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About conditional early release

Abstract: In the current Criminal Code of the Republic of Azerbaijan, as a formal requirement for the application of conditional early release of a punishment, the penalty imposed by the court was determined by the convicted person depending on the category of the offense. In contrast to the invalid Criminal Code, the severity of the offense in the current Criminal Code and the category of the offense have not been defined as restrictions on the application of the detention of the convicted person as a conditional early release.

The presumption of a certain part of the sentence imposed by the convict on the basis of the offense determined by the law is determined by the intention of ensuring the liability of the offense and also the purpose of the sentence. It aims to achieve social justice, rehabilitate the prisoner, and implement preventive function of criminal law.

As a basic criterion for prematurely releasing a sentence from a sentence, the perpetrator should not be punished for the correctness of the sentence. The conclusion of the court on the rehabilitation of a prisoner should be based on the information characterizing him her during the entire duration of the sentence, rather than the information available on the eve of the required timeframe for the pre-release release. Therefore, the article proposes to exclude Article 76.4-1 of the Criminal Code of the Republic, which was included in the law of 20 October 2017.

A controversial situation arises when the conditional early release of a prisoner is imprisoned. The conviction that a prisoner serving a sentence of

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deprivation of liberty may be imposed on a case-by-case basis prematurely after the imposition of a penalty for a certain period of imprisonment and that at least twenty-five years have elapsed since the convict's deprivation of liberty, on a case-by-case basis, and the proposal for the improvement of Article 76 of the Criminal Code has been proposed.

Keywords: penalty; deprivation of liberty; life imprisonment; early release; rehabilitation of a prisoner.

The conditional early release institution of the Criminal Code of the Republic of Azerbaijan is already well-known and sufficiently judicial practice has been established in this area both in the previous and at the present time criminal law of our republic. Article 76 of the current Criminal Code of the Azerbaijan Republic stipulates that early release from punishment is different from that of the previous Criminal Code. According to this article, if the judge concludes that the corrective work, limitation on military service, restriction of liberty, detention in a disciplinary military unit, imprisonment for a certain period or life imprisonment should not be punished correctly, it can release it prematurely. In this case, a person may be exempted entirely or partially from additional penalties. On October 8, 2010, the Plenum of the Supreme Court of the Republic of Azerbaijan adopted the “Decree of the Supreme Court of the Republic of Azerbaijan on pre-trial dismissal from pre-trial detention, replacement of unpaid part of the sentence with a more lenient penalty, changing the type of penitentiary institution and exemption from punishment for illness” Article 2 of the Decision No. 02 determines the nature of the offenses and the public danger of committing offenses in criminal and criminal law, the non-payment of the damage caused by the offense, previous conviction, non-recognition of guilt and the like, as an obstacle to premature release from punishment [4].



In contrast to the 1960 Criminal Code, which is currently in force, the right to work (honest attitude to work) during the punishment of the convict for the release of a person from pre-term detention as a pre-trial penalty in the existing Criminal Code is based on the voluntary commitment of the prisoner, to be able to demonstrate that he is corrected by his exemplary behavior, and that the court has the right to impose the penalty for a person's right to be disciplined [3, p. 219]. In general, in the 1960 Criminal Code it was proved that the person was rehabilitated with his exemplary behavior and honest attitude to the premature release of the punishment and the required penalty is required to take part in the law, the Criminal Code is required to make a judgment as to whether the person is entitled to a penalty for corrective action and that the penalty specified in the law be met. That is to say, according to the currently existing Criminal Code, the convicted person should be able to reach the level of correction in the law, as well as the limit of the penalty specified in law. Some authors consider the first factor to be a condition of premature release from punishment and the second factor as conditional [9, p. 18]. In our view, these two aspects cannot be separated from each other, and each of them should be regarded as a basis and condition.

The literature clearly shows that the court's decision should in any case be based on the persistent behavior of the prisoner, which confirms the correctness of the prisoner's sentence. However, the law does not define the criteria for judging whether the prisoner has been rehabilitated. According to the established practice and the general provisions of the law, the court concludes that the person does not need to complete the sentence for corrective punishment, the identity of the convict, his behavior during the sentence, etc. Important cases are the basis. However, it is important to consider that the requirement for the complete rehabilitation of the convict has not been established for the application of this type of punishment in the law [2, p. 178].



