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THE NEED TO SWITCH TO A NEW MODEL OF SENTENCES EXECUTION IN THE REPUBLIC OF KAZAKHSTAN AS A MODERN REQUIREMENT

НЕОБХОДИМОСТЬ ПЕРЕХОДА НА НОВУЮ МОДЕЛЬ ИСПОЛНЕНИЯ НАКАЗАНИЯ В РЕСПУБЛИКЕ КАЗАХСТАН КАК ТРЕБОВАНИЕ СОВРЕМЕННОСТИ

Abstract. Currently, the system of sentences execution in the Republic of Kazakhstan does not correspond to the realities of modern times and needs to be reformed. This fact is confirmed by penitentiary practitioners and scientists. The system of punishment execution does not provide for the correction of convicts and their subsequent resocialization. Instead, it has become a punitive tool for those who are punished for criminal offenses. As a result, instead of returning a person to society, which is the goal of criminal, penal legislation and justice, the system of punishment execution, on the contrary, alienates convicts, turning them into outcasts and eternal “enemies” of justice. At the same time, significant amounts of money are allocated from the state budget for the implementation of these negative functions. According to prisoners serving sentences, and especially the former prisoners, the penal system continues to be punitive, harsh, and sometimes violent in nature. Instead of the creation, education of prisoners, it carries out the function of providing a strict isolation of convicts, making it impossible to maintain contact with the outside world and breaking all contact with the past life, thus creating new social problems, which the state has to solve. The crisis in the penal system is compounded by the negative assessment of the entire system of punishment execution by civil society. In the article, the author examines the existing problems in the system of punishment execution in the Republic of Kazakhstan and justifies the need to switch to a new model of punishment execution. The author offers an approximate model of the new system of punishment execution. Specific proposals are formulated to improve the legal and organizational issues of the system of punishment execution.

Keywords: system of punishments execution, penal law, convicted person, regime of detention, correctional institution, parole.

Аннотация. В настоящее время система исполнения наказания в Республике Казахстан не соответствует реалиям современности и нуждается в рефор-

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мировании. Данный факт находит подтверждение у практических работников и ученых-пенитенциаристов. Система исполнения наказания не обеспечивает исправления осужденных и их последующую ресоциализацию. Вместо этого она превратилась в карательный инструмент для лиц, наказанных за совершенные уголовные правонарушения. В итоге вместо возвращения человека в общество, на что направлено уголовное, уголовно-исполнительное законодательство и правосудие, система исполнения наказания напротив отдаляет от себя осужденных, превращая последних в изгоев и вечных «врагов» правосудия. При этом на реализацию отмеченных негативных функций из государственного бюджета выделяются значительные денежные суммы. По отзывам отбывающих наказание осужденных и особенно бывших осужденных, система исполнения наказаний продолжает носить, карательный, жесткий, а порой и жестокий характер, вместо созидания, воспитания и исправления осужденных, осуществлять функции по обеспечению строжайшей изоляции последних, лишая возможности осужденных поддерживать связь с внешним миром и разрывая все их контакты с прошлой жизнью на свободе, тем самым создавая новые социальные проблемы, устранять которые приходится государству. Кризис в уголовно-исполнительной системе усугубляется негативной оценкой гражданским обществом всей системы исполнения наказания. В статье автор рассматривает имеющиеся проблемы в системе исполнения наказания Республики Казахстан и обосновывает необходимость перехода на новую модель исполнения наказания. Автором предложена примерная модель новой системы исполнения наказания. Сформулированы конкретные предложения по совершенствованию правовых, организационных вопросов системы исполнения наказания.

Ключевые слова: система исполнения наказаний, уголовно-исполнительное право, осужденный, режим содержания, исправительное учреждение, условно-досрочное освобождение.

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The execution of sentences, as an important component and final stage of the entire law enforcement process, needs to be radically rethought and improved. This is a very important task for the state due to the following circumstances:

first, the nature of the criminal penalty itself determines the provision of state coercion in relation to those convicted under a court sentence ("Punishment is a measure of state coercion imposed by a court verdict. The penalty is applied to a person found guilty of committing a criminal offense and consists in the deprivation or restriction of the rights and freedoms of this person provided for in this Code" (*Criminal code of the Republic of Kazakhstan: a practical guide* 2020, p. 37));

secondly, it is necessary to implement all the goals of criminal punishment stipulated in Article 39 of the Criminal Code of the Republic of Kazakhstan ("The penalty is applied for the purpose of restoring social justice, as well as correcting the convicted person and preventing the commission of new criminal offenses by both the convicted person and other persons. Punishment is not intended to cause physical suffering or to degrade human dignity") (*Criminal code of the Republic of Kazakhstan: a practical guide* 2020, p. 37);

third, citizens who stumble through carelessness or intentionally should return to society from the "embrace" of the criminal world;

fourthly, it is necessary to create favorable conditions for social adaptation and resocialization of former convicts and to provide them with post-penitentiary care, probation control of various types by the state until the convicts fully return to normal life (Shnarbaev, B. K. & Mizanbaev, A. E. 2016, p. 19).

