

## Liberalization of criminal policy of the republic of Kazakhstan – one of the conditions to form the democratic, secular, legal and social state

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**Abstract.** The article deals with the important and practically significant problem: liberalization of criminal policy of the Kazakhstan Republic. The problems, described in the article, are directly connected with the suggestions on criminal legislation updating in the part of understanding, imposition and execution of punishments. The suggestions, presented in the article, are also aimed at improvement of law enforcement practice; they promote the decrease of "prison population" of the country and provide an opportunity to reconsider separate aspects of punishment imposition and execution.

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### Introduction

The Article 1 of the Constitution of the Kazakhstan Republic enshrines an important norm, that the Republic of Kazakhstan confirms itself as a democratic, secular, legal and social state, the highest values of which are the person, his life, rights and freedoms [1].

To provide the fulfillment of this provision of the country's main Law, in Kazakhstan, from the moment of sovereignty obtainment, the measures on updating of all main directions of state, economic, social and political development of the society are taken.

The sphere of criminal-legal policy of the country is not an exception.

"The Concept of Legal Policy of the Kazakhstan Republic for the Period from 2010 to 2020", approved by the decree of the President of the Kazakhstan Republic, dated August 24, 2009, # 858, mentions that the most important link of the state's legal policy is the criminal policy, the updating of which is carried out by complex, interconnected correction of criminal, criminally-remedial, criminal and penal law, and also law enforcement.

The Message of the President of the Kazakhstan Republic - Nation's Leader N.A. Nazarbaev to Kazakhstan people "The Strategy "Kazakhstan - 2050": a New Political Course of the Developed State" presents a task to prepare and introduce into the Parliament the projects of 4 codes:

Criminally-remedial, Criminal, Criminal and penal, and Administrative Offence Code [2].

Procedure. From our point of view, the content of criminal policy of any state is always connected with the punishments section of the general part of criminal code and provided sanctions of articles of the special part of criminal code of the Kazakhstan Republic.

In the course of implementation of the criminal policy, it is necessary to take into account, how the law enforcement practice affects the democratic, social, economic and image development bases of the state.

For instance, in our country we have a complex situation concerning law enforcement matters, requiring reconsideration of effectual criminal law of the Kazakhstan Republic.

Thus, the index of prison population, as of January 1, 2013, constituted 295, at total number of prisoners, equal to 48684 people. It allowed Kazakhstan taking the 35th place in the world, according to the index of "prison population". For comparison, in former USSR countries, the index of "prison population", which is higher, than the one of Kazakhstan, belongs only to Russia 477 (8-place), Ukraine 302 (33-place), Belorussia 335 (24-place), and in the countries of Central Asia, this index is much lower, than in Kazakhstan. Thus, the index of "prison population" in Turkmenistan is 224 (62-place), in Kyrgyzstan - 181 (81-place), in Uzbekistan-152 (92-place), in Tadjikistan - 130

(115-place). This rating is headed by the USA, where the index of «prison population» constituted 716 [3].

Statistics testifies about penal character of the criminal legislation of the Kazakhstan Republic. Thus, with the introduction of new CC (Criminal Code) in 1998, the number of convicted increased by 8% (from 81 to 88 thousand). Every year the courts impose such type of punishment, as deprivation of freedom with regard to 18-19 thousand people [3].

For the whole period of sovereign development of Kazakhstan, according to the data of Correctional System Committee of the Ministry of Internal Affairs of the Kazakhstan Republic, more than one and a half million people passed through the correctional institutions.

### Main part

We consider that that the following changes shall be reflected in new projects of criminal, criminal and penal legislation of the Kazakhstan Republic.

Firstly, to reduce such type of punishment, as deprivation of freedom, in the sanctions of articles of the special part of the Criminal Code of the Kazakhstan Republic. Thus, in the effectual Criminal Code of the Kazakhstan Republic, the most represented type of main punishment, provided in sanctions of the CC RK, is the deprivation of freedom (559), fine takes the second place (295). The third place is taken by such type of punishment, as arrest (224). Then follows the deprivation of the right to occupy determined posts or to engage in a determined activity (176), corrective labor (158), limitation of freedom (122), community service (77), confinement in disciplinary military unit (31), limitation in military service (19), death penalty (18) [4].

It would be purposeful to exclude maximally such types of punishment, as deprivation of freedom, from the sanctions of articles of the CC RK, as it has social, economic and legal negative consequences; it shall be used only as exclusive measure, when other types of punishments do not provide any results.

A famous scientist Kudryavtsev V.N. paid attention to the fact, that one of the paradoxes of people's isolation in prison is that, being imprisoned there for the commission of crime and in order to become better, they commit new crimes in these places, sometimes more grave. This fact, in the opinion of the cited scientist, shows the inefficiency and disability of correctional rehabilitation by means of isolation from the society. Then, V.N. Kudryavtsev mentions, that the strategy of criminal isolation from the society becomes outdated [5].

