

ARREST AS A FORM OF PUNISHMENT: CRIMINAL LAW AND CRIMINAL ENFORCEMENT ASPECTS

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Abstract: The relevance of the topic of the article is determined by the imperfection of the legal regulation of assignment and enforcement of punishments in the form of arrest in the criminal and criminal enforcement legislation of the Republic of Kazakhstan and the novelty of the said legislation. In this connection, there is a need for a comprehensive assessment of social relations arising in the process of assigning and enforcing a punishment in the form of arrest and determining the legal nature of this punishment, which is the basis for the legal relations emerging due to the fact of a criminal offense committed by the guilty.

The authors of this article came to the conclusion that arrest, as a new type of punishment, which is hardly applicable in practice due to a number of circumstances, requires more detailed regulation in the criminal and criminal enforcement legislation of the Republic of Kazakhstan. Further improvement of the relevant types of legislation will allow the use of this type of punishment for preventing criminal offenses and improving the effectiveness of the reformation of the convict.

Keywords: Arrest, Imprisonment, Convict, Prison term, Punishment, Criminal misdemeanor, Humanization of punishment, Lockdown.

1 Introduction

In Kazakhstan, the emergence of the institution of punishment in the form of arrest was the result of economic and political transformations carried out in the early 90s of the last century, requiring an appropriate legal infrastructure. In particular, the Decree of the President of the Republic of Kazakhstan of February 12, 1994 No. 1569 "On the State Program of Legal Reform in the Republic of Kazakhstan" (1) indicated that it would be necessary to make changes to the punishment system: to expand the size and scope of application of property sanctions as more appropriate to market relations; to establish new types of punishments such as deprivation of liberty and arrest (for up to three months), excluding such types as public reprimand, dismissal from office, suspended sentence, and correctional labor; limit the number of crimes for which the death penalty is provided for.

Later, in the Decree of the President of the Republic of Kazakhstan of September 20, 2002 No. 949 "On the Concept of the Legal Policy of the Republic of Kazakhstan" (2), one of the areas of the implementation of the criminal policy of the Republic of Kazakhstan was to create the necessary conditions for the introduction of criminal law norms providing for such new types of punishment as deprivation of liberty, arrest, and life imprisonment.

In order to implement the assigned tasks, the Criminal Code of the Republic of Kazakhstan of 1997 (hereinafter the Kazakh CC of 1997) (3) was first adopted together with the Penal Enforcement Code of the Republic of Kazakhstan 1997 (hereinafter the Kazakh PEC of 1997). (4).

For the first time in the criminal legislation of the Republic of Kazakhstan, the Kazakh CC of 1997 provided for the punishment in the form of arrest. Although for the criminal legislation of several countries, this type of punishment is not new. According to L.V. Ryabova, this type of punishment was enshrined in the Criminal Code of Italy in 1930, in the PRC in 1979, in Switzerland in 1937, in Japan in 1907 and in several other countries. (5)

This type of punishment was enshrined in Article 46 of the Kazakh CC of 1997. In accordance with Part 1 of Article 46 of the Criminal Code of the Republic of Kazakhstan, arrest involves the lockdown of a convicted person for the entire sentence term. Part 2 of this article has enshrined that the arrest is established for a period of from one month to six months. In the case of substitution of correctional labor or a fine with an arrest for a term less than one month. Part 3 established that the arrest does not apply to persons who are under the age of sixteen years, as well as pregnant women and women with minor children. Part 4 of this article determined that the members of armed forces were arrested in military prisons.

