execution Code of the Republic of Kazakhstan, laws of the Republic of Kazakhstan "On Prosecutor's Office", "On Enforcement Proceedings and the Status of Enforcement Agents" and other laws of the Republic of Kazakhstan.

7. The procedure for consideration by the prosecutor of the appeals of persons held in custody and serving criminal sentences is determined by the penal executive and criminal procedure legislation of the Republic of Kazakhstan and other regulatory legal acts.

Chapter 2. Demarcation of powers in supervision over legality of execution of criminal penalties and application of other measures of the state coercion

8. To organize effective interaction and exclude duplication of functions of the GP office of RK, regional, district and equated to them prosecutor's offices, the following demarcation of powers shall be established in supervision over legality of execution of criminal penalties and application of other measures of the state coercion:

1) General Prosecutor's Office shall:

oversee the observance of legality in the PES, RSE "Yenbek", executive enforcement agencies for the execution of criminal penalties in the form of a fine and property confiscation, administrative police Committee of the MIA of RK for preventive control over behavior of the persons released from places of detention in respect of which the court established administrative oversight;

oversee the legality of legal acts on execution of criminal penalties and application of other measures of state coercion;

organize and coordinate the work of the prosecution authorities in the supervision over legality of execution of criminal penalties and application of other measures of state coercion;

move proposals on identification of priority areas of supervision over legality of the execution of criminal penalties and application of other measures of state coercion;

2) regional and equated to them prosecutor's offices within their authorities shall:

organize and ensure the supervision of legality in the activities of territorial bodies (departments) of the MIA RK, territorial bodies (departments) of PES, territorial bodies (departments) of the Ministry of Internal Affairs of the Republic of Kazakhstan – in monitoring of persons on parole and supervision, territorial bodies (departments) of the National Security Committee of the Republic of Kazakhstan and the Ministry of Internal Affairs of the Republic of Kazakhstan, enforcement, local executive bodies, special and penal enforcement institutions, RSE "Yenbek" institutions;

supervise legality of execution of the criminal penalties and application of other measures of state coercion;

supervise legality of legal acts on the enforcement of criminal penalties and application of other measures of state coercion;

organize and coordinate the work of the district and equated to them prosecutor's offices for supervision over legality of execution of criminal penalties and application of other measures of state coercion;

supervise observance of the Law of the Republic of Kazakhstan of April 14, 1993 " On Rehabilitation of Victims of Massive Political Repressions";

3) The Chief Military Prosecutor's Office and its territorial units shall:

supervise the legality of holding persons in guardhouses;

supervise the legality of execution of non-custodial criminal penalties against military personnel;

supervise the legality of activities of the National Guard of the MIA RK in protection of penal enforcement system institutions, performance of supervisory service and convoy escort of convicts;

supervise observance of the Law of the Republic of Kazakhstan of April 14, 1993 " On Rehabilitation of Victims of Massive Political Repressions";

4) district and equated to them prosecutor's offices shall supervise legality of the activities of the bodies and institutions for the execution of criminal penalties and other measures of state coercion on the administrative-territorial principle.

Chapter 3. Organization of work on supervision over legality of execution of criminal penalties and application of other measures of the state coercion by the General Prosecutor's Office

9. In the supervision over legality of execution of criminal penalties and application of other measures of state coercion, the structural unit of the GP office of the Republic of Kazakhstan shall:

1) provide supervision on a zonal-subject principle, organize interaction with other departments of the GP offices of the Republic of Kazakhstan, subordinate prosecutor's offices, concerned state bodies and public associations;

2) conduct inspections by analyzing the state of legality in the execution of criminal penalties and application of other measures of state coercion, the facts of emergencies, publications in the media, appeals of individuals and legal entities, including on-site visits;

3) initiate a joint inspection of legality of the operational-search activity (hereinafter - OSA) together with the structural unit of the GP office of RK for supervision of legality of the OSA in the penal executive system (PES);

4) independently issue acts of prosecutorial oversight and response when conducting an on-site inspection on the facts of breaking the law, requiring an immediate response;

5) on behalf of the leadership of GP office of RK evoke criminal cases and other materials in order to study the legality of resolutions of subordinate prosecutors, law enforcement officials, special and other state bodies, as well as judicial acts;

6) draw conclusions (in a free form) on the studied materials on the application of acts of clemency;

7) quarterly analyze the state of supervision over legality of the execution of criminal penalties and application of other measures of state coercion, as well as priority areas of supervision;

8) initiate at interdepartmental operational briefings, meetings of the board and Coordination council the review of provision of legality and the rule of law and fight against crime;

9) initiate modern methods of supervision, extend positive supervisory practices, conduct internships for regional, district and equated to them prosecutors to upgrade their qualifications;

10) carry out other orders of the Prosecutor General, his deputy, responsible for overseeing the legality of execution of criminal penalties and application of other measures of state coercion, of the head of the structural unit of the GP office of the Republic of Kazakhstan.

