

## Revisiting the Issue of Legislation in the Sphere of Entrepreneurial Activity in Kazakhstan

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**Abstract:** This article deals with the statutory regulation of entrepreneurial activity in the Republic of Kazakhstan during the period of formation and gaining independence. Chronological framework of the research covers the period between 1990s and nowadays, in which the transition to free market has taken place, the foundation for formation entrepreneurial activity in Kazakhstan has been being laid, legislative framework for certain sectors and institutions of law, which regulate entrepreneurial activity, has been affected. Various governmental programs of supporting entrepreneurial activity in the Republic of Kazakhstan were considered. Normalization of entrepreneurial legislation and enactment of the Code of Entrepreneurship of the Republic of Kazakhstan was suggested.

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### 1. Introduction

The deep structure transformations of the social and politic system, which are being done currently, and which are oriented to strengthening of the vertical power structure, adoption of certain measures on improvement of efficiency of market legal regulation, improvement of certain activity spheres of the economic system and the influence of these processes on the sphere of entrepreneurial activity require appropriate and organic, with respect to these processes, development of respective branches of law, particularly the civil and entrepreneurial law, i.e. the private and public law [1].

The law in the developed western countries is traditionally divided into the public and private law [2, 43-36]. According to Professor K. Larenz (Germany), the public law regulates relations between the government, associations, communities and other public establishments on the one hand and individuals on the other. Private law regulates relations of individuals [3, 1]. Similar definition is given by Palandt and Klunzinger [4, 11].

A famous Spanish lawyer Manuel Albaladejo determined the public law as a total of rules regulating organization and operation of the government and other public institutions, their relations between each other and with individuals. Private law in its turn is a total of rules regulating everything that concerns individuals as well as relations between them or with participation of public institutions in cases when the latter perform functions of private nature, e.g. when a public body leases premises from an individual [5, 11].

The first concept of entrepreneurship was developed by Richard Cantillon. According to his concept, an entrepreneur was an individual who acted in risk because merchants, farmers, artisans and other

small owners purchased goods at a definite price, and sold at unknown price [6].

Statutory regulation of entrepreneurial activity is performed by a community of public legal regulations, which concern various branches of law (civil, fiscal, labor, etc.), and define and regulate the behavior of market participants. At that, the ground of the legal status of entrepreneurial activity is stated by the Constitution. Article 26 Clause 4 states that everyone has the right for freedom of entrepreneurial activity, free use of his property for any legal entrepreneurial activity [7].

### 2. Methodology

The formally logical method of research conventional for legal science was used as the basic method for this article. In the research, other special methods were used, as well, including functional analysis of legal phenomena, systemic and structural approach, and historical analysis.

### 3. Body of the work

Entrepreneurship in the Republic of Kazakhstan is developed in various manners. In terms of activity – the production, commercial and financial entrepreneurship. In terms of the size of businesses – the small-, medium- and large-scale entrepreneurship. In terms of the type of ownership – the private and joint entrepreneurship. In terms of organizational structure – the individual and collective entrepreneurship (partnerships, companies). A standalone organizational and legal form of entrepreneurial enterprises are production cooperatives.

In other words, entrepreneurship becomes stronger and enters more and more spheres of economy and social strata. Its successful development

is possible if such essential conditions are present as private ownership and freedom of economic activity.

Business in Kazakhstan is the sector of economy, which is literally born by reforms. Before it, few people understood what power was hidden in this huge stratum of human enthusiasm and business energy uncalled at that time. In the first half of 1990s, many people thrust into private entrepreneurship with such universal attribute as spontaneous street retail and such main motto as "buy cheaper, sell more expensive".

One of the first measures targeting to support entrepreneurs was the adoption of the Government Program of Support and Development of Entrepreneurship in the Republic of Kazakhstan during 1992-1994, which laid the foundation for formation and development of private entrepreneurship in general without distinguishing different scales of it. At that time, the main obstacles for the entrepreneurship development were absence of integral and stable legislation and appropriate fiscal policy, difficulties in gaining investments and loans, production premises raw materials, information, i.e. absence of a real instrument of governmental support of entrepreneurship, which was to be established by this Program.

In order to establish the required conditions for active formation of the entrepreneurial class and ensure the establishment of reliable social base of economic reforms in the republic, the Program of Government Support and Development of Entrepreneurship in the Republic of Kazakhstan in 1994-1996 was elaborated and adopted. This period was marked by the fulfillment of fiscal reform, which targeted reduction of tax burden through decreasing existing taxes and fees and through application of unified taxation rules across the whole country. During the implementation of the economic reforms, small business started playing the key role. Development of small-scale entrepreneurship in junction with diversification of the industrial sector became the cornerstones of the Kazakhstan-2030 Strategy.