Until 2011, the enforcement of punishment in the form of arrest was postponed several times. When instituting the Kazakh CC of 1997, it was initially determined that the provisions of this Code concerning punishments such as correctional labor, deprivation of liberty, arrest, and life imprisonment come into effect after the Kazakh PEC enters into legal force, as the necessary conditions for the enforcement of these types of punishments are created, no later than 2003. This provision was enshrined in Article 4 of the Kazakh Enactment of the Criminal Code Act of July 16, 1997 No. 168-1. (6) On May 5, 2000, the aforementioned article of the above Act was modified by the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the Fight against Crime No. 47-II (paragraph 4 of the Amendments), according to which correctional labor was removed from the list of previously mentioned punishments and it was enshrined that the provisions of this Code concerning correctional labor come into force on January 1, 2000. (7)

Later, in accordance with Paragraph 1 of the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning punishment in the form of arrest, as well as the introduction of life imprisonment of December 31, 2003 No. 514-II (8), the provisions of the Criminal Code of the Republic of Kazakhstan on arrest were again changed, i.e. 2008 was chosen instead of 2003.

Paragraph 4 of the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the Further Improvement of the System of Enforcement of Criminal Sentences and the Penitentiary System of December 10, 2009 No. 228-IV (9) established that the provisions of the Kazakh CC of 1997 concerning punishment in the form of arrest comes into effect on January 1, 2010.

Nevertheless, these provisions did not come into effect since, on the basis of subparagraph 8 of paragraph 1 of Article 1 of the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the Further Humanization of the Criminal Legislation and Strengthening the Rule of Law in the Criminal Procedure of January 18, 2011 No. 393 – IV [10] (2011), Article 46 of the Kazakh CC of 1997 was edited and was already devoted to another type of punishment, i.e. the detention in a military prison.

At the same time, the same amendments regarding the date of entry into force of Articles 64-67 of the Kazakh PEC of 1997 dedicated to the enforcement of such punishment as arrest, were introduced into the Enforcement of the Penal Code of the Republic of Kazakhstan Act of December 13, 1997 No. 209. (11)

Thus, for more than ten years in the legislation of the Republic of Kazakhstan, there was a situation in which certain provisions of the existing Criminal and Penal Enforcement Codes of the Republic of Kazakhstan did not have the opportunity for the practical implementation.

This situation was repeated in the framework of the Criminal Code of the Republic of Kazakhstan of 2014 (hereinafter the Kazakh Criminal Code of 2014) (12) and in the Penal

Enforcement Code of the Republic of Kazakhstan of 2014 (hereinafter the Kazakh PEC of 2014) (13), although for a shorter period.

The Kazakh CC of 2014 adopted in July 3, 2014 has Article 45, which defines arrest as a lockdown for the entire duration of the sentence imposed (Part 1). In part 2 of this article, the period of arrest was established for a period of from thirty to ninety days. The period of detention is included in the period of arrest. In Part 3 of the article under review, persons who are not subject to an arrest are listed: minors, pregnant women, women with young children, men raising young children alone, women aged fifty-eight and over years, men aged sixty-three and over, disabled people of the first and second disability groups. In accordance with part 4 of this article, service members are arrested in military prisons.

Article 45 of the Kazakh CC of 2014, in accordance with Article 467 of the Kazakh CC of 2014 "On the introduction of this Code into force and the recognition of certain legislative acts of the Republic of Kazakhstan as invalid" comes into force on January 1, 2017. At present, the application of Article 45 of the Kazakh CC of 2014 is suspended until January 1, 2020, with the exception of the provisions applicable to military personnel and in cases provided for by Part 3 of Article 41, Part 3 of Article 42 and Part 2 of Article 43 of this Code (that is, situations when a fine and correctional labor assigned to convicts are replaced by an arrest due to a number of circumstances), which are applied from January 1, 2017. These dates were established by the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the Improvement of the Criminal Enforcement Legislation of April 18, 2017 No. 58-VI (14), which included part 1-1 in Article 467 of the Kazakh CC of 2014. Part 1-1 includes the above clarifications concerning the application of Article 45 of the Kazakh CC of 2014.

Thus, the formal date of commencement of such punishment as arrest in the Republic of Kazakhstan is January 1, 2017, that is, Article 45 of the Kazakh CC of 2014 comes into force two years after the Kazakh CC of 2014 comes into force. In fact, until January 1, 2020, the provisions of Article 45 of the Criminal Code of the Republic of Kazakhstan will not be applied in full but only in cases provided for by Part 1-1 of Article 467 of the Kazakh CC of 2014.