Assessment of the current situation in the system of sentences execution

Today, it has become clear to practitioners, scientists, specialists, and the entire society that the system of punishment execution in the Republic of Kazakhstan that has been

established for many decades does not correspond to the realities of our time and needs to be radically changed. So, instead of convicted persons' correction and their subsequent resocialization, the system of punishment execution has become a punitive tool for persons punished for criminal offenses. Instead of returning the convicted person into society, what is the purpose of our criminal, penal law and justice system of punishments execution, on the contrary, with the help of the state, which contains a system of punishment, alienates convicts, turning them into outcasts and the eternal enemies of justice. At the same time, significant amounts of money are allocated from the state budget for the implementation of these negative functions.

Despite the attempts made by the state to change and improve the system of execution of punishments, as practice shows, it is not yet possible. A convicted person, after serving his sentence, becomes not better, but worse. This happens, unfortunately, with the direct and active participation of the employees of the penal system and under the influence of the system of sentences execution itself, as well as various factors in the creation of which we are actively involved.

According to prisoners serving sentences, and especially the former prisoners, the penal system continues to be punitive, harsh, and sometimes violent in nature. Instead of the creation, education of prisoners, it carries out the function of providing a strict isolation of convicts, making it impossible to maintain contact with the outside world and breaking all contact with the past life, thus creating new social problems, which the state has to solve. The exception is food for convicts, which was organized at the highest level in the Republic of Kazakhstan, within the framework of international standards. Now the approved daily food standards for convicts are more than twice the daily food standards for conscripts or cadets of departmental educational institutions of the Ministry of Internal Affairs of the Republic of Kazakhstan.

The crisis in the penal system is compounded by the negative assessment of the entire system of punishment execution by civil society. The state of sentences execution causes fair criticism in the media, which contributes to the formation of a negative attitude of civil society not only to the system of sentences execution, but also in general to all law enforcement agencies and the state. Thus, it is not uncommon for high-profile publications in the media about violations of legal norms committed by individual employees of the penal system. There is a significant increase in the activity of non-governmental law enforcement organizations in resolving problematic issues in sentences execution.

We believe that it is necessary to ensure that the system of punishment execution meets the requirements of modern times and is based on civil society itself, and that all the goals of punishment set out in criminal legislation are implemented in the process of punishment execution. At the same time, the convict would be grateful and useful to perceive the entire correctional process carried out against him.

The entire system of sentences execution needs to be rethought

The current state of the penal system is characterized by limited opportunities in the organization of coverage of the entire contingent of convicts with highly paid work. As the practice of punishment execution shows, only 25–30% of convicts are covered by labor, the average salary of which is in the range of 10–15 thousand tenge. The rest of the convicts do not have the opportunity to be involved in labor.

The entire system of sentences execution should be reviewed, and only convicts who have committed serious and especially serious crimes should be placed in strict isolation. On the contrary, it is necessary to soften the detention regime for those convicted for minor and moderate crimes as much as possible. The content of sentences execution requires changes. For example, minimum- and medium-security institutions, especially medium-

security institutions for juveniles, should be transformed into rehabilitation centers with modern infrastructure, dormitories, educational, industrial, and sports facilities, eliminating strict isolation, high fences, and bars. The local administration will also work closely with such centers. The main task of sentences execution in these rehabilitation centers will not be associated with strict isolation and strict regulation of the internal daily routine of convicts, but only with the restriction of any movement of convicts without outside control.

