

ANALYSIS OF MODERN APPROACHES TO THE PROGRESSIVE SYSTEM OF EXECUTION OF PUNISHMENTS

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Abstract

The article comprehensively analyzes various modern approaches of scientists to the study of the progressive system of execution and serving of sentences: a) non-penitentiary; b) philosophical; c) institutional; d) departmental. As a result of the analysis, the author proposes organizational and practical measures to improve the modern progressive system.

Key words

progressive system, execution of punishments, the serving of punishments, alternative sanctions, punishment system, the residence of convicts outside the colony, social adaptation, legal institutions, principle of law, principle of legislation, the principle of progressive system.

The progressive system of execution and serving of criminal punishments is a category that has become and continues to be the subject of study for many penitentiary scientists. In their scientific research, the authors examine the progressive system from various sides and directions, thereby expanding and deepening knowledge about this theoretical construct [1].

D. Howard is considered the founder of the progressive system of execution and serving of punishment. He was the first to propose and substantiate the criteria for classifying convicts into groups, the movement through which depended on their behavior during the process of serving their sentence. A number of "benefits" were proposed for reforming convicts: improved food rations and premises for serving the sentence, as well as an increase in the number of visits with relatives and easier work compared to other convicts [2].

In foreign practice, one of the first progressive systems of execution and serving of punishment was implemented by the head of the British naval penal colony, Captain Alexander Mekonochi. He developed his own system of changing the conditions of serving punishment, dividing all convicts into classes depending on their behavior, attitude to work, etc. Convicts with positive characteristics

eventually ended up on a separate island, where they could live with their families and run their own household, as well as earn early release. Convicts with negative characteristics, on the contrary, fell into strict frameworks for serving punishment, were kept isolated from the main mass of convicts and had to serve the appointed term of punishment until the end [3].

The system developed by Alexander Mekonochi also traces the essence of the modern progressive system of execution and serving of punishment. Traditionally, a progressive system is understood as a system of serving punishment based on the transfer of reforming convicts to a less strict regime, which provides for an approximation to the conditions of life in freedom, and, accordingly, convicts who do not want to reform, to more severe regime conditions.

In the study of the progressive system of execution and serving of sentences, today several modern approaches have emerged that require more detailed analysis.

The first approach to the study of the progressive system is conventionally called non-penitentiary. The progressive system of execution and serving of criminal sentences is a category that is characteristic not only of punishment in the form of imprisonment but also of measures not related to imprisonment [4].

Analyzing the scientific literature, we can note the mention of the progressive system only in relation to the execution of a sentence in the form of imprisonment, but not to other types of punishment [5]. However, some scientists take the position that the progressive system can also be extended to other types of punishment (*not only imprisonment*), at least to some of them.

For each type of punishment not associated with isolation from society, a specific regime for the execution of this type of punishment is established, referred to in scientific literature as "non-penitentiary". Non-penitentiary regime is a legal order for the execution of punishments without isolation from society, consisting of compliance with general and specific obligations (requirements), which, on the one hand, are designed to neutralize the impact of factors capable of creating conditions for the conditionally convicted person to commit a new crime, and, on the other, to ensure favorable conditions for his correction.

In the current criminal-executive legislation, a progressive system is enshrined in the execution of a sentence in the form of forced labor. According to Part 3 of Article 114 of the Criminal Executive Code of the Republic of Uzbekistan, convicted persons who do not violate the detention regime and have families, by order of the head of the institution, may be allowed to live separately with their families on the territory of the penal colony-settlement or on the territory of the district (city) where the penal colony-settlement is located [6].

In the scientific literature, there are also proposals to extend the progressive system to punishments in the form of compulsory and correctional labor.

Thus, some authors propose their own system of serving compulsory work, which involves dividing the conditions of serving them into three types: normal, relaxed, and strict. Under relaxed conditions, those sentenced to compulsory work may: a) partially exercise their right to rest by applying to the criminal executive inspectorate with an application for the possibility of suspending the execution of the punishment in the form of compulsory work for a period of 6 to 10 days during the period of providing the convict with his next annual leave at his main place of work; b) work at facilities designated for them, while the time of compulsory work cannot exceed six hours on weekends and on days when the convict is not busy with his main job, service or study [7].

Within the framework of the non-penitentiary approach, it is also necessary to dwell on the position according to which the "progressive system" and the ideas of "restorative justice" serve as the basis for the emergence of alternative sanctions and punishments.

