Some issues of the legal regulation of imprisonment under the criminal legislation of Azerbaijan

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ABSTRACT

Despite the inconsistency, restriction of freedom in a democratic society is one of the means of preventing serious and gravest crimes, the most important defense mechanism. Despite this, its social significance should not be exaggerated too much. The government must have the criminal justice system aimed at certain categories of people. There is neither offense, nor criminal, at all. Therefore, regardless of severity and nature of the crime and the criminal, conceiving an imprisonment as a universal means that affects the society, would be wrong. This contradicts the principle of humanism in criminal legislation.

KEY WORDS: crime, the criminal legislation, imprisonment, legal regulation

INTRODUCTION

In connection with the adoption of the law of the Criminal Code of the Republic of Azerbaijan (1) dated 30 December 1999 and entered into force from 1 September 2000, as a part of the legal regulations implemented in the Republic of Azerbaijan the punishment type of imprisonment in the punishment system has undergone significant changes.

These changes include a number of factors. First, the humanization problem of practicing the application of punishment, first of all, of the punishment of imprisonment as a type of it, caused anxiety of social and legal consciousness for a long time. Secondly, the standards developed in the developed states, and the international legal practice in the field of determination and application of imprisonment is reflected in the Criminal Code adopted in the Republic of Azerbaijan. Thirdly, the present state and the quality of crime in the Republic of Azerbaijan, requires strengthening the criminal responsibility according to gravest and recurrence crimes. Finally, in order to provide a real alternative to the death penalty as an exceptional type of punishment, the legislative punishment of lifetime imprisonment has been considered and the term of imprisonment for a proper period of time prolonged.

1. Punishment of imprisonment

The Article 55.1 of the Criminal Code of AR explicates the notion of imprisonment as a type of punishment: “Imprisonment on a certain term consists in isolation of condemned from a society by his premise in establishments of a settlement type, in establishments on serving punishments of the general, strict or special mode or in prison.”

In accordance with the Article 57 of the Criminal Code of the Republic of Azerbaijan, the court, coming to a conclusion about loss of necessity of for commitment of serious crimes against the life safety, the life imprisonment punishment can be alternative for the life imprisonment.

Life imprisonment is not appointed to women, persons, which at the moment of commitment of a crime did not reached age of eighteen, and also to the men who have reached the age of 65 (CC of AR, Article 57.2).

2. Types of institutions executing punishment

The Article 56 of the Criminal Code of the Republic of Azerbaijan regulates the establishments of punishment as an imprisonment as following:

a) to persons, condemned for crimes, committed on imprudence, to imprisonment for the term of up to five years - in establishments - settlements on serving punishments;

b) to persons, for the first time condemned to imprisonment for commitment of deliberate crimes, not representing the big public threat or less serious and minor serious crimes, and also to the persons condemned for crimes, accomplished on imprudence, to imprisonment for the term from above five years - in establishments on serving punishments of the general mode;

c) to the persons, for the first time condemned to imprisonment for commitment of serious crimes, and also at relapse of crimes if condemned served time in imprisonment earlier, and to women at especially dangerous relapse of crimes - in establishments on serving punishments of a strict mode;

2) At especially dangerous relapse of crimes, and also at replacement of life imprisonment with imprisonment to the certain term - in establishments on serving punishments of a special mode;

c) To persons condemned to life imprisonment - in prisons.

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The kind of establishment on serving punishments specified by the Court verdict can be changed only in accordance with the Code of Punishment Execution of the Republic of Azerbaijan by the court.

3. Period of imprisonment

The Criminal Code of the Republic of Azerbaijan defines a longer period of imprisonment, and thus, the punishment potential increases. This is connected with the fact, that the imprisonment is one of the important elements of the punishment system.

Prolonging the period of imprisonment, the legislature, first of all, pays a special attention to the provision of achieving the goal of crime prevention and the restoration of social justice.

In accordance with the Article 55.2 of the CC of AR imprisonment on the certain term is established for the term from three months up to fifteen years. For comparison, it should be noted that this term is defined from six months up to twenty years in the CC of RF (CC of RF, Article 56.2). In case of partial or full addition of terms of imprisonment at assignment of punishments on sets of crimes, the maximal term of imprisonment cannot be more than fifteen years, and on sets of judgments - not more than twenty years (CC of AR, Article 55.4). Let's compare once again: in accordance with the Article 56.4 of the CC of RF, in case of partial or full addition of terms of imprisonment at assignment of punishments on sets of crimes, the maximal term of imprisonment cannot be more than twenty years, and on sets of judgments - not more than thirty years.

