

Legislation stages development of imprisonment sentences in criminal law of Azerbaijan republic

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Abstract— Fight against criminals is one of the important duties of governments. Human being has never thought of anything else as important and serious as imprisonment sentences in fighting against criminals historically. By a glance at law history in countries we will be able to see traces of detention camps sentences throughout the history. In ancient times, detention camps were created in Eastern countries such as China, Babylon, Egypt, and At that time detention camps were not used as a place to punish but they were considered as a place to hold the accused people until the punishment time. In Russian emperorship including Azerbaijan republic, detention camps were considered as a place to watch the suspects as an absolute resolution and not as a place to administer punishments. Regarding the growth of feudal populations and class campaigns, detention camps became important to perform punishments, gradually. The present study is going to deal with legislation processes of imprisonment punishments in Azerbaijan republic.

Keywords— crime, penalties, detention camp, criminal laws, Azerbaijan republic

1 Introduction:

By a glance into laws in different countries we can see that all countries in the world have predicted detention camps as a punishment in dealing with the criminals. Since very ancient times, all governments and states have thought of imprisonment punishment as a forceful and amending punishment, they have devised criminal laws for themselves and have punished the criminals using this method. But gradually and specifically in present era, doubts about jailing punishments and their modifying role have become greater and many legal experts believe that detention camp is no longer useful to reform and to prevent the occurrence of crimes. But it has been considerably noticed that how the detention camps and imprisonment punishments were during history pass. Therefore, the present theoretical paper is going to have a look at imprisonment legislation de-

velopment stages in criminal law in Azerbaijan Republic. By looking at law history of this country we can divide imprisonment punishments to the following stages:

- A) Before revolution (up to 1917)
- B) Soviet Union era (1917 – 1991)
- C) Independence era (from approving constitutional law in 1995 up to now)

A- Before revolution (up to 1917)

In Russian emperorship including Azerbaijan republic, detention camps were not only considered as a place to administer punishments. Gee Fontsky showed that in Russian emperorship detention camps did not mean punishment but it was considered as primary holding places in basements [1]. N. S. Taghansio believes that at that time the duty of

detention camps was not to punish criminals, but to catch and hold them [2]. The very first information about tsars' government has been revealed in an edition of regulations in 15th century related to Ruskaya Pravda (Russian Constitution) [3]. Analyzing the sources under investigations showed that in centuries 11 to 14, even in religious rules and legal rules, detention camp had been wide-spread. Detention camps at that time were divided into several categories. First category included specific detention camps resided in palaces and territories belonging to great feudal. The next group included detention camps of tsar Russian government. And the third category was related to detention camps in monasteries where the opponents of churches and outstanding religious people were kept. At that time imprisonment was mostly exercised along with tortures and bodily punishments (detention camps were considered as a type of place to develop and progress punishments during 1949 and were fixed as a factor of punishment). In 1550, detention camps were first introduced in law as the primary places of holding and then they were classified to different groups regarding some orders and standards. In this legislation the life long detention house or detention house up to the time a guarantee representation was taken into consideration. Detention houses were divided into two temporary and permanent types and were differentiated from each other regarding their structure: stones, ordinary soil and ..., guards held detention camps in a closed status and there was a sever strangulation and the government did not do anything about the cloths and food in these prisons (in 1662 and in Russia Alexi Romanov, Russian Tsar, ordered

to pay the prisoners to supply food) and prisons were partly institutionalized.

In an article approved in 1649 which continued up to 200 as the main criminal rule basis in Russia and there were more than 40 crimes predicted in it, a series of penalties of life long imprisonment to certain time imprisonment (1 to 4 years) were taken into consideration. These penalties were devised for crimes such as: disrespect to church and palaces of kings and lords, resistance against government, fraud, mischief, plunder,

In late 17th century and when First Peter's government was started, some important changes were made on criminal policies of the government. In this era, the criminal policies were made more sever by emphasizing more on worldly issues rather than spiritual and religious aspects and exile with tortures became common and those who were accused were sent to workshops and salt factories and to distant areas such as Siberia and Ural (north of Russia). Then, democratic changes occurred, affected Western Europe in tsarist Russia and in Azerbaijan, either.

During the same era, some ideas about factors and conditions for crimes, penalties, nature and obligations of it, reciprocal effects against convicts and some ideas about new systems of detention houses were developed. People paid attention to thoughts of tsar Bekaria and Bentam regarding the natural rights and personality of criminals and finally in 11th October 1819, the association to support captives started its activities. Detention houses were controlled by emperor and fundamentally the role and religious training goals were followed and some advices about religious ritu-

als were presented to them and some rules were devised to employ and train them.