Chapter 4. Organization of work on supervision over legality of execution of criminal penalties and application of other measures of the state coercion by the regional and equated to it prosecutor's office

10. In the exercising of supervision over legality of execution of criminal penalties and application of other measures of state coercion, the prosecutor of the region, the prosecutor equated to him and their deputies shall:

1) organize and ensure supervision over legality in the activity of territorial bodies (departments) of the penal enforcement system, territorial bodies (departments) of the Ministry of Internal Affairs of the Republic of Kazakhstan for monitoring of paroled and supervised persons, territorial bodies (departments) of the National Security Committee of the Republic of Kazakhstan and the Ministry of Internal Affairs of the Republic of Kazakhstan on expulsion from the Republic of Kazakhstan, enforcement bodies, local executive bodies, bodies executing criminal punishment, special and PES institutions, RSE Yenbek institutions, local police service (hereinafter referred to as LPS);

2) ensure supervision over observance of the Law of the Republic of Kazakhstan of April 14, 1993 “On Rehabilitation of Victims of Massive Political Repressions”;

3) coordinate activities of local executive and law enforcement bodies on execution of criminal penalties and application of other measures of state coercion;

4) provide immediate response to the facts of torture, unlawful influence measures to persons in custody and convicted persons;

5) if required, organize inspections to supervise legality of the operative search activity (OSA) in the PES institutions;

6) monitor activities of district and equated to them prosecutors on supervision of legality of the execution of criminal penalties and application of other measures of state coercion, also provide organizational and methodological assistance;

7) ensure immediate arrival of district prosecutors and prosecutors equated to them to check the emergencies;

8) ensure participation of the prosecutor in the court of appeal in the review of petitions on the court rulings related to the execution of the sentence;

9) at least 2 times a year provide reception of convicts, inspection of the residential compound, medical-sanitary unit, penalty premises and other facilities in the PES institutions. Regional and equated to them deputy prosecutors shall carry out this work quarterly;

10) redistribute powers between the regional, district and equated to them prosecutor's offices if the PES institution is located in the regional center;

11) initiate and implement modern supervision methods, extend positive supervision practices, conduct workshops, on-the-job training of the staff;

12) provide supervision of the legality of judicial acts on the enforcement of sentences.

If necessary, delegate the duty of participation in the court to the relevant structural unit;

13) carry out other orders of the Prosecutor General, his deputy, responsible for overseeing legality of the execution of criminal penalties and application of other measures of state coercion, the head of the structural unit of the GP office of the Republic of Kazakhstan.

11. Structural unit of the prosecutor's office of the region shall:

1) provide conduct of inspection by analyzing the state of legality of the execution of criminal penalties and application of other measures of state coercion, on the facts of emergencies, publications in the media, appeals of individuals and legal entities, including on-site visits.

In cases of violations that are not of a systemic nature, the inspection shall be entrusted to the authorized state bodies of control and supervision, whose competences include relevant issues;

2) organize and conduct inspections upon appeals of participants of the national preventive mechanism (hereinafter referred to as NPM) and members of public

monitoring commissions (hereinafter referred to as PMC), and take measures of prosecutorial oversight and response for the revealed breaches of the law;

3) provide notification of the structural unit of the GP office of the RK by telephone or other type of communication about the facts of an emergency within 1 hour.

Full information on the facts of the emergency shall be provided within 3 hours and shall contain: the date, time, place and circumstances of the emergency, causes, goals, methods, objects and tools used in the incident, the total number of persons involved in it, indicating full names, articles of the Criminal Code, on which they were convicted, their presence on the operational and preventive registration (if there are more than 5 persons, information about them shall be attached by the list);

4) on single facts of self-injury, hunger protest, suicide and use of special means, the information shall be provided to the structural unit of the RK GP office within 24 hours indicating the reasons and outcome of the decision made;

5) provide supervision over legality of the activities of special institutions;

6) verify legality of resolutions on placement of the convicted person in the penalty room, also conditions of his detention within 24 hours, and in the event of remoteness of the institution - 48 hours with adoption of measures of prosecutorial oversight and response when necessary;

7) on a permanent basis, provide reception of convicts, inspection rounds of the residential compound, medical-sanitary unit, disciplinary and other premises in the PES institutions;

8) verify legality of procedural judgments in the criminal cases initiated on the facts of emergencies;

9) quarterly analyze the state of legality in priority areas of supervision and present information to the structural unit of the GP office of the Republic of Kazakhstan on the 5th day of the month following the reporting period;

10) maintain a quarterly updated passport of the penitentiary system of the region;

12. Acts of prosecutorial supervision, addressed to the central state bodies and its departments, officials, shall be sent through the GP office of the RK.