In case of replacement of public works, corrective works or restriction of freedom to imprisonment, it can be appointed for the term of and less than three months according to the Article 55.3 of CC of AR.

However, the regulation of punishment of imprisonment specified in the Articles 55-57 of CC of AR is difficult to be appreciated unequivocally. On the one hand, solution of some important issues (assignment of imprisonment, the minimal and maximal terms of imprisonment, etc.) have been achieved by the legislature, on the other hand, CC of AR put forward the problems presenting the necessity of solving some problem emerged in this field. Restoring the imprisonment in the punishment system, the legislature associated it with the important issues such as conditions of imprisonment and the legal results of its application.

The legislative assigns the term of imprisonment from one month up to three months. In the Legal literatures, the efficiency of short term imprisonment is not paid enough attention. Thus, in 80s, the prisoner could be in the establishments on serving punishments up to a year (1, p. 90-97). However, relatively to the arrest, identifying the imprisonment as less serious punishment for the serious and minor serious crimes, the legislative defined groundlessly punishments of a strict mode for those arrested. While those arrested for the serious and minor serious crimes placed in establishments on serving punishments of a strict mode, the placement of the persons sentenced to imprisonment for serious crimes in establishments on serving punishments of general mode can not be considered as a right solution of the problem. In addition, note that the prison conditions are not always assigned for the persons sentences to the imprisonment.

4. Actual conditions of imprisonment

Indeed, actually the content of the prison conditions are considered for those sentenced to jail. In accordance with the Article 69.1 of the Code of Punishment Execution of the Republic of Azerbaijan, those sentenced to jail can be stored in establishments on serving punishments of serious. Part 2 of the same Article doesn’t include any rules to provide prisoners serving punishments in the establishments of general mode. This article denoted: “According to Article 1.1. of the 69 Code, imprisonment condition of the persons appointed from the penitentiary establishments to the investigative are defined by taking into account the prison mode of those establishments and the kind and mode of the establishments assigned for them by the court verdict. In this case, the long-term meetings of the prisoners considered in this Code may be replaced with telephone conversations and short-term meetings with their own consent”.

The persons sentenced to imprisonment, are allowed to talk on the phone to close people in accordance with their wishes (CPE of AR 69.1.2.). In terms of meeting, only a little softening is observed in respect to minors. The minor prisoners are able to move within the education territory in accordance with the rules of internal discipline of the establishments. According to the Article 124.2.3 of the CPE, the minor prisoners are allowed to the forty-eight short-term and eight long-term meeting per year.

As for our conclusion, Criminal Code of AR doesn’t consider the arrest as a kind of imprisonment, even though this punishment is served in the isolation of strict mode, on the other hand, the Code considers the establishments on serving punishments as an isolation establishments. Recognizing the conditions of serving punishments in the establishments as an isolation from the society, as we think, is not accurate. Article 119 of the CPE of AR almost defines actual restriction of liberty in the establishments of settlements on serving punishments. It is difficult to imagine the person communicating with family, as well as with the local population living in residential areas, as isolated from the society. Considering the establishments of settlements on serving punishments as a restriction of liberty together with the establishments of strict mode would be correct.

We consider that such a solution of the problem could properly reflect the essence of serving punishment of settlements kind, and at the same time, could help to eliminate distortion in the application of the imprisonment.

We think, the regulations specified in the Article 56.1.1. of CC of AR, that is solution of circle of the persons to be condemned for crimes, committed on imprudence, to imprisonment in the establishments – settlements is not right.
In accordance with the 56.1.1.of CC of AR, the persons, condemned for crimes, committed on imprudence, to imprisonment for the term of up to five years are appointed to the establishments - settlements on serving punishments.

Similar problems are stipulated by the new approach of the legislators to the essence of relapse of crimes. As it is known, according to the Article 18.1 of CC of AR, relapse of crimes shall be deliberate committing of crime by the person, who has been convicted before for earlier deliberate committed of crime. Such commentary of the relapse of crimes doesn’t indicate to define the fact of completed service of punishment for the crimes, committed on imprudence during appointing the kind of the establishment on serving punishment, or serving punishment for the earlier crimes committed deliberately during the judgment for such crimes.

In this case, it would be more correct to take into account the fact of earlier completed service of punishment, but not relapse. In the sanctions of a special section of the CC of AR, depending on the exact establishment of serving punishment, the imprisonment has not been differentiated a kind of punishment.