The most important is that at the deficit of population and large territory of the Republic of

Kazakhstan, the state shall fight for each citizen, relapsing into crime, and tend to return it to serve to society and state. Besides, this measure will allow reducing the expenses of the state on the correctional system of the country. Thus, for the last 10 years, the expenses on penal system rose by 4.5 times and constituted 47.5 bln. tenge in 2013, and the support of one convicted person costs 613 thous. tenge per year for the state.

Secondly, to reconsider the terms of freedom deprivation towards abridgement. Deprivation of freedom as per the article 48 of the General Part of the CC RK for the committed crimes, provided by the Special Part of the CC RK, are established from 6 months to 15 years, and for especially grave crimes - up to 20 years or for the term of life. The term of deprivation for negligent crime cannot exceed 10 years. In case of partial or complete addition of the deprivation terms in case of accumulative sentencing, the term of deprivation cannot exceed 25 years, and per totality of sentencing - 30 years. We see that there is a significant increase of deprivation terms in comparison with the old criminal code of our country. Thus, the Criminal Code of Kazakh SSR (the article 23 "Deprivation of Freedom") determines the terms of deprivation from three months to 10 years, and for especially grave crimes - up to 15 years. Only in replacement of death penalty, in order of oblivion, the deprivation of freedom could be imposed for the term of more than 15 years, but not exceeding 20 years. Taking into consideration many circumstances, connected with conditions of keeping the convicted, with the possibility to terminate the correction process in shorter terms, with annually increasing number of the convicted, with the increase of expenditures for their keeping, it would be purposeful to reconsider the terms of deprivation, not exceeding 10, and in special cases - up to 15 years.

According to the experience of foreign countries, especially the countries of European Union [6], if life imprisonment is imposed, when 15 years are expired, if the convicted has become better, he can be set at liberty, and in Kazakhstan, as per the item 5 of the article 70 of the CC RK, in case of life imprisonment, the convicted shall complete 25 years. The convicted gets a hope for correction.

With such approach, and with reduction of maximal terms of deprivation, in our opinion, the number of special squads in correctional institutions can reduce twice or thrice for 3-5 years.

Thirdly, to reconsider the order of conditional early release from punishment. To simplify the order of conditional early release from the correctional institutions, determined in the article 70 of the CC RK [4], reducing the obligatory terms for serving punishment: for minor offences - up to 1

year, for crimes of average gravity - up to 2 years, for severe - up to 3 years, for especially grave crimes - up to 4 years, instead of the ones, mentioned in legislation (not less than one third of the term of punishment, imposed for minor or average crimes; not less than half of the term of punishment, imposed for the severe crime; not less than two thirds of the punishment, imposed for especially grave crimes; not less than three quarters of the term of punishment, imposed for the crimes, provided as per items c), e) of the part three, four of the article 120 and as per items c), d) of the part three, part four of the article 120 of the CC RK).

The suggested approach provides an opportunity to promote the convicted for correction and to reduce significantly the number of prison population, and, alongside with that, to increase the responsibility of staff of correctional institutions. Moreover, the item 4 of the cited article 70 of the CC RK determines a general requirement that the actual term of deprivation, completed by the convicted, could not be less than 6 months.

Fourthly, to extend the use of such institute of the criminal law, as conditional sentence.

The article 63 Conditional sentence of the Criminal Code of the Kazakhstan Republic, in whole, has a positive value in law enforcement practice and needs extension and activation.

It shall be referred to minimization of involvement of citizens to the sphere of criminal justice, creation of conditions for wider use of criminal law measures, not connected with the isolation from society (Approved in the Decree of the President of the Kazakhstan Republic, dated August 24, 2009, # 858 "A Concept of Legal Policy of the Kazakhstan Republic for the Period from 2010 to 2010" Concept section 2, subsection 2.10) [9].

It is not a secret, that staying in the correctional institution, under the influence of different factors; the convicted personality is deformed seriously. In the opinion of famous scientists, practical workers of the correctional system, a punishment in the form of deprivation of freedom, being, in whole, a positive instrument of influence on the convicted, produces itself definite negative consequences. The use of criminal sanction in the form of deprivation of freedom increases the number of psychologically injured people, and people with psychic anomalies, having the negative impact on the health of many convicted. Deprivation of freedom cannot only correct the convicted, but also to strengthen the antisocial personality features.

Fifthly, some aspects of execution of the punishment shall be reconsidered. The correctional institutions have such tasks, as to correct the

convicted, not to allow repeated crimes on their part and to prepare them to the return to normal life.