Chapter 5. Organization of work on supervision over legality of execution of criminal penalties and application of other measures of the state coercion by district and equated to it prosecutor's office

13. In the exercise of supervision over legality of execution of criminal penalties and application of other measures of state coercion, the district and equated to them prosecutors, their deputies, employees of district and equated to them prosecutor's offices shall:

1) oversee legality of activities of the bodies executing criminal penalty, PES institutions, probation services, local executive bodies, territorial bodies of enforcement proceedings, the bodies executing expulsion from the Republic of Kazakhstan, territorial DIA, local police service (LPS), private court bailiffs (PCBs) in execution of criminal penalties and application of other measures of state coercion on the administrative and territorial basis;

2) carry out inspections upon results of analysis of the state of legality of criminal penalties execution and application of other state coercion measures if there are grounds in the form of emergencies, publications in the media, statements and appeals from individuals and legal entities, other messages and signals.

If necessary, prior to the inspection, preliminary meetings are held with convicts to clarify the circumstances.

In the event of revealed violations that are not of a systemic nature, the inspection shall be entrusted to the authorized state bodies of control and supervision, whose competence includes relevant issues;

3) carry out checks on appeals of participants of the national preventive mechanism (NPM) and members of the public monitoring commission (PMC), take measures of prosecutorial supervision and response on the revealed infringements of legality;

4) carry out inspections with on-site visits on the facts of emergencies, of which the prosecutor of the region shall be immediately notified.

Take measures of prosecutor's supervision or response to the revealed infringements of legality;

5) check legality of the use of special tools and draw conclusion of reasonability of the actions of the penal institutions' administration.

The conclusion shall contain information on the person, place, time and circumstances of the use of special means, data on the employees who applied them, grounds for their application, conclusions on legality of their use. Corroborative materials shall be attached to the conclusion;

6) check individual cases of self-injury, hunger strike and suicide, find out the causes of the incident, assess the actions of the employees of the institution, ensure adoption of a legal proceeding decision. Regional prosecutor shall be promptly notified of these facts;

7) participate in the court proceedings and oversee legality of judicial acts on enforcement of the sentences, establishment and extension of administrative oversight;

8) in case of revealing facts of torture, unlawful measures of influence, including in connection with appeals of the convicts and persons taken into custody, take measures to register them in the Unified Register of Pre-Trial Investigations, transfer them to investigative jurisdiction;

9) check within 24 hours, and in cases of remoteness of the institution - 48 hours, the lawfulness of placing the convict in the penalty room and his detention conditions; take measures of prosecutorial supervision and response in cases of breach of legality;

10) receive convicts on a monthly basis, make inspection rounds of the residential compound, medical-sanitary units, penalty rooms and other facilities in the PES institutions. The supervising prosecutors of the district and equated to them prosecutor's offices shall carry out this work constantly;

11) during the reception of the convicted person, they shall explain the current legislation, respond to questions related to the conditions of serving, actions of the administration of the institution, assist in drafting a petition or appeal on the criminal case on which he/ she was convicted, inform of objections to improvement of his/her situation;

12) verify legality of imposition of penalties and the use of incentives for suspects, accused and convicted persons;

13) check legality of the actions of local executive bodies on the provision of social and other assistance to persons exempted from serving a criminal sentence and registered with the probation service;

14) check legality of the actions of probation services on execution of criminal penalties, including additional, unrelated to social isolation, as well as postponement of execution of the sentence, level of recidivism among the persons on record, parole and supervision;

15) carry out analysis of activities of the DIA and LPS on control of the behavior of paroled and supervised persons, monitor the state of legality in the application of electronic tracking devices used by the probation service, DIA. In the event of revealed infringement of legality, prosecution supervision or response acts shall be introduced;

16) check legality of activities of the territorial bodies of enforcement proceedings regarding collection of penal fines and property confiscation.

The supervision is carried out by analyzing the state of legality, checking the territorial bodies of the enforcement proceedings, evaluating the enforcement proceedings;

17) direct information on the state of supervision over legality of execution of criminal penalties and application of other measures of state coercion to regional and equated to them prosecutor's offices at least once a quarter, unless other terms are established by the regional and equated to him prosecutor.

14. District and equal to them prosecutors shall submit acts of prosecution supervision and response to the territorial bodies of the regional level and their officials through the regional and equated to them prosecutor's offices.

Chapter 6. Final Provisions

15. The main performance indicators of the district, regional and equated to them prosecutor's offices in supervision over legality of execution of criminal penalties and other measures of the state coercion shall be:

- 1) prevention of breaches of the law, conducive to torture;
- 2) ensuring the rights of convicts to socially useful relations and social and legal assistance;
- 3) ensuring the right of convicts to parole, replacement of the unserved part of the criminal penalty by a more lenient penalty and transfer to a minimum security institution;
- 4) reasonableness of replacing the criminal penalty to the recorded person by incarceration;
- 5) enforceability of penal fines and confiscation of property to the state revenue;
- 6) the level of recidivism among the persons registered with probation offices and territorial DIA units.

The main performance indicators of district, regional and equated to them prosecutor's offices may be changed at the suggestion of the structural unit of the General Prosecutor's Office depending on the state of legality in the supervision over observance of legality of execution of criminal penalties and other measures of state coercion.