January 1, 2017 is the date of entry into force of Chapter 15 of the Kazakh PEC of 2014 devoted to the enforcement of punishment in the form of arrest. This date is included in Part 1 of Article 177 of the Kazakh PEC of 2014.

The purpose of the article is to analyze the legal nature of legal relations arising in the process of assignment and enforcement of arrest.

2 Materials and Methods

The implementation of the purpose of the article is carried out with the help of an analysis of the norms of Kazakh legislation regulating the assignment and enforcement of a punishment in the form of arrest, with the aim of legal qualification of this type of punishment and determining its place in the legal system of Kazakhstan.

The methodological potential includes general scientific methods (dialectical method, analysis, synthesis, analogy, induction, and deduction) and such methods as systemic, formal legal and comparative legal ones, which allow to compare different views on the legal nature of relations arising in the process of applying the Kazakh CC of 1997 and that of 2014 as well as the Kazakh PEC of 1997 and that of 2014 when assigning and enforcing an arrest.

3 Results and Discussion

In recent years, the criminal and criminal enforcement legislation of the Republic of Kazakhstan has undergone significant changes in terms of the assignment and enforcement of sentence

in general, as well as in the terms of the assignment and procedure for the enforcement of certain types of punishment, in particular. These changes can be clearly examined by the example of the assignment and enforcement of an arrest.

In accordance with Part 1 of Article 46 of the Kazakh CC of 1997 and Part 1 of Article 45 of the Kazakh CC of 2014, arrest consists in a lockdown for the entire term of the sentence imposed.

G.F. Polenov (15, p99) noted that despite the fact that arrest is a short-term form of punishment, it is, because of the significance of repressiveness (lockdown), can have a great preventive effect on those who commit crimes.

The term of arrest in accordance with Part 2 of Article 45 of the Kazakh CC of 2014 is currently within ten and within fifty days. Until July 12, 2018, this period was different, i.e. from thirty to ninety days. These changes were made to the Kazakh CC of 2014 by the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the Improvement of Criminal, Criminal Procedure Legislation, Law Enforcement and Special State Bodies of July 12, 2018 No. 180-VI (16)

In the former Criminal Code of 1997, the period of arrest was much longer: from one month to six months (Part 2 of Article 46 of the Kazakh CC).

In accordance with Part 5 of Article 45 of the Kazakh CC of 2014, when a sentence is replaced, the minimum period of arrest may be less than ten days.

This situation may arise in the following cases provided by law:

1. When enforcing a fine imposed on a convict for a criminal misdemeanor, the unpaid part of the fine is replaced by an arrest at the rate of one day of arrest for four unpaid monthly calculation indicators (Paragraph 1) of Part 6 of Article 41 of the Kazakh Criminal Code of 2014);
2. In the event of circumstances impeding the carrying out of correctional labor by a convict (except for disability), it is replaced by an arrest at the rate of one day of arrest for four unpaid monthly calculation indicators (Paragraph 1) of Part 5 of Article 42 of the Kazakh CC of 2014);
3. In case of evasion of a convicted person from community service, it is replaced by an arrest at the rate of one day of arrest for four unworked hours of community service (Paragraph 1) of Part 2-1 of Article 43 of the Kazakh CC of 2014).

An arrest, in accordance with Part 3 of Article 45 of the Kazakh CC of 2014, is not assigned to a certain group of persons, which includes

1. minors;
2. pregnant women;
3. women with young children;
4. men raising young children by themselves;
5. women aged fifty eight and over;
6. men aged sixty-three and over;
7. disabled people of the first and second disability groups.

