

Contemporary Analysis of Social Consequences of Imprisonment Application in the Republic of Kazakhstan

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Abstract: The study is considered the social consequences of imprisonment application as an independent type of punishment in the criminal legislation of the Republic of Kazakhstan the reduction of which would allow to minimize the process of citizens' involvement to the sphere of criminal and legal relations and to lower a number of the "prison" population of the country. The problem of social consequences of punishment was a subject of independent research by scientists of the near and far abroad earlier; however, the Kazakhstani jurisprudence did not pay sufficient attention to these matters. The art of the law enforcement system is consisted in punishing the person who committed crime without resorting to the severest type of punishment as imprisonment.

Key words: Criminal and legal policy, punishment, type of punishment, law enforcement activity, humanization, suspended sentence

INTRODUCTION

According to existing criminal legislation of the Republic of Kazakhstan, life imprisonment is one of severest types of punishments after the death penalty. It is explained by the volume of right restrictions of a prisoner, established by legislation and regulations.

Imprisonment, according to Article 40 types of punishments of the Criminal Code of the Republic of Kazakhstan. Belongs to the main types of punishments and is used alongside with penalty, corrective works, restriction of freedom, the death penalty, only to those persons who committed a crime. Imprisonment as a main type of punishment is not applied to those who committed a criminal offence. According to part 1 of Article 46 of the Criminal Code of the Republic of Kazakhstan. The imprisonment consists in isolation of a prisoner from society by sending him/her to a colony-settlement or placement in a corrective colony of general, strict and special regime or in jail.

Moreover, the order of application of this type of punishment is found in the normative resolution No. 15 of the Supreme Court of the Republic of Kazakhstan "the issues of punishment determination in the form of imprisonment" from October 19th, 2001. The resolution indicates that punishment in the form of imprisonment as one of the strictest types of punishment among other

formats of punishment provided by the law is appointed only in the cases when the correction of prisoners and the prevention of new crimes are impossible in determination of less severe types of punishment.

At the same time, the practice of law application in the Republic of Kazakhstan showed that imprisonment as the severest punishment became a widespread format in jurisprudence.

According to jurisprudence, the widespread type of punishment is imprisonment (51.8%) then follows a penalty (4.7%), freedom restriction (2.2%), corrective works (0.4%) and delay from punishment serving (0.3%). According to Article 63 of the general part of the Criminal Code of Kazakhstan, the suspended sentence was applied in 40.6% cases.

It was happened due to contents of sanctions and articles of special part of the Criminal Code of the Republic of Kazakhstan of 1997.

In accordance with the Criminal Code of the Republic of Kazakhstan of 1997, the most presented type of the main punishment prescribed in sanctions of articles of special part of the Criminal Code of the Republic of Kazakhstan was imprisonment 559 cases then a penalty 295 cases. The third position took arrest 224 cases. After that deprivation of the right to hold a certain position or to be engaged in a certain activity 176 cases, corrective works 158 cases, restriction of freedom 122. Cases,

involvement into public works 77 cases, detention in disciplinary military unit 43 cases, restriction of military service 31 cases, life imprisonment 19 cases, the death penalty 18 cases.

Due to such law enforcement practice in Kazakhstan, the courts applied imprisonment to 18-20 thousand people annually who stayed in correctional institutions. As a result, there is a continuous process of intensive increase of a number of the "prison" population.

N.A. Nazarbayev the president of the Republic of Kazakhstan in his Address to the people of Kazakhstan from January 29th 2010 noticed the necessity to change the negative practice of an application of such type of punishment as imprisonment. He pointed out that in our system of punishment the penalties are make <5%, corrective works 0.4%, public works 0%. The main type of punishment is still imprisonment.

The new Criminal Code of the Republic of Kazakhstan adopted in 2014 came into force on January 1st, 2015 within the frame of realization of address of the head of state, Nursultan Nazarbayev to the People of Kazakhstan "Kazakhstan 2050" a New Political Policy of the established state".

In spite of stage-by-stage humanization of the criminal legislation of our country, the new Criminal Code of the Republic of Kazakhstan of 2014 which came in to force on January 1st, 2015, kept the leading position of the considered type of punishment-imprisonment.

For example, in articles of special part of the Criminal Code of the Republic of Kazakhstan of 2014 the following types of punishments often take place: imprisonment 744 cases, a penalty 471 cases, corrective works 468 cases, restriction of service 342 cases, confiscation of property 264 cases, involvement into public works 152 cases, arrest 150 cases, the death penalty 12 cases.

Therefore, imprisonment is a main type of punishment in the new Criminal Code of the Republic of Kazakhstan again as well as in the Criminal Code of Kazakhstan of 1997.