According to Article 76.3 of the Criminal Code, premature release from prison may be imposed on the prisoner following the actual part of his sentence:

- 1) at least a half of the term of the sentence imposed for a large public danger or less serious crime;
- 2) for committing a grave crime - at least two thirds of the term of the sentence imposed;
- 3) for a particularly serious offense - at least three-fourths of the term of the sentence imposed;
- 4) as well as a person who has been released pre-conditionally from pre-trial detention, if conditional early release was canceled on the grounds envisaged by Article 76.6 of this Code, or previous convictions for re-release of criminal offenses if convicted - at least three-fourths of the sentence term.

By the way, let us note that according to the Law of 137-IVQD of 31 May 2011 of the Republic of Azerbaijan, the Criminal Code provides for a permit for early release of a punishment, after at least two thirds of the term of the sentence imposed for a serious offense Article 76.3.2 was amended and the duration of the penalty was imposed for the application of this type of punishment for grave and especially grave crimes. However, Article 816-VQD of October 20, 2017, adds new Article 76.3.1-1 to CM and has at least two thirds of the term of the sentence imposed for a serious offense. We consider this amendment to be lawful, and consider that at least three-fourths of the portion of the penalty imposed for the application of a pre-term detention of a punishment in respect of persons convicted for committing grave and especially grave crimes, in other words, the position not to put any difference between grave crimes and especially grave crimes was groundless.

The formal terms for imprisonment for the application of pre-term criminal punishment in the Criminal Code include not only the penalty of imprisonment, but also the correctional work, restriction on military service, restriction of liberty,



and the maintenance of a disciplinary military unit. In the above-mentioned decision of the Plenum of the Supreme Court, it was explained to the courts that the determination of whether the convict's sentence was not legally prescribed by considering these allegations would provide an unconditional justification for the rejection of that appeal [4].

In the case of persons sentenced to imprisonment, the term of the sentence imposed by the convict for the application of this law institution shall not be less than six months. According to the authors of the CC of the Republic of Azerbaijan, this directive of the law can only be subject to a penalty of deprivation of liberty, which does not constitute a major public threat or constitutes the less serious offense [2, p. 178-179]. What is the specific definition of a minimum of six months? The sentence of imprisonment is one of the types of penalties envisaged by criminal law in all countries of the world. According to Article 55.2 of the Criminal Code of the Republic of Azerbaijan, a term of imprisonment for a term of three to twenty years was established. Where the penalty type is replaced by imprisonment (public affairs, correctional work, etc.), the term of this penalty may be more than twenty years if the term of the sentence is less than three months, and the penalty of a crime or conviction. Existing judicial practice shows that the perpetrators are increasing year by year. Thus, in the 60s of the last century, the percentage of convicted persons was 28-32%, 41-45% in 1971-1977 and 50-54% in 1980-1997. Nevertheless, if the total crime rate in 1961-1970 was 13600 cases, in 1971-1980 this figure was 14650 and in 1981-1990 15850. Thus, as stated in the literature, the aim of achieving a reduction of crime was not achieved by widely using penalties [6, p. 261-262].

H.C. Alakbarov said that in some CIS countries 55% of those who committed crimes are currently subjected to actual deprivation of liberty, while in Western Europe this figure is 8-15% and Japan is 3-5%. In the year 2018, 26381 crimes were committed in Azerbaijan, 89.7% of which were not of great public danger or



less serious, only 10.3% were grave and especially grave crimes. Azerbaijan ranks third after Russia and Georgia for the number of imprisonment per 100,000 population across 48 European countries. However, the total weight of grave and especially grave crimes does not exceed 10-14% in the structure of crimes registered every year in our country, while violent and criminal offenses are at a socially-vulnerable level [8, p. 12-13]. In this regard, we agree with this position in the literature that the practice of criminal repression does not meet the basic principles of criminal law and the moral beginnings of criminal punishment if it does not exceed 14% of the gross weight of grave and especially grave crimes [5, p. 15].

