Legal Gaps in Progressive System of Resocialisation of Convicts in the Republic of Belarus

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Abstract

The Decree of the President of the Republic of Belarus of December 23, 2010 No. 672 approved the Concept of improvement of the system of criminal liability and order of their execution. One of the objectives of this concept is to improve the criminal and penal legislation in terms of increasing the efficiency of corrective and preventive effects of punishment and other measures of criminal responsibility, including measures to encourage convicts to correct. However, the existing penal legislation of the Republic of Belarus has certain gaps that prevent the full extent to realise the goal of progressive system with regard to resocialisation of persons sentenced to imprisonment.

Keywords: penal law, progressive system of resocialisation, sentenced to imprisonment, correctional institution, prison.

In accordance with the recommendations of § 60.1 and § 60.2 of the Standard Minimum Rules for the Treatment of Prisoners in 1955 (approved by the resolution of the Economic and Social Council of 31 July 1957), such a model “should be designed to reduce to a minimum the differences between prison life and free life, which reduces prisoners’ sense of responsibility and dignity as human beings ... It is desirable that ... measures were taken of a prisoner’s gradual return to life in society. This goal can be achieved taking into account the characteristics of every individual ... introducing special treatment for released either in the institution or the other ...” [6, 191]. In other words, prison regime in terms of the amount of penalties may not infringe on human health, and its conditions cannot be destructive to a human psyche and carried for a mental and moral degradation, and therefore the impossibility of resocialisation and social adaptation of the convicted to life in society. The use of cars and limiting of rights

should not embitter and suppress, and preclude gradual return to a normal and law-abiding life in freedom.

This position in the early twentieth century was reflected in the works of Russian legal scholars N. Tagantsev and N. Sergeevsky. Tagantsev states: “Of course ... regime ... dehumanises a criminal, erases his personality, making it passive ... by virtue of which the effect of prison is fragile and not long-lasting, but ... transitional administration of prisons could be, if not eliminated – then weakened” [11, 299–300]. N. Sergeevsky agrees with him formulating two problems facing the prison: the elimination of everything that can destroy the body of the prisoner; the transformation of these institutions into the institutions in which a prisoner, by means of a possible correction, would be able to return to life in society. However, he emphasises that “... changing the conditions of life, changes the character of a person, therefore, the purpose and nature of punishment has to be changed” [8, 89–101].

Analogous approaches in the 70s of the twentieth century were used and defended in the works of a known scientist in the field of penal law N. Struchkov: “The objectives of the regime of punishment ... most successfully will be carried out when every convicted person, while serving his sentence, will receive the necessary punitive-educational effect” [9, 174].

His views are shared by such scholars in the field of penal law as A. Mikhlin, P. Ponomarev, V. Seliverstov, I. Shmarov: “Differentiation of sentence and the process of educational influence presupposes that various categories of convicted persons depending on the nature of their crimes and the degree of danger to society and past criminal activities should be applied with a different amount of the punitive impact on limiting of rights, and the educational work in the detention centre should take into account ... their typological and psycho-pedagogical features” [5, 85].

The above-mentioned recommendations, approaches and positions reflect, albeit not completely, the essence of progressive prison system, whose purpose is to achieve compliance with the order and conditions of punishment execution, behaviour, intra-personal changes and the degree of resocialisation of the convicted person by providing punishment as well as the optimal inclusion in the life after release from prison.

However, as rightly pointed out by Belarusian scientist O. Bazhanov, now progressive elements of the system are not compatible with each other and there is a tendency blurring the concept and essence of the system. Research in this direction is going in breadth, but not always in depth. Practice proves that the criminal law division of the classification of convicts in the detention centre does not account for the peculiarities of their correction, depending on the qualifications and related crimes: selfish, violent and other aspirations. At the same time, the author emphasises that this situation poses a science of criminal and criminal-executive right the problem of theoretical, methodological and legal development issues in the formation of a penal system in the form of imprisonment as regards: establishing correctional system for different types of resocialisation of convicts; special order of execution of the sentence in correctional institutions, which would provide a gradual change in the punishment serving

conditions for condemned in the case of improvement of regime until the semi-freedom regime or limited freedom in case of correcting them, or worse, if one fails, breaches the rules of the regime of serving the sentence [1, 126–133, 139–141].