DISCUSSION

The process of fight against crime is very expensive action for any state as the modern crime is the object of a "heightened" attention from the part of law enforcement agencies and the whole state. Continuous improvement and modernization of the whole process of fight against crime, its scientific providing and maintenance are necessary. The lack of scientific support of practical activities of law enforcement agencies brought to the absence of analytical work, detailed factor analysis and prognosis on the republican and regional levels of the

country. As a result, the work of law enforcement agencies is carried out randomly without desirable results, despite of tangible expenses.

Consequently, there is no a feedback of information and law-enforcement activity, i.e., useless accumulating of information without connection with preventive activity and counteraction of crime. According to the famous scientist A.I. Dolgova the general organization of fight against crime includes:

- Information and analytical activity
- Criminological forecasting
- Determination of strategy of fight against crime
- Forecasting of fight against crime
- Creation and improvement of a legal basis of fight against crime
- Implementation of programs of fight against crime, correction and coordination of activities for fight against crime
- Organization and development of scientific research of fight against crime
- Preparation of professional staff and improvement of their qualification
- Formation of law culture of the members of society (Dolgova, 2010)

Tangible expenses are foreseen for professional staff training in departmental educational institutions and material support of all law enforcement agencies, including social protection of staff of the mentioned institutions and other expenses.

For example, according to the researchers of the criminological dictionary, "the price of the crime" is understood as an approximate monetary value of economic, social consequences (direct and indirect loss) and the expenses or costs connected with crime. The price of the crime should be distinguished from the cumulative harm done by concrete crimes which represents only its part (Norma, 2012).

During the realization of criminal policy of our government within the frame of world economic and financial crisis it is necessary to choose measures of crime counteraction not only by their efficiency but also to consider the future expenses. We will consider social and economic consequences of application of such type of punishment as imprisonment.

In the sphere of criminal law, imprisonment, according to its content is one of the severest types of punishment which represents (Article 46 of the Criminal Code of the Republic of Kazakhstan) the compulsory isolation of a prisoner into specialized facilities.

The imprisonment applied by the court as a measure of criminal penalty is realized by the placement of a legal age prisoner in a colony-settlement or corrective colony of general, strict and special regime or in jail.

The law accurately and differentially identifies the categories of the prisoners and the types of correctional facilities to serve a sentence within the format of imprisonment. According to parts 5, 6 of Article 46 of the Criminal Code. The type of correctional facility for serving of imprisonment is appointed:

- To the persons convicted of crimes by imprudence and to those who received first conviction for a commission of a deliberate crime for which sentence to imprisonment for a period of up to 1 year is imposed in colonies-settlements
- To the persons who received the first conviction within the format of imprisonment for the period of >1 year for the commission of minor, moderate or serious deliberate crimes and to the persons to whom a penalty, corrective works, restriction of freedom are replaced with imprisonment in corrective colonies of general regime
- To the persons who received the first conviction within the format of imprisonment for commission of serious crimes for recidivism of a crime if a prisoner served the imprisonment earlier; to the women in case of recidivism of a crime in corrective colonies of strict regime
- In case of dangerous recidivism of a crime and to the persons convicted to life imprisonment in corrective colonies of special regime
- To the persons convicted to imprisonment for a period of >5 years for commission of serious crimes and also in case of recidivism of a crime, the serving of the part of punishment but no >5 years in prison can be appointed
- To the persons convicted to imprisonment for the crime committed on imprudence for a period of no >5 years in colonies-settlements

According to the principle of humanity, those people who do not have 18 years by the time of sentence imposing by court they are located in educational colonies of the general or reinforced regime (part 2 Article 46 of the Criminal Code of the Republic of Kazakhstan).

As we stated above, imprisonment as one of the severest types of punishment is often applied. However, imprisonment has to be applied as an exceptional measure of punishment when other types of punishment do not allow the achievements of the aims.

From our point of view it is necessary to change this ratio of types of punishments in the new criminal legislation, having reduced such type of punishment as imprisonment and having increased the types of punishment which are not connected with isolation of the person from society. The aims of imprisonment, formulated in Article 38 of Criminal Code of the Republic of Kazakhstan. As restoration of social justice, the improvement of a prisoner, the prevention of new crimes by a convicted person or other people has serious consequences for a convicted person, his/her surroundings and society in general.

For example, the authors of the conception of the project "ten measures for decrease of the "prison population" (within the frame of exclusion of Kazakhstan from among 50 leading countries on "prison punishment") determined the following negative consequences of lasting imprisonment:

- Social (the loss of social connections, the risk of family disintegration, the loss of former skills and abilities, the of formation of "ocial parasitism")
- Economical (in Kazakhstan within 10 years the expenses for penal system grew by 4.5 times and in 2013 they were 47.5 billion tenge). Convicted person's upkeep is about 613 thousand tenge per year
- Criminal (prison is a "actory" of crime, distribution of criminal subculture, criminalization of society)

It is necessary to consider the problem of social consequences of imprisonment in details. Firstly, the placement in correctional facility means physical isolation from familiar society, (it is about first prisoners). In addition, the imprisonment has a high level of repressiveness as it is connected with the restrictions of the rights of a prisoner: the prohibitions of free movement, the possibility not to choose a certain type of labor activity, the time of the work and rest, communication with relatives. Those citizens who are in the place of imprisonment by the sentence of the court have no right to participate in elections and to be elected (part 3 Article 33 of the constitution of the Republic of Kazakhstan).