However, it should be recognized that the penalty of deprivation of liberty is one of the most popular forms of punishment at all times. This penalty measure is prescribed that the court considers the nature of the offense as inconsistent with the guilt of the perpetrator, and does not consider it incumbent to remain in prison for the purpose of the sentence, and that it is possible to correct it by imprisoning a prisoner with a special set of measures [7, p. 190]. However, the short-term application of this measure significantly reduces its effectiveness and makes it even more apparent in the eyes of the people. In this regard, Prof. M. Rahimov has come to the conclusion that in the future, the need for isolation of persons who committed crimes of economic and negligence, as well as those that have committed drug-related and non-violent crimes, will be eliminated. However, the punishment for deprivation of liberty for rebels and violent crimes accompanied by violent crimes will continue to be the most crucial punishment in the future. The future of the sentence will be accompanied by a refusal from the lack of positive results of a short term imprisonment [6, p. 263-264]. On the other hand, it is practically impossible to determine whether the prisoner actually embarks on a correct correction when the sentence is less than six months long. Moreover, as mentioned above, it does not allow for a shorter period of penalty. The



abovementioned persons provide grounds for determining that a part of the term of the sentence imposed by the convict has not been less than six months for the application of this law institute in relation to persons convicted to imprisonment.

A prisoner who has been sentenced to life imprisonment may be released prematurely by a penalty. The new Article 764-1 of the Criminal Code of the Republic of Azerbaijan was included in Article 816-VQD of 20 October 2017 as follows: “A person convicted of a life imprisonment may be convicted in a manner prescribed by Article 57.3 of this Code in cases of early release, of the penalty for the last five years of his sentence”. This type of deprivation of liberty was included in the Criminal Code of the Republic of Azerbaijan dated February 10, 1998 in connection with the abolition of the death penalty in our republic. The life sentence of the Criminal Code of the Republic of Azerbaijan effective from 1 September 2000 is included in the penalty system. According to Article 57.1 of the Criminal Code, lifetime imprisonment is defined only for crimes committed against peace and humanity, war crimes, identity, public safety and public order and especially for grave crimes against state power. We would like to note that we did not agree with Article 76.4-1 of the Criminal Code as of October 20, 2017. Article 175 of the Code of Criminal Procedure of the Russian Federation, of January 8, 1997, also stipulates that a person sentenced to life imprisonment without prejudice to the rules established in the penitentiary for the last three years, has the right to appeal for release. However, that provision was subsequently excluded from the Code of Criminal Execution [11].

In our view, a person who is punished as a prerequisite for a premature release from a punishment must act in the absence of a penalty for corrective action. This cannot be construed as limiting, in particular, to any period of time (for the last five years of the term in which the penalty was committed) against those who have been punished in the life imprisonment. From this point of view, we consider the following position as expressed in the 19 October 1971 resolution



of the Plenum of the Supreme Court of the USSR of 19 October 1971 “On the judicial practice of early release of prisoners and replacement of the unserved portion of the sentence” the conclusion of the court on the rehabilitation of the convict should be based on the information characterizing him / her during the entire duration of the sentence, rather than the information available at the time of the expiry of the necessary timeframe for the application of pretrial detention as a precautionary measure [10, p. 78]. Therefore, we propose to exclude the Article 76.4-1 of the Code.

We would like to note an incomprehensible situation that may arise during the application of a pre-emptive punishment on a person sentenced to life imprisonment. According to Article 57.3 of the Criminal Code, the Court considers that the sentence of life imprisonment has actually taken at least twenty-five years of imprisonment and that he has not committed a deliberate crime during his sentence and that the prisoner does not need to be punished, the life imprisonment may be replaced by a term of imprisonment for a certain period of time or may be freely released from that punishment prematurely. According to Article 171 of the Criminal Code of the Republic of Azerbaijan, approved by the Law of the Republic of Azerbaijan dated July 14, 2000, 908-IQ, a person sentenced to life imprisonment shall be released on parole after the expiration of the time limit established by the Criminal Code may apply to the court on the application. When his petition was denied by the court, it was settled six months later, at least one year after the date of the rejection of the court's decision (1281-VQD of 12 October 2018 – I.E.) can be viewed. The same provision is defined in Article 513.2 of the Criminal Procedure Code of the Republic of Azerbaijan.