The position of Russian scientists towards this problem deserves special attention. Thus, M.S. Rybak writes, that the critics of penal approach fairly stated, that it is unnatural and unreasonable to turn the life of person, who taken the rap or barbed wire of the "zone" into endless punishment, concentrating its all "power" at the stage of execution of the punishment. No matter how the person is guilty, the state and society have no right to go down to private revenge and "punish", especially if the court thought good to keep a person, who committed a crime, for future normal life and return him, after correction, to the society [8].

For instance, the main reason of the majority of emergencies in the correctional institutions is connected, as a rule, not with any criminal manifestations or social-economic shocks, but with banal idleness of the convicted. It is also proved by the foreign investigations of such authors as Becker G.S., Scheffer D.J., Beigbeder Y. and others [9, 10, 11, 12, 13, 14].

A percent of occupation of the convicted, at the best indices, does not exceed 25-30%. The hinder is the absence of work, especially payable, and also bad organization of labor of the convicted on the part of administration of the institution. With right organization of labor, the majority of the convicted would work and get salary.

For separate categories of the convicted, taking into consideration their law-abiding behavior, a desire to become better, active behavior and many other things, it is necessary to reconsider the regime of their keeping, allowing them to work out of prison under particular conditions. There is such positive foreign experience of penal institutions.

## Conclusion

The educational system for the convicted also needs updating. Right organization of teaching process for the convicted is another important problem. Foreign experience shows that the educational forms can be different: full-time, extra-mural and remote [15, 16, 17]. The educational system in the correctional institutions, existing in ORC, is aimed at people, who do not have elementary education. It shall be oriented at the programs after secondary and higher education, and also the teaching to narrow trades.

Imagine the situation, when the convicted, after serving time, goes at large as not a degraded person, rent from the outer world, without means of living, ready to commit new crimes, but with a Specialist Degree, popular on the shop floor, and with primitive accumulations. The state will be in no

need to invest into such convicted, what is going on now, to return him to normal life. In our opinion, at modern level of economic development of the state and relatively small number of population, it is not utopia, but a quite solvable problem.

Sixthly, it is necessary to increase the preventive orientation of measures, carried out in the country, to oppose the criminality.

A Law of the RK "About the Preventive Measures of the Delinquencies", passed on April 29, 2010, as amended (as of February 16, 2012), practically does not work [18].

We consider that it would be reasonable to adopt at government level a program on implementation of the Law of the RK "About the Preventive Measures of the Delinquencies", with definite measures, which shall be supported organizationally and financially on the part of the state, both at the republican and local levels.

It will provide an opportunity to join the efforts of all bodies and public representatives for formation of new ideology in the society in the sphere of opposition to criminality, the essence of which shall come down to the fact, that crime prevention and prevention itself presuppose national security protection, as the criminality presents one of the threat sources of the state's national safety [19].

When countering the criminality, it cannot but taken into account the opinion of the famous Russian criminologist G.A. Avanesov, that the criminality is generated by the conditions of social life, but it is also a part of these conditions [20].

It would be right to consider the crime prevention process as not only the influence on criminality, as a negative constituent of the society, but also on the society itself, which generates this criminality.

### Summary

The suggestions on updating of the current legislation of the Kazakhstan Republic and law enforcement practice.

1. To reconsider the notions and purposes of punishment in the criminal legislation of the Kazakhstan Republic.
2. To exclude maximally from the sanctions of articles of the Special Part of the Criminal Code of the Kazakhstan Republic such type of punishment, as deprivation of freedom, replacing it by another types of punishment, not connected with the isolation of personality from the society (fine, correctional task etc.)
3. To reduce the deadlines for deprivation of freedom, provided in the criminal legislation of the Kazakhstan Republic, determining them as

not exceeding 10 years, in special cases - up to 15 years (instead of 25 and 30 years).

4. To simplify the order of conditional early release from the correctional institutions, reducing the obligatory terms for serving punishment: for minor offences - up to 1 year, for crime of average gravity - up to 2 years, for severe - up to 3 years, for especially grave crimes - up to 4 years, instead of the ones, mentioned in legislation (not less than one third of the term of punishment, imposed for minor or average crimes; not less than half of the term of punishment, imposed for the severe crime; not less than two thirds of the punishment, imposed for especially grave crimes; not less than three quarters of the term of punishment, imposed for the crimes, provided as per items c), e) of the part three, four of the article 120 and as per items c), d) of the part three, part four of the article 120 of the CC RK).
5. To extend the use of such institute of criminal law as conditional sentence (The article 63 Conditional sentence of the Criminal Code of the Kazakhstan Republic), having quite positive value in law enforcement practice.
6. To make amendments to effectual Correctional Code of the Republic of Kazakhstan to the solution of problems, connected with the labor use of the convicted people and their education.
7. To activate the implementation of the Law of the Kazakhstan Republic "About Crime Prevention", by means of adopting a document (plan, program) for its fulfillment, at the government level).

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