This list has undergone significant changes compared to the Kazakh CC of 1997, which included only three categories of persons:

1. Persons who are under the age of sixteen by the time they are sentenced, and later those who have not reached the age of eighteen by the time they are sentenced, in accordance with the Amendments to the Criminal, Criminal Procedure, and Penal Enforcement Codes of the Republic of Kazakhstan concerning the Simplification of Procedures for the Investigation of Criminal Cases, the Decriminalization of Certain Offenses and the Improvement of Legislation for Administrative Offenses of December 9, 2004 No. 10-III (17);
2. pregnant women;
3. women with young children.

The inclusion of minors (initially - persons under sixteen years old) in the number of persons subject to the punishment in question is justified by the fact that thus the negative consequences of this punishment in relation to children are prevented. Lockdown (keeping locked up in chambers, lack of meetings with parents or other close people), lack of general education, vocational training, and movement under escort lead to a breakdown of positive social and emotional ties with parents, relatives and other people, loss of time and opportunity in obtaining education and mental and physical development, which later, after serving the sentence, is either difficult or impossible to recover.

Changes in the criminal law in respect of the persons, to whom arrest is not applied, were carried out in two directions:

1. extension: the list includes 1) men who bring up young children alone, 2) women aged fifty eight and over, 3) men aged sixty-three and over, 4) people of the first and second disability groups.
2. reduction: instead of women with minors, now it involves women with young children.

In Part 4 of Article 45 of the Kazakh CC of 2014 a provision stating that service members are arrested in military prisons was remained.

The fifteenth chapter of the Kazakh PEC of 2014 currently regulates the process of enforcement of punishment in the form of arrest. This chapter, in accordance with Part 1 of Article 177 of the Kazakh PEC entered into force on January 1, 2017.

Places where persons serve punishment in the form of arrest are detention centers and isolated areas of remand centers assigned according to the place of conviction (Paragraph 1 of Article 83 of the Kazakh PEC of 2014) and military prisons for military personnel (Paragraph 2 of Article 83 of the Kazakh PEC of 2014).

It should be noted that the Article 83 of the Kazakh PEC of 2014 included isolated areas of the remand centers in the list of places where persons serve punishment in the form of arrest according to the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning the Improvement of the Criminal Enforcement Legislation of April 18, 2017 No. 58-VI. (18) Prior to this amendment, only detention centers were places where persons served punishment in the form of arrest.

At the same time, it should be noted that the former Kazakh PEC of 1997 initially defined arrest facilities as places where persons served punishment in the form of arrest. Later, in accordance with the Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan concerning Further Improvement of the System of Enforcement of Criminal Sentences of December 10, 2009 No. 228-IV, were replaced with remand centers. (9)

For the first time, the Kazakh PEC of 2014 defined time periods for sending convicts to serve an arrest, i.e. starting from the day the sentence enters into legal force (Part 1 of Article 84), and, in relation to convicted military personnel, within three days after receiving a court order on the enforcement of sentence entered into force (Part 2 of Article 84).

The peculiarities of enforcement of arrest are reflected in Article 85 of the Kazakh PEC. A smaller part of these peculiarities was already present in the former criminal enforcement legislation of the Republic of Kazakhstan: for example, the fact that persons convicted for arrest are kept lockdown in cells (Part 1). Nevertheless, here it is necessary to clarify that in the edition of Part 1 of Article 64 of the Kazakh PEC of 1997 with amendments of December 10, 2009, the cell type was specified (shared lockable cells). (9) Prior to this, there was no such specification, although the detention of prisoners in shared lockable cells was implied. This was due to the fact that the original edition of Part 2 of Article 64 of the Kazakh PEC of 1997 enshrined that persons convicted to arrest are subject to the

conditions of detention established by this Code for persons serving a sentence of imprisonment according to the general regime in prison. Article 127 of the Kazakh PEC of 1997 in the edition in question determined that those sentenced to deprivation of liberty are kept in prisons in shared lockable cells (Part 1).

Also, as before, in places where persons serve the sentence of arrest, men, women and persons who have previously served their sentences and have a criminal record are kept separately. In the original edition of Part 1 of Article 64 of the Kazakh PEC of 1997, the list of these persons also included minors, who were subsequently excluded.