In certain countries, the term of life imprisonment is different from the time limit for the release of a prisoner, as a condition of early release. In our republic, the sentence of imprisonment for a prisoner is at least twenty-five years old. According to Article 78 (3) of the Criminal Code of the Republic of Poland dated



June 6, 1997, a person sentenced to imprisonment for a term of 25 years is subject to at least 15 years of imprisonment and the person convicted to life imprisonment may be released prematurely after the expiration of at least 25 years. In this case, the court sets a ten-year trial period on that person [13]. According to Article 72 of the Criminal Code of the Republic of Georgia dated 22 July 1999, a person sentenced to life imprisonment shall have at least 20 years of imprisonment [12], of the Criminal Code of 15 May 1871 of the Federal Republic of Germany According to § 57, at least 15 years [14] may be released prematurely on parole.

According to the law, there is a chance that the prisoner who has been sentenced to life imprisonment will have the opportunity to obtain two possibilities for undergoing the twenty-five years of the sentence of imprisonment (the absence of a deliberate crime during the sentence and the conviction that the defendant does not need to be punished) : 1) replacement of the life imprisonment with a certain period of imprisonment (according to Article 57.4 of the Criminal Code, life imprisonment may be replaced by imprisonment for up to ten years); 2) premature release of life imprisonment.

The question is: What is the time limit for calculating the time limit prescribed by law during the early release of a convict whose sentence of life is replaced by deprivation of liberty for up to ten years? Let's clarify our mind with a crash. A. has been sentenced to life imprisonment. After serving 25 years of this type of sentence, the court replaced the sentence with eight years' imprisonment. The crime he committed was undoubtedly a grave crime. Can he be released prematurely after his sentence, after having served at least three-quarters of his sentence? In our opinion, this question was given in the very correct decision of the Plenum of the Supreme Court. Article 6 of the judgment states that if the penalty imposed on a person is reduced by a pardon or amnesty, as well as on other grounds, such as premature release from punishment, replacement of the outstanding part of the sentence with a more lenient type of punishment, or the



penal not to be a penalty imposed by the court for the calculation of time limits established by law, but must be calculated by taking into account, in fact, the reduced duration of imprisonment, amnesty, or other grounds [4]. Hence, after the court has taken up to three-fourths of a sentence of up to eight years imprisonment for the termination of the sentence A., it may release him prematurely. The fact that A.'s eight year term of imprisonment is actually untrustworthy will be the trial period for him and he will be responsible for the execution of the duties imposed by the court during this period.

Thus, there is no problem in the application of a pre-term release of punishment as a replacement for a life sentence of deprivation of liberty for a certain period of imprisonment. The problem occurs during the second case - the premature release of life imprisonment. The content of Article 57 of the Criminal Code is understood to mean that a prisoner who has been sentenced to life imprisonment may be imprisoned for life imprisonment, within a reasonable period of twenty-five years of imprisonment, in a penalty of imprisonment for a term of imprisonment may be prematurely released prematurely without replacing it. There are two questions from a logical point of view: 1) the person in question is released prematurely in advance; 2) What period of time will not be served by the convicted person? After all, the unserved part of the sentence imposed by the court implements certain tasks in the application. There is no time here, but the fact that a person is not required to make the remainder of his sentence was conditionally released prematurely. In fact, however, the person is not conditional on this, but is punished completely.

As we have seen, here we face a contradictory situation. We think that there are two types of exit: 1) Amendment of Article 57.3 of the Criminal Code, namely, the premature release from punishment of a prisoner serving a penalty of life imprisonment after replacing this penalty with a certain period of imprisonment Determination of the possibility; 2) the period of probation (the period of time



during which the sentence of a prisoner who has been sentenced to life imprisonment on a pre-term discharge of a sentence directly on the ground that he / she has actually been imprisoned for at least twenty-five years of imprisonment and that the court does not need that punishment; it is expedient to define 10 years in accordance with Article 57.4 of the Code and include the provision in Article 76 of this Code). We prefer more the second option, because a more flexible requirement for a person who has been sentenced to life imprisonment is actually settled there.

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