The institution of alternative punishments to imprisonment corresponds to the idea of restorative justice and the ideas of a progressive system. Of course, the theoretical models of "restorative justice" and "progressive system" have had a significant impact on the development of the institution of alternative punishments. The theoretical models of "restorative justice" and "progressive system" have already been created, but the development of the institution of alternative punishments has not yet been completed. The norms on punishments alternative to imprisonment have not yet been formed into a legislatively enshrined system of norms with a specific purpose and method of regulating social relations.

The next approach that we will reveal when studying the progressive system is philosophical. In scientific literature, one can find the approach of authors to the progressive system of execution and serving of punishments as the relationship of the system and its elements. The system is a set of elements that are in mutual relations and connections with the environment, and also form a certain integrity and unity. Any system consists of several levels (subsystems).

The first concept of a system arose in ancient philosophy (Plato, Aristotle), where much attention was paid to the disclosure of the specific features of the system. The principles of the systemic nature of knowledge were developed in German classical philosophy. In the 50-60s of the 20th century, a number of general system concepts and definitions of the concept of a system were put forward in the USSR, the USA, Great Britain and other countries. Intensive study of this concept is still relevant today.

Progress is a direction of development characterized by a transition from lower to higher, from less perfect to more perfect. Progress can be discussed in relation to the system as a whole, its individual elements, and the structure of the developing object.

In the etymological dictionary of the Russian language by Max Vasmer, the word “progress” comes from the Latin *progressus* – success; the literal translation is advancement, then from the Latin *prōgredi* – “to move forward” [8].

S. I. Ozhegov gives the following definition: “progress is a progressive movement, an improvement in the process of development” [9].

The philosophical dictionary considers “progress” as a process resulting from development, in which the number of elements and subsystems increases, the structures that unite them become more complex, the number of connections and interactions increases, and the set of functions, i.e. actions and procedures performed by these elements and subsystems, increases, thereby ensuring greater stability, adaptability, viability and the possibility of further development.

In the classical understanding, scientists attribute the following to the elements of a progressive system of execution and serving of sentences: 1) the institution of changing the conditions of detention of convicts in the same correctional institution, both for the better and for the worse; 2) changing the type of correctional institution, both for the weakening of the type of regime and for the strengthening; 3) replacing one criminal punishment with another in the process of its execution; 4) conviction for committing a crime in the process of executing a sentence; 5) parole from serving a sentence.

As A.A. Propostin notes, a number of scientists propose to supplement the number of elements of the progressive system of execution and serving of punishment with measures of encouragement and punishment. And also says that measures that have a significant impact on the elements of the progressive system of execution of punishments should be called factors (factor approach), which, with due legislative regulation, are capable of making the progressive system more effective. The above-mentioned author includes administrative supervision among the factors [10].

In addition to the above-considered elements of the progressive system, we include in its content the following institutions and sub-institutions of criminal-executive law (despite the controversial and debatable inclusion of some of them): 1) granting convicts permission to move without an escort or escort outside the institution (Part 1 of Article 84 of the Criminal Executive Code of the Republic of Uzbekistan); 2) convicts are allowed to study by correspondence in higher and secondary specialized educational institutions located in the area of deployment of

the institution (Part 3 of Article 115 of the Criminal Executive Code of the Republic of Uzbekistan); 3) convicts may be allowed to leave the penal institutions for a period of no more than seven days, not counting the time of travel there and back (up to four days), in connection with exceptional circumstances (death or serious illness threatening the life of a close relative, an event that caused significant material damage to the convict or his family) in the manner specified in Part 1 of Article 82 of the Criminal Executive Code of the Republic of Uzbekistan; 4) persons sentenced to imprisonment serving their sentences in penal colonies may receive a pension in the manner prescribed by law (Part 5 of Article 96 of the Criminal Executive Code of the Republic of Uzbekistan).

All of the listed institutions and sub-institutions of criminal-executive law related to the stay of a convicted person outside a correctional institution have a common feature - they express a refusal of the need for the convicted person to continue serving his/her sentence in conditions of isolation, security and a comparatively stricter regime, while simultaneously indicating the possibility of another option of conditions - serving the sentence without security, but under supervision, for a long or short term.

Accordingly, here, when characterizing the progressive system, we have moved on to the following approach, revealing the progressive system of execution and serving of punishment, as an institution of criminal-executive law. The institutional approach to the study of the progressive system includes two main concepts: "institutions" - norms, customs of behavior in society, and "institutions" - the consolidation of norms and customs in the form of laws, organizations, institutions.