Differentiation of the prisoners according to these establishments, first of all, is directed to create favorable conditions for maintenance of their correction and discipline, as well as for neutralization of negative impact of those against the mode on the prisoners. At the same time, restriction of the application of the imprisonment in the establishments of settlement type cannot be considered successful.

We think, the prior Criminal Code was more successful in the regulation of this issue. As the study of the Court practice points, the persons infringing traffic rules and operation of vehicles are assigned to the establishments of settlement type. If the Article 263.2 of CC of AR – serving the punishment in the establishment of settlement type doesn’t provoke any doubts, in this case, its application according to the 3rd part of the same article is a problem matter. The difference between parts 2 and 3 of the Article 263 of CC is only the results: death of two or more persons. However, this doesn’t characterize the degree of danger of the personality of the defendant unequivocally.

On the one hand, the legislative provides more possibilities for individualization of the punishment, especially terms and measure of its type. On the other hand, during determining the type of reformatory camps, the judicial review of the defendant is excluded, while the question of personality is of great importance here. As it is mentioned, CC of AR has prolonged the term of imprisonment, which significantly improved the material conditions of reformatory camps, and which should be supported from the principle of providing security of the society and the state, and the personality. In terms of modern civilization, preservation of the people in bad conditions for a long time is not acceptable. This doesn’t seem to come together with the physical, moral and mental imagination of life, honor and dignity of the personality.

Transferring the criminal-executive system from the Ministry of Internal Affairs to the Ministry of Justice has led to the slight progress in the practice of prisoners‘ behavior and the execution of punishments. Therefore, we consider that prolonging the terms of imprisonment should be accompanied with the improvement of serving punishment conditions. According to the provision set forth in the Article 58.1 of CC of AR more strict kind of punishment from among provided for a crime shall be appointed only in case, if less strict kind of punishment cannot provide achievement of the purposes of punishment. The law, first of all, directs the Court to focus on the saving the measures of punishment and legal impacts aimed at the criminal, and on the application of punishment connected with less social expenditures. The punishments not related to the isolation, first of all, the elective approach to the appointment of imprisonment provide not only individualization requirements of the punishments, and realization of the humanism and justice principles, but also assist to serving this punishment in the transited reformatory camps.

5. Criminal code in the republic of Azerbaijan

The CC of AR sets that the legislation reminds the imprisonment as a kind of punishment in most articles of CC of AR. In this case, it defines of a kind of establishment on serving punishments shall be made by a decision of court according to articles (Article 55-57 of CC of AR), in other cases, it uses the punishment as a measure of nature and degree of action of the criminal stipulated as public danger (Article 15 and 18 of CC of AR). In other cases, the imprisonment is used in regulating the mechanism of providing a number of punishments (corrective works – Article 49, Restriction of freedom Article 53, etc.), fourth, the characters of the imprisonment for the persons committed crimes of different categories are set (Article 58 - General grounds of assignment of punishment; Article 66 - Assignment of punishment on set of crimes; Article 67 - Assignment of punishment on set of decisions; Article 85 - Kinds of the punishments appointed to minor). Finally, mentioning the imprisonment as a kind of punishment in most articles of general part is used in the regulation of different types of release from punishment and conditional condemnation (CC of AR, Article 70 - Conditional condemnation; Article 76 - Conditional - prescheduled release from serving a punishment; Article 77 - Replacement of deserved punishment by mitigating kind of punishment; Article 79 - Delay from serving punishment to pregnant women and women having juvenile children; Article 89 - Release from punishment of minor).

In addition, in CC of AR the imprisonment is used as a definite etalon for determining comparative seriousness of punishments. Comparison of the seriousness of one punishment with another’s in general plan is determined by structuring their list (Article - 42CC of AR); Quantity measurements of imprisonment, arrest, maintenance in disciplinary military units, restriction of freedom, corrective works, restriction on military service and obligatory works have been determined in the Articles 46-57, CC of AR in detailed form.
As V.K. Duyunov writes, from the point of realization of the defined purposes of the punishments of isolation of the defendant for a proper term or for a lifetime, the imprisonment is a necessary means of criminal and legal interactive impact putting forward the essence of the nature and degree of the committed crime, and the essence of the characteristics of the personality of the defendant. (2, p. 258).

In this case, the limits of the punishment considered by law let us to use it for the persons committing crimes of different categories.

However, appointment of the imprisonment as the most serious punishment, first of all for the persons committed serious crimes and especially serious crimes is completely reasonable.

From the point of struggling against the crimes of any category, the weight of the imprisonment can be regarded as a universal means of the criminal and legal interactive impact.