The enacted Civil Code of the Republic of Kazakhstan, namely Article 10, included all governmental efforts, which had been being taken during several years, oriented to development and protection of entrepreneurship. [8] Article 25 Clause 4 of the Constitution of the Republic of Kazakhstan, enacted on August 30, 1995, which announced the right of every citizen for freedom of entrepreneurial activity, was one of the most expected clauses. [7]

1997 can be called the period of formation of a civilized business in the country, because at that time the Decree of the President of the Republic of Kazakhstan on measures of enhancement of

government support and development of small-scale entrepreneurship was adopted. Since that time, the prioritized development of entrepreneurship is the integral part of the government policy and the majority of drastic changes in the society are associated with it. [9]

Enactment of the Law "On Individual Enterprise" on June 19, 1997, and of the Decree of the President of the Republic of Kazakhstan "On Prioritized and Regional Programs of Support and Development of Small Entrepreneurship in the Republic of Kazakhstan" on July 7, 1997 provided for its comprehensible strengthening of the economy of Kazakhstan. Small- and medium-scale entrepreneurs appeared and became strong, and their number grew significantly.

In order to strengthen the government support and activate small-scale entrepreneurship, the President of the Republic of Kazakhstan signed a decree on March of 1997, which became the basis for establishing the Fund of Development of Small-scale Entrepreneurship JSC. The main objectives of the Fund were encouragement of formation and economic growth of subjects of small-scale entrepreneurship (hereinafter referred to as SSE) in the Republic of Kazakhstan and improvement of efficiency of utilization of public finance invested as a support of small businesses.

Between 1997 and 2001, public bodies adopted a row of laws, decrees and orders, which targeted the support and the development of small-scale entrepreneurship, namely they were:

1. the Decree of the President of the Republic of Kazakhstan #3398, dated March 6, 1997, "On Measures to Strengthen Government Support and Activation of Development of Small-scale Entrepreneurship"; the Order of the Government of the Republic of Kazakhstan #665, dated April 26, 1997, "On Establishment of the Fund of Development of Small-scale Entrepreneurship"; the Law of the Republic of Kazakhstan #131-1, dated June 19, 1997, "On Government Support of Small-scale Entrepreneurship"; the Law of the Republic of Kazakhstan #135-1, dated June 19, 1997, "On Self-employed Entrepreneurship"; the Decree of the President of the Republic of Kazakhstan #4189, dated December 31, 1998, "On the Government Program of Development and Support of Small-scale Entrepreneurship in the Republic of Kazakhstan in 1999-2000"; the Decree of the President of the Republic of Kazakhstan #597, dated May 7, 2001, "On the Government Program of Development and Support of Small-scale Entrepreneurship in the Republic of Kazakhstan in 2001-2002";

The high rates of economic growth of the country and the annual average growth of the GDP of

Kazakhstan at 11.6% in 2001-2002, and at 9.3% in 2003-2004 allowed the Government of the Republic of Kazakhstan render great support to small-scale entrepreneurship. [10]

The Decree of the President of the Republic of Kazakhstan #1096, dated May 17, 2003, "On the Strategy of Industrial and Innovation Development of the Republic of Kazakhstan in 2003-2015"; the Decree of the President of the Republic of Kazakhstan #1268, dated December 29, 2003, "On the Government Program of Development and Support of Small-scale Entrepreneurship in the Republic of Kazakhstan in 2004-2006". The governmental entrepreneurship support policy was given renewed momentum, after approval in 2003 of the Strategy of Industrial and Innovation Development of the Republic of Kazakhstan in 2003-2015. Among its main objectives were the creation of entrepreneurial climate and a structure of social institutions, which would support the private sector, improve competitive advantages, assist in putting into production elements of the chain of added values in particular productions, encourage establishment of science-based and high-technology export-oriented productions, diversify the export potential of the country with respect to goods and services, implement international quality standards, and develop integration in the world economy through joining the world scientific and technological innovative processes.

The period of 2005-2007 was marked by adoption of laws, decrees and orders that significantly influenced the entrepreneurial activity in the Republic of Kazakhstan.

The Order of the Government of the Republic of Kazakhstan #450, dated May 12, 2005, "On Approval of the Program of Expedited Measures on Development of Small- and Medium-scale Entrepreneurship in the Republic of Kazakhstan in 2005-2007"; the Law of the Republic of Kazakhstan #124-III, dated January 31, 2006, "On Private Entrepreneurship"; the Decree of the President of the Republic of Kazakhstan "On the Concept of the Transition of the Republic of Kazakhstan to Stable Development in 2007-2024".