The following scientific approach assumes understanding of the progressive system as a principle. Article 6 of the Criminal Executive Code of the Republic of Uzbekistan lists the following types of principles of criminal-executive legislation: a) legality, b) justice, c) humanism, d) democracy, d) differentiation and individualization of execution of punishment, e) rational use of coercive means and stimulation of law-abiding behavior of convicts, g) humane treatment of convicts, respect for the honor and dignity of convicts inherent in the human personality. Some authors, in addition to the basic principles of criminal-executive legislation, distinguish the following types: a) the principle of combining persuasion and coercion; b) the principle of the possibility of correction of each person who committed a crime; c) the principle of development of useful initiative and self-activity of convicts. Some authors propose to consider the progressive system as a principle of criminal-executive legislation [13]. In our opinion, the progressive system of serving a sentence should become a kind of penitentiary ideology, i.e.

principle that would be implemented through institutions for changing the conditions of serving a sentence, preparing convicts for release, early release, etc. As is known, Article 6 of the Criminal Executive Code of the Republic of Uzbekistan does not provide for such a principle. Therefore, we believe that Article 6 of the Criminal Executive Code of the Republic of Uzbekistan must enshrine the principle of a progressive system of serving a sentence with its subsequent full reflection in the institutions and norms of this law. The final stage of the system - preparing convicts for release - must be differentiated taking into account positively and negatively characterized convicts.

The following approach, actively discussed in scientific and other literature, we will conditionally designate as departmental. It assumes consideration of the progressive system of execution and serving of punishment as a system of "social elevators". At present, the system of "social elevators" is defined as a mechanism for changing the legal status of a convict by means of an assessment by the commission of the institution for execution of punishment of his behavior with the help of established criteria. The system of "social elevator" assumes a direct connection of the regime and conditions of detention of the convict with his behavior. This system is intended to develop motivation for law-abiding behavior in convicts and is a tool that provides an opportunity to improve their legal status.

In the course of implementing the Concept of the criminal-executive legislation of the Republic of Uzbekistan in 2019-2021 in the sphere of improving the criminal-executive system, systematization and harmonization of the norms of the criminal-executive legislation, a whole range of tasks is being solved to reform the system of execution of punishment, one of which is the further improvement of the principles, procedure and conditions of criminal-legal influence, taking into account modern approaches, advanced international standards and foreign practices, as well as public control in the activities of penal institutions, ensuring their close interaction with civil society institutions in the social adaptation of persons released from places of imprisonment [14].

As noted by I.I. Aminov, the technologies of "social elevators" are intended to solve this problem. Their essence lies in moving convicts, depending on their law-abidingness and the degree of their participation in resocialization programs, to more or less favorable conditions of detention, i.e. transferring either from a more severe regime to a more lenient one (elevator "up"), or vice versa (elevator "down"). The final upper destination in this case is parole from further serving of the sentence [15].

In 2023, more than 1,500 convicts who completed special social adaptation programs under the "social elevator" system were transferred from ordinary

conditions of serving their sentences to lighter ones, and over 500 were transferred from penal colonies to penal settlements. The courts decided to replace imprisonment with a more lenient type of punishment for more than 300 convicts, about one thousand convicts were released on parole from places of imprisonment. At the same time, 120 convicts, due to their behavior that did not meet certain criteria, had their conditions of detention tightened: they were transferred from ordinary conditions to strict ones.

The analysis shows that in practice the system of "social elevators" has not been sufficiently implemented. In this regard, the question of giving the decisions of the certification commissions within the framework of the implementation of the system of "social elevators" a higher status is natural, as a result of which the court could take these decisions into account and rely on them. As I.I. Aminov and V.E. Eminov point out, the problematic issues identified in the process of practical implementation of the system of "social elevators" can be resolved only by amending the criminal-executive legislation and improving the organizational and legal measures for the functioning of this system [15].

Thus, in accordance with the Decree of the President of the Republic of Uzbekistan dated January 30, 2025 No. UP-17, "On improving the procedures for financing the social protection system of the population", from May 1, 2025, persons released from places of detention will receive a one-time payment in the amount of 6 times the BRV (2.25 million soums). The funds will be paid through the Inson social services centers [16].

Thus, summing up the article, it is necessary to say that at present the progressive system of execution and serving of sentences is increasingly becoming the object of research of penitentiary scientists, as well as scientists in other branches of scientific knowledge, all this testifies to the particular relevance of the topic under consideration and the need for its more in-depth and comprehensive study, including at the monographic level.

In the context of improving the modern progressive system of execution and serving of sentences, we propose the following organizational and legal measures:

- 1) it is necessary to expand the subject of consideration of the progressive system, including in it the study of punishments not related to imprisonment, as well as alternative sanctions, in conjunction with the ideas of restorative justice;
- 2) it is necessary to consolidate the progressive system as a principle of criminal-executive legislation in Art. 6 of the Criminal Executive Code of the Republic of Uzbekistan;
- 3) it is necessary to increase the number of elements of the progressive system of execution and serving of sentences.

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