However, most of the peculiarities of serving the sentence of arrest are new for the current criminal enforcement legislation of the Republic of Kazakhstan:

1. Prisoners with various infectious diseases are kept separately from healthy people (Part 1 of Article 85 of the Kazakh PEC of 2014);
2. Such convicts as former employees of courts, law enforcement and special state bodies, persons authorized to exercise control and supervision over the behavior of convicted persons are kept in isolation from other convicts (Part 1 of Article 85 of the Kazakh PEC of 2014);
3. When a convicted person is hospitalized in a medical institution, an escort is organized to ensure his or her protection (Part 1 of Article 85 of the Kazakh PEC of 2014);
4. Convicted military personnel are kept separately depending on their ranks (commissioned officers and enlisted grades) and separately from military personnel held in the military prison for other reasons (Part 3 of Article 85 of the Kazakh PEC of 2014).
5. Persons sentenced to arrest are provided with food according to the standards applied to persons sentenced to deprivation of liberty.

Military personnel sentenced to arrest are provided with food according to the standards established by authorized bodies dealing with criminal enforcement, national security, and defense of the Republic of Kazakhstan in coordination with the central authorized body charged with budget planning (Part 2 of Article 85 of the Kazakh PEC of 2014).

In accordance with Article 86 of the Kazakh PEC of 2014, a person sentenced to arrest, in addition to general rights and obligations (Articles 10 and 11 of the Kazakh PEC of 2014), the following rights are granted:

1. to receive and send letters and telegrams at his or her own expense once a month;
2. to receive money transfers;
3. to spend monthly, for the purchase of food and essential items, the funds available in control accounts dedicated for temporary placement of money amounting to one monthly calculation indicator;
4. to receive monthly parcels, transfers, and packages with essential items and clothing according to the season. Also, sick and disabled convicts are entitled to receive packages and transfers with medicines and medical products in the quantity and assortment determined by a medical certificate;
5. to have meetings with a lawyer without limitation of their number and duration, under conditions that ensure their confidentiality;
6. to have a daily walk of at least one and a half hours;
7. to have a telephone conversation with the spouse and close relatives at own expense in cases of death or terminal illness of the spouse or a close relative, a natural disaster that caused significant material damage to his or her family and other exceptional circumstances of a personal nature;
8. to have short-term visits for a period of not more than seven days, not counting the time required for travel (not more than five days), in connection with the death or terminal illness of the spouse or a close relative, or a natural disaster that caused significant material damage to his or her family.

In the above article, along with the rights and obligations common to all convicts provided by Articles 10 and 11 of the Kazakh PEC, special rights are provided for persons sentenced to arrest. It should be noted that the conditions of serving the sentence of arrest, as defined in Article 86 of the Kazakh PEC of 2014, significantly differ from the previous criminal enforcement legislation. B.K. Shnarbayev and A.E. Mizanbayev (19) note that the legislation has refused a repressive approach to the enforcement of punishments in the form of arrest, which occurred earlier in legal theory and practice. The humane approach to serving the sentence of lockdown is reflected in special rights for persons sentenced to arrest. (26-30)

In particular, receiving parcels, transfers, and packages with essential items and clothing according to the season is now possible once a month (Subparagraph 4 of Part 2 of Article 86 of the Kazakh PEC of 2014), while earlier, although such a receiving was provided for, its frequency was not specified.

In the new PEC of the Republic of Kazakhstan, the legislators readopted the size of one monthly calculation indicator for the monthly expenses of the convict for the purchase of food and essential items deducted from the funds available in control accounts dedicated for temporary placement of money (Subparagraph of Part 2 of Article 86 of the Kazakh PEC of 2014). This size was also provided in the first edition of the Kazakh PEC of 1997. It should be borne in mind that the specified size, in accordance with the previously mentioned Kazakh Act of December 10, 2009 has been increased to three monthly calculation indicators. (9) Accordingly, the current size of the monthly expenses for the purchase of food and essential items is a manifestation of tougher conditions for serving the punishment in question. Moreover, there is a need to consider the possibility of increasing this indicator to three monthly calculation indicators.