By changing the mode and conditions of detention of convicts in the direction of increasing or decreasing of limiting rights, thereby administration decides to serve the team with a view to a timely response to their behaviour. Convicts, sentenced to lighter terms of punishment are a motivational factor. Differentiation of the conditions of serving prison within each correctional institution helps to prepare individuals for execution of a sentence, to adapt to society after their release from prison [13, 310].

The regime should create the necessary conditions for the use of others, the best in pedagogical relation to the means of correction and resocialisation of the convicted person, while performing his self-service functions: punitive, and ensure remedial, corrective social control (prevention).

However, the existing penal legislation of the Republic of Belarus has certain gaps that prevent to fully realise the goal of the progressive system in a phased resocialisation of convicts [3, 268–270].

For example, in Part 2 of Article 68 “Changing the conditions of detention of persons sentenced to imprisonment within a detention facility” of the Criminal Executive Code of the Republic of Belarus (further – CEC) law stipulates that persons sentenced to imprisonment recognised embarked on the path of correction contained in the IR for the first-time serving a sentence of imprisonment, the IR for those who have previously served a sentence of imprisonment, correctional institution (further – CI), translated into improved conditions of detention after serving a quarter of their sentence, as contained in the correctional institution of special regime, after serving one third of his sentence. In case the convicted maliciously violates the established order of punishment, the improved conditions by the decision of the Chief of the correctional institution are cancelled.

At the same time, in part 3 of Article 116 of the “Criteria and the degree of correction of convicts”, CEC expressly states that the convicted may be considered having taken the path of correction if he has taken a written commitment to law-abiding behaviour, has no penalties, in good faith refers to work or study, works on collective self-service, cleaning and landscaping of the correctional institution and the surrounding areas, and shows useful initiative in other socially useful activities, and the convicted is not extinguished the penalty until the decision influencing verdict caused offence; it is also provided that he has taken all its best reparation measures.

However, in the provisions of Article 117 “Deliberate violation of convicts established order of punishment”, CEC prescribes that the convicted sentenced to imprisonment is maliciously violating the established order of punishment serving prison authorities during the term of sanctions if it has no less than:

- 1) four penalties provided for in § 1 and § 2 of part 1 of Article 112 “Measures penalties applicable to persons sentenced to imprisonment” CEC, and for convicts held in the EC – § 1 and § 2 of Article 129 “Sanctions applied to prisoners in educational colonies” CEC;

- 2) three penalties, one of which is provided in § 3 and § 4 of Part 1 of Article 112 of the CEC, and for convicts held in the EC – § 3 and § 4 of Article 129 of the CEC;
 - 3) two penalties, one of which is provided for in § 6 of Part 1 of Article 112 of the CEC, and for prisoners, contained in EC – § 5 of Article 129 of the CEC [12].
- Thus, the following conclusions can be made:

- 1) Article 116 of the CEC improved conditions of serving a sentence given to a convict, having concluded on certification “has become on the path of correction”, i.e., their certified correctional administration on the basis of criteria such as availability of liability of the convicted person of law-abiding behaviour, good conduct (no penalties), conscientious attitude to work or school, works for the collective self-service, cleaning and landscaping of the EC and the surrounding areas, the manifestation of useful initiatives in other socially useful activities, and convicted, not to repay the damages during the serving the sentence caused by a crime; it all depend on compensation measures;
- 2) improved conditions for convicts serving a sentence set by administration of correctional institutions for a long period of time in compliance with the above stated requirements;
- 3) in accordance with the requirements of § 2 of Article 68 of the CEC, the abolition of the improved conditions of serving punishment may take place only after the evaluation of a convict’s malicious violation of the established order of punishment.