The very first systematized regulation order regarding detention from freedom administration was approved in 1832 and it was published as entitled: "Overall constitution and code about the detained and people in exile". Article 171 of this code was exactly referring to detention camp systems and was approved in 22nd march 2003 in practical legal system and criminal code in Russia for life long deprivation of freedom and detention. This rule considered 8 penalty types and 5 of them were related to deprivation of freedom. Also there are some evidences of the existence of a detention house in Shosha in 1869 in Azerbaijan Republic due to the fact that it was part of tsarist Russia at that time. Also some detention camps were active in Baku, Lankaran, Nakhjavan, Zagatala, Zangzor, Nokha and ... and in some cases the prisoners were held in special houses and this resulted in run away by them. In 1903 and according to general articles of criminal law, the criminals were kept in reconciliation houses along with obligatory workings for 1 to 6 years. During this period the prisoners were considered as cheap work forces and this idea was utilized in former socialist Soviet Union government vastly.

B- Soviet Union era (1917-1991)

After Russian labor revolution, the previous system of detention houses changed and controlling the detention camps was ceded to People's Ministry of Justice. The collapse of the previous powerful organizations practically resulted in abandoning the activities of some legal codes and

changing detention regimes. In this era there was much attention paid to compulsory work. Compulsory work documented in the approved system code in constitutional law of Azerbaijan socialist republic and also Soviet Union was enhanced regarding the policies of the government. The government took the responsibility of ideological training of the prisoners on the one hand and supplying the needs of economical lives of all prisoners as a goal.

In 1922 and in third meeting by administrative committee of Azerbaijan socialist republic, the criminal code for Azerbaijan socialist republic was approved. In this law, the penalties were as follows:

- 1) exile from the country
- 2) deprivation of freedom with holding in houses in isolation or along with torture (bad conditions)
- 3) conditioned accusation
- 4) compulsory working without detention
- 5) social condemnation
- 6) property confiscate
- 7) commitment to pay fine
- 8) fine
- 9) to execute by a firing squad
- 10) deprivation of rights
- 11) firing from position and rank

In this way the system code of 1922 differentiated penalties

from other social security codes by increasing deprivation from freedom. But due to the economical problems of the prisoners, low level of professionalism in management, lack of acceptable level of readiness of the observers and staffs, and lack of manufacturing workshops in some detention camps, the work-reform code law being approved in 1924 seemed absolutely necessary. After that in 1927 and in 3rd December the criminal code for Azerbaijan socialist republic was approved. In this law, 14 types of penalties were approved (article 22) where the punishment of deprivation from freedom with spending the penalty in work camps was modified and was determined to be between 3 and 10 years (article 31), while in previous times this law of penalties was determined to work-reform houses from 3 to 10 years (article 31) and in other previous laws in work-reform houses, it was determined to be from 1 month to 10 years. In late 50s in former soviet union and in Azerbaijan socialist republic some complicated things happened due to the basic changes in trends in a way that this period was accompanied with things such as the realization of adoring persons, massacres, and mass slaughtering of citizens in soviet union, the extraordinary development of penalties' policies, increasing number of short-term detentions and ...

. As the prominent scholar F.Y. Samandarov has pointed out: "penalty code system and different types of punishments within this system resulted from a need for social necessities." Exactly during the same years, the term 'social security thoughts', was altered with the term suppression. Meanwhile during this time the criminal policy changed a lot and people paid less attention to criminal law

science theory and scholars such as N.V.Krilenko, I.B.Rashikanieh, D.A.Stochka, E.Gh.Shronidet and ... were suppressed unreasonably. The history of code system approval of Azerbaijan socialist republic shows that the time periods for detention penalties have always been changing. The maximum detention in 1902 was 5 years, it was 10 years in 1922, and it was determined to be 25 years in 1937 (during the years between 1937 and 1949 and by alternating deprivation from freedom instead of death penalty, the time for these penalties increased- during these years some lawyers asked for revision regarding detention abandonment in prisons and abandonment of short term detentions following the increase of detention penalties. These scholars believed that it would be better to deprive from freedom instead of sending the criminals to prisons and work and be trained instead of being sent to short term detentions.)

In 8th December 1958 the board of ministers of Soviet Union approved a constitution about work- retention camps and colonies and detention houses. The basic type of work-retention camps became a set of 4 regimes (common, intensified, serious, and private). Concurrently with colonies, detention houses having a serious or common regime were established. The transferring from colonies to prison was only done by the order issued in a judiciary house. After this system, the administration of penalties was based on colonies, since most prisoners spent their penalties in working colonies. During 19870s and 1980s, basic changes occurred in the system of deprivation from freedom. During these years the number of convicts going to prisons by be-

ing sentences in judiciary offices decreased and most convicts were sent to colonies to spend their deprivation penalties. After Soviet Union was collapsed down and Azerbaijan Republic announced independence, in order to accord detention penalties with international norm standards, the new law code for Azerbaijan republic was approved in 30th December 1991.