At the plenary session of the IV International penitentiary forum “Crime, punishment, correction” (Ryazan, November 20–22, 2019), a well-known Russian scientist V. A. Utkin spoke quite convincingly about new approaches to scientific support of a new concept of the penal system’s development as an ideology of its modernization. His ideas deserve attention and support, with the exception of one expressed position on the negative assessment of “judgments about the further humanization of the penal system” (*IV international penitentiary forum “Crime, punishment, correction” (to the 140th anniversary of the Russian penal system and the 85th anniversary of the Academy of the FPS of Russia): collection of speeches and reports of participants (Ryazan, November 20–22, 2019) 2019*, pp. 107-111). It seems to us that it is the further humanization of the penal system that should form the basis for reforming the system of sentences execution. In support of this position, we will cite the words of academician V. N. Kudryavtsev that one of the paradoxes of isolating people in places of detention is that they commit new crimes in these places, sometimes no less serious. This fact, according to the quoted scientist, once again indicates the ineffectiveness of convicts’ correction by isolating them from society (Kudryavtsev, V. N. 2003, p. 162). Further, V. N. Kudryavtsev points out that the strategy of convicts isolation from society is becoming obsolete (Kudryavtsev, V. N. 2003, p. 169). Thus, we will be able to destroy the system

of punishment execution that has developed over the years and is economically costly for the budget and does not benefit society, which generates a criminal subculture and other negative social consequences.

Strengthening and improvement of the existing material base of the penal system's institutions

The state of the material base of penal institutions is morally and materially outdated and needs to be updated. The standard provision for each type of penitentiary system's institutions, defined in Article 89 of the Criminal Code of the Republic of Kazakhstan, needs to be developed and approved at the government level, taking into account foreign experience (institutions of minimum, medium security, medium security for juveniles, maximum, emergency, full, mixed security (*Penal Code of the Republic of Kazakhstan: practical guide 2019*, p. 4)). In addition, it would be advisable to convert the prison, who were convicted for crimes of medium gravity, in a typical dwelling (no high fence, gratings and barbed wire), but with effective control systems, and institutions of maximum, emergency and complete security should be further strengthened with regime controls, so that there is a difference not only in the new form of institutions types of the penitentiary system, but also in the content.

It is a question of indulgences concerning the persons convicted for crimes of minor and moderate gravity. At the same time, we support further tightening of the detention regime for those convicted for serious and especially serious crimes. This will not only increase the effectiveness of sentences execution, but also progressively destroy the criminal subculture. It is also necessary to provide for various new forms of sentences execution for different categories of convicts.

Formation of new industrial relations

It is necessary to radically change the existing system of industrial relations so that it is flexible, useful, profitable and benefits all parties to such relations. The penitentiary system should start using the advantages of

the market economy (the ability to make profits and superprofits and use them for the benefit of convicts), create in correctional institutions, according to the experience of the former USSR, a powerful and efficient production that allows convicts to work and earn money. At the same time, they will not only pay for their maintenance, but also make a profit for the state budget.

It is necessary to establish preferential taxation or completely exempt from taxes all types of production available in the system of sentences execution both in isolation and outside of correctional institutions, to provide paid work for all convicts, since the lack of employment among them is the main cause of most of the incidents that occur in institutions of the penal system.

It would be advisable to link the system of industrial relations with a progressive system of sentences execution, as well as with the conditions of parole, which would have a positive impact on effectiveness of the goals implementation of criminal punishment. For example, a good work record could reduce imposed sentences, allow for additional visits, and provide other incentives and stimulus.

Trends in the development of modern criminal policy require the expansion of other measures of criminal law and penal influence in the framework of restorative justice development. So, those convicted of economic or corruption crimes should not be placed in general correctional institutions to be "eaten" by criminal elements or corrupt employees of the penal system, but sent to serve their sentences for the entire established period in some abandoned village, in order to give them the opportunity to legally create favorable conditions for home improvement and generally strengthen the infrastructure of rural areas. With this approach, the convict himself will be satisfied, there will be a great benefit for the chosen village, and most importantly, the humanity of criminal legislation will be ensured and the goals of criminal punishment will be fully implemented.

Interesting in theory and useful in practice is the proposal of a theoretical model of Russian scientists under the scientific guidance of the Honored scientist of the Russian Federation, Sc.D (Law), Professor V. I. Seliverstov on the organization of serving prison sentences for economic and official crimes. The essence of which is to create specialized correctional institutions for convicts sentenced for economic and official crimes. (Seliverstov, V. I. (ed.) 2019, p. 53). Based on the above, we consider it appropriate to propose to the Committee of the MIA of the Republic of Kazakhstan to convert correctional institutions into specialized institutions for serving sentences for economic and official crimes, for terrorist and extremist crimes, etc. without any additional costs. Moreover, the practice of creating specialized correctional institutions for convicted former law enforcement officers is already available.