In May 2005, the Government of the Republic of Kazakhstan adopted the Program of Expedited Measures on Development of Small- and Medium-scale Entrepreneurship in the Republic of Kazakhstan in 2005-2007". The program of expedited measures assumed improvement of the legislation in the sphere of small- and medium-scale entrepreneurship and creation of viable infrastructure systems.

During 2005-2007, adoption of the Law "On Private Entrepreneurship" allowed to regulate more soundly social relations, which occurred in connection

with the private entrepreneurial activity by individuals and legal entities, to determine main legal, economic and social conditions and warranties that would ensure the freedom of private entrepreneurial activity in the Republic of Kazakhstan [11].

With the purpose of implementing the assignment of the Chief of State N.A. Nazarbaev, which he announced in his Address to the People of Kazakhstan "The New Decade – the New Economic Growth – the New Opportunities of Kazakhstan", dated January 29, 2010, the Government of the Republic of Kazakhstan developed and approved the Program of Entrepreneurship Development "The 2020 Business Roadmap" on April 13, 2010.

The objective of the Program was to ensure stable and balanced growth of regional entrepreneurship in non-energy sectors of the economy and conservation of existing and creation of new job positions.

Implementation of the "2020 Business Roadmap" Program is carried out in three directions of entrepreneurship support: First and foremost, it is financial support of new business initiatives, i.e. new up-to-date enterprises are going to be established in regions. Secondly, it is recovery of the entrepreneurial sector, i.e. support of existing businesses, which face financial difficulties during the crisis. Thirdly, it is support of export-oriented production, i.e. support of entrepreneurs who export their products to external markets. For the first direction, the main instrument will be subsidies of interest rate and guarantees against loans for establishment of new productions. For the second direction, the government will participate in the restructuring of indebtedness of enterprises by means of subsidizing the remuneration rate under previously provided problematic loans and deferment of tax payment to the budget without accrual of any penal fees. As for the third direction, the government support will be rendered by means of subsidizing the interest rate under current bank loans. [12]

Implementation of the Kazakhstan development strategy until 2030, the strategy of bringing Kazakhstan into the list of top 50 competitive countries in the world, and the strategy of industrial and innovation development until 2015 assume diversification of the economy, technological breakthroughs as well as development of the entrepreneurial sector as the cornerstone of market relations and competitive economy.

Economic development of Kazakhstan has significantly progressed lately in the direction of forming polysubjective structure of property relations. Following the Constitution of the Republic of Kazakhstan, The Civil Code legalizes this circumstance. At that, peculiarities of obtaining and

cessation of the right of ownership for property, possession, use and disposal of the property are determined exclusively by the law for each subject. And the law only determines the types of property, which can be owned only by government or only by individuals.

With the purpose of implementation of the assignment of the Deputy Head of Administration of the President of the Republic of Kazakhstan T.S. Donakov #51-11, dated January 13, 2011, to fulfill Clause 10 of the Activity Plan for 2011 with regard to implementation of the Concept of Legal Policy of the Republic of Kazakhstan between 2010-2020, which was approved by the Order of the Government of the Republic of Kazakhstan #1468, dated December 30, 2010, a Concept of the draft Code of Entrepreneurship was elaborated.

The objective of the draft Code of Entrepreneurship lies in normalization of entrepreneurial legislation of the Republic of Kazakhstan, elimination of gaps in the statutory regulation of entrepreneurship.

#### 4. Conclusion

Presently, the legislation in the field of entrepreneurial activity is a huge array of regulatory legal acts of various branches. At that, there are no restrictions and warranties of restricting further increase of their number.

Therefore, the objective to normalize this huge array appeared to be very topical. A single conceptual and methodological database for all regulatory legal acts, which regulate entrepreneurial activity and entrepreneurial relations, is required.

The entrepreneurial legislation in the Republic of Kazakhstan is pending a qualitative upgrade. The global law of *transition from quantity to quality* comes into effect, because there is a critical amount of entrepreneurial legislation sufficient for moving to the brand new round of rulemaking. This requires a legal act of a higher level – a code or any other codifying law.

#### 5. Summary

The new situation required drastic changes in the legal foundation of the economic activity. The Civil Code of the Republic of Kazakhstan is an important landmark on this way. It states principal grounds of economic relations during the transition to the market-based methods of economic activity and

formed main rules and standards of their statutory regulation during the era of changes. However, to our opinion, the further development and improvement of the entrepreneurial activity requires summarizing and legislative recognition of all standards that concern entrepreneurial activity and enactment of the Code of Entrepreneurship.

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