The fact that the Kazakh PEC of 2014 increased the minimum duration of walks of persons sentenced to arrest from one hour to one and a half hours deserves a positive assessment (Subparagraph 6 of Part 2 of Article 86 of the Kazakh PEC of 2014). The Kazakh PEC of 1997 also provided for the duration of walks of at least one and a half hours but only for minors.

In addition, the current legislation specifies exceptional circumstances of a personal nature with which a telephone conversation of a convict with his or her spouse or close relatives can be allowed (Paragraph 7 of Part 2 of Article 86 of the Kazakh PEC of 2014). This will allow to apply the law in a uniform manner, as well as to avoid the facts of abuse of official powers by the relevant staff in the places where persons serve the sentence of arrest.

The evidence of further humanization of the criminal enforcement legislation of the Republic of Kazakhstan is that in the Kazakh PEC of 2014 for the first time granted the following rights to persons sentenced to arrest:

1. to receive and send letters and telegrams once a month at own expense (Paragraph 1 of part 2 of Article 86 of the Kazakh PEC of 2014);
2. to receive money transfers (Paragraph 2 of Part 2 of Article 86 of the Kazakh PEC of 2014);
3. to have short-term visits for a period of not more than seven days, not counting the time required for travel (not more than five days), in connection with the death or terminal illness of the spouse or a close relative, or a natural disaster that caused significant material damage to his or her family (Subparagraph 8 of Part 2 of Article 86 of the Kazakh PEC of 2014).

The novels of the Kazakh PEC are the provisions of Article 87, which for the first time determined the peculiarities of the legal status of convicted military personnel serving a sentence of arrest:

1. the time of serving a sentence of arrest shall not be counted in the total term of military service and the length of service when bestowing a military rank (Part 1);
2. during this period, a service member cannot be bestowed with a military rank, appointed to a higher position, transferred to a new duty station or dismissed from military service, except for cases of recognition as unfit for service due to health reasons (Part 2);
3. also, a convicted service member, during the specified period, is not paid a monetary allowance (Part 3).

The theoretical legal analysis of the previous and current Kazakh criminal and criminal enforcement legislation and the existing scientific interpretation of legal categories in the field of the application of punishment in the form of arrest allows to identify the following main conclusions.

Despite significant positive changes in the definition, procedure and conditions for the enforcement of punishment in the form of arrest in the criminal and criminal enforcement legislation of the Republic of Kazakhstan, there are certain gaps and contradictions in them that need to be eliminated as soon as possible in order to implement the principles of justice and legality.

First, it is necessary to draw attention to the minimum presence of labor in the enforcement of the sentence of arrest. Paragraph 71 of the General Order and the System for the Keeping of Convicts in Military Prisons of Military Police Bodies of the National Security Committee of the Republic of Kazakhstan approved by the order of the Chairman of the National Security Committee of the Republic of Kazakhstan No. 319 of September 25, 2014 (20), indicates that convicted military personnel are involved in the work for economic maintenance of military prisons with a duration of not more than two hours per week. Chapter 7 of the General Order and the System for the Keeping of Convicts in Military Prisons of Military Police Bodies of the Armed Forces of the Republic of Kazakhstan Approved by Order No. 367 of the Minister of Defense of the Republic of Kazakhstan of July 20, 2017 (21) stipulates the possibility of engaging military personnel in the maintenance work in military prisons, cleaning the cells and other premises of military prisons in order of priority according to the duty schedule, as well as the site improvement of military prisons. Paragraph 34 of the Rules of Organization of Activities and General Order of Special Institutions Enforcing Punishments in the Form of Arrest approved by the Order No. 504 of the Minister of Internal Affairs of the Republic of Kazakhstan of July 26, 2017 (22), indicates that prisoners are charged with sweeping and washing cells, cleaning the cell's lavatory and the exercise yard at the end of the walk. However, in the last two documents the maximum limit of the duration of such work per week is not specified. Chapter 15 of the Kazakh PEC of 2014 has no provision at all for engaging persons sentenced to arrest in work. Although, Article 65 of the Kazakh PEC of 1997 indicated that the administration of places of arrest has the right to involve convicts in the maintenance of the premises of places intended for serving a sentence of arrest, without payment lasting no more than four hours a week. The possibility of engaging persons sentenced to arrest in paid work is also not provided for in the specified chapter of the Kazakh PEC of 2014.