Secondly, the conviction of the person is a tragedy not only for a convicted person (isolation from society, loss of connections with friends, fellow workers and even with relatives) but also for his/her close relatives, friends (a negative assessment from neighbors, colleagues of the spouse, schoolmates of children and many other things).

Thirdly, according to famous scientist, punishment, being a positive instrument of impact on the criminal, imprisonment itself generates the certain negative

consequences which do not depend on law enforcement agencies. Due to various factors, a serious deformation of the prisoner is noticed during the stay in correctional facility.

The famous scientist V.N. Kudryavtsev says about paradox of the isolation of people in jails. Being placed there for commission of the crimes in order to be improved, they commit new crimes, sometimes-heavier offences. This fact, according to the quoted scientist, indicates an inefficiency and powerlessness of correction of criminals by means of isolation from society (Kudryavtsev, 2003a, b). Further, V.N. Kudryavtsev specifies that strategies of isolation of the criminal from society outlive its usefulness.

Fourthly, the stay of persons in correctional facilities brings to a degradation of the convicted personality to influence of subculture on him/her and criminalization of society in general. Over one and a half million people went through the system of correctional facilities for years of sovereign development of our country. Therefore, during the modification of the types of punishments in the existing criminal legislation it is necessary to pay attention to possibility of the maximum reduction of a number of the people sent to correctional facilities. It is about minimization of involvement of citizens to the sphere of criminal justice, creation of conditions for broader application of the criminal and legal measures which are not connected with the isolation from society.

Fifthly, a large number of the convicted people negatively affect the image of our country. Nowadays the population of our country is 17 million people, the number of the convicted people on January 1st, 2015 was about 48000 in 2011-55552 in 2010-62997 prisoners in correctional facilities. Kazakhstan according to the number of "the prison population" on January 1st, 2013 had the 35th position in the world.

Earlier, Kazakhstan until 1998 was on the third position in the world according to the number of "the prison population", after the United States of America and Russia (Dzhansarayeva, 2006).

Accepted measures after the message of the head of state which was mentioned in the article, including amnesty of 2011, lowered "the prison population" by 15 thousand people (from 63 thousand to 48 thousand). The country moved from 22nd place in 2010-35th in 2012 and the prison index was lowered to 295. However, it exceeds indicators of the European countries twice and remains as the highest one among the states of Central Asia including members of the CIS countries (Uzbekistan, Kyrgyzstan, Tajikistan and Turkmenistan).

Active application of such type of punishment as imprisonment has economic consequences as well. Within

the frame of a problem under consideration, the direct costs of the state for the realization of such type of punishment as imprisonment are very high.

According to data of January 1st, 2015, the upkeep of a convicted person is about 640 thousand tenge per year. Expenses on penal system in Kazakhstan were 50 billion tenge. Moreover, nobody calculated the upkeep of the former prisoners after their release from correction facilities and their adaptation. The expenses are definitely high. The expenses for the upkeep of the convicted people are caused by prison conditions. In former USSR, each correctional facility had high-capacity production allowing earning money. Therefore, the prisoners covered expenses and returned interests to the budget of the state. Nowadays such productions do not exist and the percent of prisoners' employment does not exceed 25-30%. The convicted people are not working in correction facilities, they do not earn money because of poor organization of prisoners' labor by administration of a colony.

The appropriate organization of the prisoners' labor would promote the salary earning by them and viewing of future perspective.

For this purpose, it is necessary to reconsider the mode of imprisonment for some categories of the convicted people allowing them to work in society under appropriate conditions.

Besides, it is necessary to study and introduce everywhere a positive foreign experience of penal institutions for former prisoners not to become a burden for the government and with savings or appropriate education which he/she got during imprisonment to start a new life.

For this purpose, it would be necessary to reconsider some aspects of an execution of the punishment. It is known that specific tasks are set for correctional facilities as a correction of convicted people and not allowing the commission of second crimes and returning former prisoners to normal life.

The condition of an execution of the punishment in Kazakhstan has a number of unresolved problems which unfortunately, stop the development of criminal and executive system of the Republic of Kazakhstan.

For example, the main reason for the majority of emergencies in correctional facilities is not connected with some criminal manifestations or social and economic shocks but with a banal unemployment of the convicted people.

The convicted people are in isolation, they do not work and they do not see their future perspectives. Moreover it is so difficult to work with such contingent for administration of facilities.