C- Independence era (from approving constitutional law in 1995 up to now):

After the collapse of Soviet Union, and Azerbaijan Republic announced independence, based on international criminal-law in innovations and private experiences in Soviet Union and in order to accord detention penalties with international norm standards, there was a need for a new law code for Azerbaijan republic which could entail all goals and targets and criminal policies of governmental governance. Thus, the new criminal law of Azerbaijan was approved in 30th December 1991 and was administered from first September 2009 (by regarding precise definitions in principals and fundamentals and common and private articles, it seems that it has been derived from French criminal code system) and some important changes were applied in penalty system and the type of deprivation from freedom penalties in a way that:

First: the standards of democratic states and positive international experiences were reflected in it.

Second: considering the status of crimes in Azerbaijan and the repetition of crimes on the part of criminals the intensification of criminal responsibilities has been reflected in it.

Third: by aiming at altering for exceptional death penalties, the legislator has considered life long deprivation from freedom and has increased detention penalties in a way that: in article 1-55 of the code system above, it can be seen that: "deprivation from freedom, isolation of the convict from the people in detention houses or entities, would be possible by spending the penalties with private regimes, serious, common, and local". In this law case an alternative is determined for death penalty for those convicts that have committed serious private crimes, when the judiciary house is not convinced of the required conditions to lack of administering death penalty (refer to article 57). Of course this penalty (life long detainment) is not practiced for women and those who were under 18 years old while committing the crime and men above 65 years old.

In article 56-1 of this law, the types of spending this penalty entities and locations for deprivation from freedom have been determined as follows:

- 1) For those who committed this crime due to lack of being cautious, the deprivation from freedom time would be less than 5 years in local entities to spend the penalty time.
- 2) For those who have committed crimes which do not have social dangers and are half-sever or sever and the person has been sentenced to be deprived from freedom for the first time and also for persons who have committed crimes due to lack of cautiousness and are sentenced to more than 5 years

deprivation from freedom, entities with common regime of penalties are recommended.

- 3) For those who have committed private half sever crimes for the first time and have been sentenced to be deprived from freedom and also when the crime is repeated if the convict has had previous record of being deprived from freedom and when doing the repeated crime it was very heavy, entities with serious regime penalties are recommended.
- 4) When the repetition of crimes accompanies with dangerous crimes or there is an alternative to life long detention from freedom sentence, the penalty time will be spent in entities having a private regime (very heavy).
- 5) Those who have been sentenced to life long detention in detention camps

Therefore, in law code of 1991 in Azerbaijan, detention has been approved and practically its time period has increased but it is not the case that every convict who has been sentenced to deprivation from freedom and isolation is not sent to detention (prison) (but he will be sent to one of entities mentioned above to spend penalty period except in a case that he is sentenced to life long detention from freedom through which he is sent to the prison). According to article 55-2 of Azerbaijan criminal law code, the detention time is between 3 months and 15 years (except for the case through which life long detention is altered for death penalty). Meanwhile, in criminal law code of Federation of Russia

the detention time is between 6 months and 20 years.

Conclusion:

As it has been observed in historical studies about detentions and imprisonments from tsarist era of Russia to independence of Azerbaijan Republic, like other societies and states, there have been such penalties and their goal has been to realize social justice and reconciliation of the convicts. Also as we investigated the status of prisoners in ancient times and the location to keep them have been very awful and they did not give the prisoners enough water and food. Also the prisoners did not have appropriate clothes and they were spending their penalties in damp and shallow and dark locations in basements with no sanitation cares. Basically we observed that historically life long detention was considered not as a penalty but as a temporal method to retain people to hold trials for them. But afterwards and specifically after 19th century, deprivation from freedom was considered as one of methods to apply penalties. Also in Azerbaijan Republic the criminal legislator has considered the application of deprivation from freedom penalty as the last resort and the most sever location and prison has been considered to exercise it. This is an extraordinary characteristic but unfortunately regarding the lack of material facilities and lack of scientific equipment of the incumbents and officials to take care and train in these entities to the last method and retraining and educational methods practically no difference has been observed and the prison has not achieved its goals (punishment and reconciliation of convicts). Now the important question among

lawyers and crime scholars is that whether prison is a good or bad penalty? Or is there any necessity to retain prisons as a location to administer penalties? Meanwhile, we can not vote to omit prisons totally regarding the viewpoints of states and governments.

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