The need for labor (both in the form of paid labor, and in the form of improvement of living conditions) when enforcing an arrest is due to the fact that labor is an integral part of the reformation of a convict. (23-25) First, it is based on the very concept of reforming a convict, that is, the formation of his or her law-abiding behavior, a positive attitude towards individuals, societies, work, norms, rules and ethics of behavior in society (Subparagraph 10 of Article 3 of the Kazakh PEC). Secondly, socially useful work is one of the main means of reforming a convict (Subparagraph 4 of Part 1 of Article 7 of the Kazakh PEC). The importance of the reformation of a convict is due to the fact that this is one of the purposes of punishment (Part 2 of Article 39 of the Kazakh PEC of 2014). Thirdly, the main duty of convicts is the conscientious attitude to work (Subparagraph 7

of Part 1 of Article 11 of the Kazakh PEC). The lack of labor in the reformation of a person sentenced to arrest is also perplexing due to the fact that even those sentenced to deprivation of liberty who are serving a sentence in cells work in specially equipped working cells or on the territory of isolated local areas of a manufacturing zone (Parts 1 and 4 of Article 149 of the Kazakh PEC).

It would be advisable to provide in Chapter 15 of the Kazakh PEC of 2014 the possibility of engaging persons sentenced to arrest in maintenance of the premises of places intended for serving a sentence of arrest without payment of no more than two hours per week.

Secondly, the new Kazakh PEC of 2014 did not reflect the measures of encouragement and punishment applied to those sentenced to arrest, and, accordingly, the procedure for their application. Although, the Kazakh PEC of 1997 had such a rule, i.e. Article 66. It is advisable to adopt the experience of the previous Kazakh legislation concerning this issue, making certain changes in it, taking into account the current conditions of serving the sentence of arrest. In particular, the list of incentive measures previously provided for in the Kazakh PEC of 1997 including acknowledgment, early removal of the previously imposed penalty, and permission for a telephone conversation, should be expanded to include additional spending of money amounting to monthly calculation indicator for the purchase of food and essential items during holidays. Such a list of incentive measures is practiced in the previously mentioned General Order and System for the Keeping of Convicts in Military Prisons of Military Police Bodies of the National Security Committee of the Republic of Kazakhstan (Paragraph 111). (20)

It is suggested to keep the list of penalties the same: reprimand and placement in a punishment cell. Nevertheless, the maximum term for the latter penalty is necessary to be reduced from ten to five days, taking into account the fact that at present the maximum term of arrest is reduced from ninety days to fifty days.

In connection with consideration of the issue of incentives and penalties applied to persons sentenced to arrest, it is inadmissible to invoke Articles 128 and 131 of the Kazakh PEC of 2014 in the previously mentioned Rules of Organization of Activities and General Order of Special Institutions Enforcing Punishments in the Form of Arrest due to the fact that these articles regulate incentives and penalties, as well as the procedure for applying them to persons sentenced to another type of punishment, i.e. deprivation of liberty.