For this purpose, it is necessary to reconsider the regime for some categories allowing them to work in a

society under appropriate conditions. Besides, it is necessary to study and use a positive foreign experience of penal institutions in practice.

In addition, the system of training of the convicted people needs to be reformed as well. Unfortunately, the existing system of training in correctional facilities is designed for the persons who do not have even primary education.

It would be necessary to train the convicted people according to programs of postsecondary and higher education and preparation and retraining on specific working specialties. Forms of education can be various: full-time tuition, correspondence courses and distance learning. The potential of the higher education of Kazakhstan allows providing training for such category of our citizens who are temporary isolated from society.

Imagine a situation when a convicted person after his/her release isn't degraded and torn off from the outside world, not the out-of-pocket pauper ready to commit a new crimes but the specialist with money and diploma who is in a great demand. In this case, government should not invest such people. They would have everything to start a new life. From our point of view, it is not a utopia it is a solvable issue due to modern level of economic development of the state and rather small population.

CONCLUSION

From our point of view, it is necessary to reconsider some aspects of law application. The criminal legislation has to be rigid, even cruel concerning the ardent criminals who are repeatedly judged, committing crimes deliberately and their stay in society represents the danger to people around. They should be definitely isolated from society.

At the same time, the criminal legislation has to demonstrate the humanity concerning those persons who committed crimes for the 1st time, especially if crimes committed on imprudence.

Firstly, there is necessary to consider the available types of punishments in the Criminal Code of the Republic of Kazakhstan. It would be rational to introduce the new types of punishments alternative to imprisonment and not connected with isolation of the person from society. Thus, emphasis should be placed on such types of punishments which are not connected with isolation of the person. In addition, to consider imprisonment as an exclusive type of punishment and to apply it only in case when application of other types of punishment did not bring positive results.

Secondly, in sanctions of articles of special part of the Criminal Code of the Republic of Kazakhstan to reduce such type of punishment as imprisonments which prevails now.

Thirdly, to reduce the maximal duration of imprisonment which according to point 3 of Article 46 of the general part of the Criminal Code of the Republic of Kazakhstan. "Imprisonment" makes 25 years for aggregate of crimes and about 30 years for aggregate of judgments.

Fourthly, to intensify the application of such progressive form of punishment as a suspended sentence. The essence of the suspended sentence consists in rendering educational and precautionary influence on prisoner, passing a stage of real serving of punishment if he/she meets certain conditions. Suspended sentence acts not as punishment but as a form of release from real completion of the imposed sentence. This is the nature of the law. In the Criminal Code, the suspended sentence is not included into the system of punishments. It is considered as a separate chapter as an independent institute of the criminal law. The main issue of a suspended sentence application is a belief of the court in inexpediency of a real execution of the punishment which is a result of the careful analysis of all facts of the case, the note of the minor severity of the offence and public danger of the criminal.

Fifthly, to consider in the criminal legislation an independent type of punishment as life imprisonment. This type of punishment has the right for allocation as an independent type of punishment because it differs from imprisonment because imprisonment belongs to terminal types of punishment but life imprisonment to termless one. It is specified in sanctions of articles of special part of the Criminal Code of the Republic of Kazakhstan as an alternative to the death penalty and to imprisonment.

Sixthly, the revision of the separate aspects of an execution of the punishment connected with a conditional early release.

It will give the chance to stimulate a convicted person to be improved and it is essential to reduce the number of the prison population and at the same time to increase the responsibility of staff of correctional facilities and considerably reduce the cost of the applied type of punishment. There are cases when the person deserving early release is unreasonably deprived by the legislator of this right.

The staff of criminal and executive system with their experience can detect the convicted personality who deserves a conditional early release or who can't be released from prison before the term of punishment sentenced by court.

In application of imprisonment, the problems of imposing and execution of the punishment, the organization of the process of correction, re-education of the convicted people and their return to society, should be resolved in the new criminal, criminal and executive legislation of the Republic of Kazakhstan which provide high realization of the purposes of the imposed sentence.

REFERENCES

- Dolgova, A.I., 2010. Criminology: The Textbook Under the General Edition. 4th Edn., Infra Publishers, Russia, Pages: 461.
- Dzhansarayeva, R.E., 2006. Problems of Fight Against Crime in Correctional Facilities: Monograph. Almaty Publishers, Kazakhstan, Pages: 9.
- Kudryavtsev, V.N., 2003a. Strategy of Fight Against Crime. Jurist Publishers, Pennsylvania, Pages: 162.
- Kudryavtsev, V.N., 2003b. Strategy of Fight Against Crime. Jurist Publishers, Pennsylvania, Pages: 169.
- Norma, K., 2012. Criminological Dictionary. Astana Publishing House, Kazakhstan, Pages: 147.