However, having received better conditions, the convicted person may repeatedly perform various violations of the order of the terms and conditions of serving the sentence (including gross and systematic), have a valid foreclosure and even sent back in a punishment cell, and freed from it once again to the improved conditions of serving the punishment.

CEC norms are fixed by law, that is, the convict administration of correctional institutions cancels improved conditions even in the presence of:

- 1) three existing penalties (reprimand and/or an extraordinary duty for cleaning or the detention facility); and this is a systematic violation of the order of the terms and conditions of serving the sentence;
- 2) two existing penalties (one of which is “the deprivation of the right to receive ordinary parcels or transfer” and/or “depriving another long or short visits”, the second – “a reprimand” or “extraordinary duty”) – a collection of “deprivation ...” superimposed to the convicted person for a flagrant violation of the order of the terms and conditions of serving the sentence;
- 3) one active recovery “placement in a punishment cell”; and this penalty is imposed on the convicted person for a very flagrant violation of the order of the terms and conditions of serving the sentence.

Moreover, in accordance with the provisions of Article 117 of the CEC, the recovery “transferred to the cell-type room (1 to 6 months)” does not take into account the recognition of the convict maliciously violating the established order of punishment. The conditions of the malicious violation of the convicted can be improved and he can be transferred in cell-type premises, serve his punishment and return again to the improved conditions of serving the sentence of imprisonment.

It should be noted that the mentioned problem is also relevant and significant for the criminal and criminal-executive policy of the Russian Federation. Thus, held on 10 September 2009 the All-Russian scientific-practical conference on reforming the penal system, the Minister of Justice A. Konovalov clearly identified the position of justice in this area for the next decade: “It is an extremely important, I would say, task of creating a system of incentives for a special contingent to the law-abiding behaviour. The system of execution of punishments should be set up and effectively operate a system of social “lifts” (the regime of serving the sentence – *author’s note*). That would allow a person to get out of a critical situation if he wants to ... Social “lifts” are aimed at stimulating the release on parole, pardon or transfer of convicted persons to a softer mode content ... special contingent will see their performance and justice” [4, 11–13]. The director of the Federal Service of the Russian Federation Penitentiary A. Reimer shares this position, targeting subordinates on the forthcoming reform of the entire penal system [7]. He supports the proposal of a solution to this long-standing issue and Russian scientists’ in the field of penal law: “For the best social adaptation ... you must release the prisoners ... gradually ... It would be logical to convict because under strict supervision passed to semi-free mode, and then – on the loose. Reintegration into society should be gradual” [10, 5–6; 2].

Thus, on the basis of the above analysis of the current penal legislation of Belarus, it should be recognised that a progressive system (“social lifts up”), enshrined in the rules of the CEC has the legal gaps that do not allow it to “progressively” work on the resocialisation of the person convicted to imprisonment. Changes and additions to the CEC regulations in this part are required.

Juridiskie trūkumi notiesāto personu resocializācijas progresīvajā sistēmā Baltkrievijas Republikā

Kopsavilkums

Baltkrievijas Republikas prezidents 23.12.2010. ar Dekrētu Nr. 672 apstiprināja koncepciju par kriminālatbildības sistēmas pilnveidošanu un tās izpildes kārtību. Viens no šīs koncepcijas mērķiem ir uzlabot krimināltiesību un kriminālsodu izpildes normas, palielinot korekcijas un preventīvo efektivitāti sodiem un citiem kriminālās atbildības

pasākumiem, tostarp pasākumiem, kas veicinātu notiesātos laboties. Tomēr pastāvošajā kriminālsodu izpildes jomā Baltkrievijas Republikā ir zināmas nepilnības, kas neļauj pilnībā realizēt progresīvās sistēmas mērķi – ar brīvības atņemšanu notiesāto personu resocializāciju.

Atslēgvārdi: sodu izpildes likums, progresīva resocializācijas sistēma, brīvības atņemšana, sociālās korekcijas iestāde, cietums.

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