Revision of the form of convicts' education

The existing system of education in institutions of the penal system does not meet the requirements. Training should be considered according to part 1 of Article 7 of the PC of the RK as one of the important means of convicts' correction as a primary, basic secondary, general secondary, technical and vocational education (*Penal Code of the Republic of Kazakhstan: a practical guide* 2019, p. 13), which, unfortunately, is not given due attention now, and education is the most important factor of convicts' correction. Education, in our opinion, should become an effective means of convicts' correction, creating favorable conditions for training, upbringing, correction and subsequent adaptation of convicts to life in freedom. For example, it is possible to provide a targeted allocation of grants by the Ministry of education and science of RK for training of convicts according to requests of regional penal systems or of the Committee of the penal system of the Ministry of Internal Affairs, scholarships to students etc. Thus, the training of convicts in correctional institutions will turn into a form of mandatory socially useful work,

since studying in a correctional institution; the convict will benefit not only himself, but also society as a whole.

Formation of new relationships in the process of punishment execution

In the system of punishment execution, the mandatory nature of the method of legal regulation was developed. Since punishment is a measure of state coercion, its execution determines the nature of the method of legal regulation – an imperative method that assumes inequality of subjects of legal relations (the “power-subordination” method (Anisimkov, V. M. & Seliverstov, V. I. (eds) 2008, p. 14)). At the same time, it should be remembered that the priority of the state is to ensure the rights, freedoms and legitimate interests of a person. This requirement also applies to convicts who are part of Kazakhstan's society. For this reason, along with compulsory measures, the legislation provides for other ways to influence convicts.

It is necessary to create departments (groups) for working on the problems of convicts in the institutions of the penitentiary system, which would assist convicts in restoring their violated legal rights and interests. Unfortunately, we have plenty of examples of unjustified convictions of innocent people for long terms of imprisonment. This approach would make it possible to transform the relations of employees of penal institutions with convicts from antagonistic to allied, which will certainly affect both the behavior of convicts and their attitude to the system of punishment execution and justice.

Revision of the existing ratio of criminal and penal legislation of the Republic of Kazakhstan

Today, there is no doubt about the independence of penal law, but despite the separation of penal law from criminal law, these branches of law are closely interrelated, as indicated by Kazakh scientists (Shnarbaev, B. K. & Mizanbaev, A. E. 2017, p. 36). The well-known Soviet scientist E. G. Shirvind pointed out that the authors of all textbooks of Soviet

correctional labor law unanimously considered Soviet correctional labor policy to be a part of Soviet criminal policy, and Soviet correctional labor law to be a branch of Soviet criminal law (Shirvind, E. G. 1956, p. 5). But later, thanks to the efforts of leading scientists-penitentiaries of the Soviet period (V. P. Artamonov, N. A. Belyaev, N. A. Struchkov, B. S. Utevsky, Yu. m. Tkachevsky, A. S. Mikhlin, I. V. Shmarov, G. F. Khokhryakov etc.) penal law became an independent branch of law.

Because of this, the reform of sentences execution is impossible without adjusting the content of criminal legislation. We offer the following.

1. The law provides for certain restrictions on the use of liberty deprivation. For example, Article 46 of the Criminal Code of the Republic of Kazakhstan stipulates that deprivation of liberty is not imposed on persons who have reached the elderly age (over 63 years), women raising two or more children, juveniles who have committed crimes of minor and medium gravity for the first time, disabled people of the first and second groups, etc. For this category of convicts, it is necessary to provide for the creation of specialized institutions – hospitals, closed-type sanatoriums, which will significantly reduce the burden on the execution units and increase the efficiency of their activities.

2. Reduce the maximum terms of imprisonment provided for in Article 46 of the Criminal Code of the Republic of Kazakhstan: for intentional crimes – no more than 10 years; for reckless crimes – up to 5 years; for aggregate crimes – up to 12 years; for aggregate sentences – no more than 15 years.

3. Review the procedure for parole established in part 3 of Article 72 of the Criminal Code of the Republic of Kazakhstan, that is, reduce the actual terms of serving sentences for minor crimes – up to 0.5 years, medium – up to 1 year, serious – up to 2 years, especially serious – up to 3 years.

4. Expand the use of the institution of parole (Article 63 of the Criminal Code of the Republic of Kazakhstan).

The implementation of the proposed approach will ensure not only the fulfillment of the goals of criminal punishment, but also help to create a new model of punishment execution, which would not only suit the parties to penal relations, but also contribute to improving the efficiency of punishment execution, as well as achieving positive results in combating crime at the present stage.

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