CC of AR considers imprisonment or alternatives along with other punishments for the serious and very serious crimes.

The analysis of the norms of special part of CC of AR let us to come to such conclusion, that wide alternativeness of some norms of sanctions is not substantial.

Referring to the rule mentioned in Article 213.2 of CC of AR (has been added to the law dated 17.04.2007) it becomes obvious that the person committed this crime (Evasion from selling precious metals and precious stones to the state) is punished by the penalty at a rate from one up to five thousand of nominal financial unit, or corrective works for the term up to two years, or deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years or restriction of freedom for the term from one up to three years. Such sanctions do not allow making mistakes, so a lot of types of punishments are considered here. We think that along with the penalty, appointment of correction works, even restriction of freedom for the term up to three years, imprisonment seems to be appropriate to the purposes.

Such types of sanctions prove the legislative to be directed to the wide range application of imprisonment, which is acquittal in some cases. However, these should be struggled with by criminal-legal means, and it is possible (3, p. 19).

The sanctions for a number of crimes include imprisonment, as well (Article 180.2 and 182.2 of CC of AR), and thus put forward electoral necessity before the courts: either appointing a real punishment as the restriction of freedom, or determining it as conditional. Determining it as conditional by the courts is not in less cases than the real appointment of restriction of freedom.

In this case, the court practice is obliged to correct shortcomings of in the regulation field in accordance with the legislative rules not through the imaginary, but real alternatives of imprisonment.

The imprisonment as a kind of punishment is regulated through the criminal and legal norm of, and first of all through the Code of Punishment Execution of the Republic of Azerbaijan.

6. Criminal Procedural code in the republic of Azerbaijan

Including 4 chapters, the section IV of the Code of Punishment Execution of the Republic of Azerbaijan are dedicated to the regulation of serving punishment as the kind of imprisonment in general. At the same time, we would like to note that in terms of the regulation of the execution rules and terms of the imprisonment, CPE of AR comprises achievements of the law study, social expectations of the public and international standards defined for the prisoner. In addition, CPE of AR differs for its content and legislative technique, as well.

Despite the contradictions, restriction of the freedom is more important defense mechanism of social value, as a means of eliminating serious crimes and special serious crimes in a democratic society. Rather, “in comparison with the free members of the society, the application of the imprisonment restricts the legal status of the prisoner significantly” (4, p 190). However, it is not necessary to exaggerate its social significance too much. The government must have a system of criminal and legal means aimed at the persons committed crimes in various categories. In general, there is neither crime, nor criminal. Therefore, regardless of severity and nature of the crime and the criminal, conceiving an imprisonment as a universal means that affects the society, would be wrong. This contradicts the principle of humanism in criminal legislation (5, p. 20). Unfortunately, now the position of essentially torturing the prisoners serving their punishment on imprisonment type of punishment dominates in the juridical regulations. This contradicts to the principle of humanism in criminal legislation.

7. Conclusion

We can come to conclusion that historically, as the time passes by, some additions and changes are made to the laws, as well as to the criminal legislation. Of course, they are implemented in connection with the development stages of society, the specification and the improvement of the legislation, and with the elimination of aroused gaps. In this respect, the changes made to the regulation of the restriction of freedom according to the criminal legislation of the Republic of Azerbaijan are no exception. Thus, the Criminal Code of the Republic of Azerbaijan was adopted by the law dated 30 December, 1999 and entered into force September 1, 2000. As a part of the judicial-legal reforms implemented in the Republic of Azerbaijan, the kind of punishment of restriction of freedom in the punishment system has undergone significant changes.

These changes were associated with a number of reasons. First, humanization of the practice of appointing the punishment, first of all imprisonment as a type of the punishment is unavoidable requirement of the time. This
problem caused anxiety of social and legal consciousness for a long time. Secondly, the standards developed in the developed states, and the international legal practice in the field of determination and application of imprisonment are reflected in the Criminal Code adopted in the Republic of Azerbaijan. Thirdly, the present state and the quality of crime in the Republic of Azerbaijan, requires strengthening the criminal responsibility according to gravest and relapse crimes. Finally, in order to provide a real alternative to the death penalty as an exceptional type of punishment, the legislative punishment of lifetime imprisonment has been considered and the term of imprisonment for a proper period of time prolonged.

Spreading the principles of humanism in the society more and more, has led to the elimination of the death punishment and its replacement with the life imprisonment.

Doubtless, as the time passes by, additional fundamental changes in the kind of punishment of restriction of freedom will be carried out as a continuation of the judicial-legal reforms in the punishment system.

REFERENCES

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