Thirdly, the Kazakh PEC of 2014 does not regulate the procedure for the movement of convicts in the territory of the places arrest. Only in Part 1 of Article 85 of this Code, there is a provision stating that in case of a convict being sent for hospitalization to medical institutions, an escort is sent to ensure his or her protection. In addition, in paragraph 31 of the previously mentioned Rules there are provisions for an escort for convicts, according to which the movement of convicts through the territory of a detention center or a remand center is carried out only under escort. It is necessary in the Kazakh PEC of 2014 to introduce a norm providing for the obligation of persons sentenced to arrest to move through the territory of the places of arrest only under escort and not to be limited to the presence of a corresponding provision in the by-law. Fourth, Article 84 of the Kazakh PEC of 2014 states that only a court verdict that has entered into legal force as the basis for the enforcement of a sentence of arrest, which is not enough. The grounds for the enforcement of arrest include a court decision that has entered into legal force in the event of the replacement of such types of punishment as a fine, correctional labor and community service by an arrest in accordance with Paragraph 1 of Part 6 of Article 41, Paragraph 1 of Part 5 of Article 42 and Paragraph 1 of Part 2-1 of Article 43 of the Kazakh CC.

Fifth, in accordance with Subparagraph 5 of Part 2 of Article 86 of the Kazakh PEC of 2014, sentenced to arrest have the right to

meet only with a lawyer without limiting the number of such meetings and their duration, under conditions that ensure their confidentiality. As violation of this provision, Subparagraph 95-104 of the general order and the system for the keeping of convicts in military prisons of military police bodies of the National Security Committee of the Republic of Kazakhstan has provisions concerning holding meetings of convicted military personnel with lawyers, relatives and other persons. (20) In particular, it is indicated that convicted service members are provided with short two-hour meetings (Paragraph 95), for example, with persons who are not relatives of a convicted service member (Paragraph 96), as well as with the spouse and relatives (Paragraph 97) on a rotational basis (Paragraph 98). It seems to be logical to bring the above-mentioned bylaw into line with the Kazakh PEC of 2014 by excluding most of the provisions of Paragraphs 95-104 of above-mentioned General Order, with the exception of the provisions on granting a service member meetings with a lawyer, as well as security measures during meetings.

Sixth, Part 1 of Article 467 of the Kazakh CC of 2014 currently invokes Part 3 of Article 41, Part 3 of Article 42 and Part 2 of Article 43 of this Code. Before the amendments to the Kazakh CC of 2014, in July 2018, these norms provided for provisions on the replacement of fines, correctional labor and community service with punishment but according to the Amendments of July 12, 2018 № 180-VI, (16) Articles 41 and 42 of the Kazakh CC of 2014 were edited and Part 2 of Article 43 of the Kazakh CC of 2014 was edited and supplemented with new Parts: 2-1 and 2-2.

4 Conclusion

The stated provisions can be used in the process of improving the criminal enforcement legislation of the Republic of Kazakhstan concerning the legal regulation of the assignment and enforcement of such type of punishment as the arrest in order to prevent criminal misconduct, improve the efficiency of correction of the convict, etc.

In particular, the proposal to increase the monthly expenditure on the purchase of food and essential items from one to three monthly calculation indicators is an additional opportunity to humanize the penal legislation of the Republic of Kazakhstan.

The desire to improve the correction of persons sentenced to arrest explains our proposal to include in Chapter 15 of the Kazakh PEC of 2014 the provisions on the possibility of engaging convicts in work, as well as to make up a separate article providing for incentives and penalties applied to convicts and the procedure for their application.

For the prevention of possible offenses by convicts, it is proposed to introduce in the Kazakh PEC of 2014 the obligation of convicts to move around the territory of places of arrest only under escort.

In order to fully reflect the current criminal and criminal procedure legislation, it was suggested that, in addition to the court's verdict, the court's rulings entered in force in case of replacement of fine, correctional labor and community service for arrest are also included in grounds of arrest.

To eliminate the contradictions in the Kazakhstan legislation, it is proposed to make the appropriate changes in part 1-1 of Article 467 of the Criminal Code of the Republic of Kazakhstan, as well as in separate by-laws of the Republic of Kazakhstan.

The stated conclusions and suggestions of the authors to improve the criminal and criminal enforcement legislation in terms of defining, assigning and enforcing such punishment as arrest can be used by other authors of scientific papers on the specified topics, both within Kazakhstan's science and beyond.

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