



AMNESTY AND PARDON: SCIENTIFIC EXPLANATIONS, FUNCTIONAL MARKS, NORMATIVE-LEGAL BASICS

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ABSTRACT

In this article, the interrelated qualities of amnesty and pardon institutions, functional characteristics, originality, regulatory frameworks, the improvement of amnesty and pardon institutions, which are an act of humanity and compassion, in the process of liberalization of the judicial system are revealed from a scientific and philosophical legal point of view.

KEY WORDS: *amnesty, pardon, act of grace, absolve from blame, humanism, punishment, free from punishment, sharia, convict, crime, law, outlawed organizations.*

INTRODUCTION

There are different religious, moral, scientific, philosophical and legal interpretations of amnesty. Religious interpretations are mainly considered in conjunction with moral and philosophical interpretations [1]. Although in all of them amnesty is seen as the forgiveness of sin, there is a difference in scientific, philosophical and legal approaches. Amnesty and pardon in the scientific literature are considered to be distinct moral and legal phenomena. In practice, there are views that consider them as categories and events.

Amnesty has long been known as an act of humanity and a moral event. In ancient Rome, people sitting in auditoriums and in the stands decided to forgive or not to forgive gladiators who lost in battle. The gladiator who won the battle asked them what to do, if the tribune and the audience showed a thumb, then this was a sign of forgiveness, pardon, and the losing gladiator was left alive. The word amnesty comes from the Greek word «amnestia» and means «forget», «forgive» This interpretation meant the release of the person who was sentenced from punishment by the ruler and the highest institution.

In the science of Sharia, much has been examined about the punishment and its pardon. In the books of our great compatriot Burkhonuddin al-Marginoniy, «The Book of Crimes», «The Book of

Paying for Blood», and «The Book of Paying for Murder», dealt with «questions of the commandment or non-commandment of a sentence of revenge» and various issues related to criminal actions. They disclosed how one could free oneself by recovering losses and other payments according to Islamic dogma [2]. Marginoniy considered issues related to exemption from duty in his work «Hidoya». Along with this, explains the use of the concept of «pardon». According to this, «pardon is the amount between a certain numbers of mandatory taxes» [3]. Duty is made by giving, charity, refusal of this amount. It is not known the etymological change, contamination, the transition to co-use in the sense of forgiveness and pardon of the word «pardon» used in Sharia law.

Researcher Sh. Eshanova, who studied the Caziys' courts that operated in Central Asia, said: «Appointed according to Sharia, each new caziy should have read the book of the cases of the previous caziy, compare the questions and sentences given there with the documents, carefully to study all the work performed, as well as a new caziy, could cancel the sentence or, on the contrary, extend the term of imprisonment» [4]. The Caziys were appointed by Padishah or Amir. The Caziys single-handedly examined criminal cases, «there were no legal appeals or cassations. According to Sharia law,



persons who did not agree with the sentence of Caziy had the right to complain of him to Beck, Khan or Amir, and they, in turn, transferred the case to Chief Caziy or convened a council of Cazivs to review the case» [4]. The Council of Caziys had the right to overturn the sentence, pardon or change the sentence. Such a right also belonged to Khan, Amir, that is, the supreme ruler. This means that in Muslim law, the Caziys' court protecting human rights could not only punish, but also reconsider punishments, change its forms, release a person by canceling the wrong punishment, have mercy. It is true that the word amnesty does not occur in Sharia law, but this does not mean that Muslim law did not apply pardon. The call for forgiveness is an important humanistic quality of Karan and Hadith. The Hadith says: «Whoever repents, Allah will forgive him» [5]. And it is also said: «As soon as the servant of God regrets his sin, not having time to ask for the forgiveness of his sins, Allah will forgive his sins» [5]. But this Islamic interpretation did not mean that the punishment was completely forgiven, the Sharia laws stated that the crime would not go unpunished.

DISCUSSION

As a political-legal concept, the word «amnesty» appeared in the second half of the twentieth century, more precisely in the International Agreement on Human Rights. The World Declaration, adopted in 1948, noted that everyone has the right to live, be free and to be inviolable (article-3), and the International Covenant on Civil and Political Rights stated that «The right to live is an inalienable right of every person. This right is protected by law. No one has the right to deprive a person of his life ... Everyone sentenced to death has the right to ask for pardon or commutation of sentence. Amnesty, pardon or change of death sentence may be provided in all cases» [6]. In this document, amnesty and pardon are not different from each other. But lawyers try to distinguish them. For example, Russian lawyers understand the concept of amnesty as a normative legal act that applies to a group of certain individuals who have committed «similar», «identical» crimes. According to the famous criminologist V.E.Kvashis, amnesty is a normative legal act of a humanistic nature, which applies to prisoners who are close in terms of the type of punishment. In this case, it is observed that not the opinions, petitions, appeals of prisoners are taken into account, but the recommendations of the institutions holding the prisoners, the internal affairs agencies [7]. Doctor of Law, who analyzed the functional qualities and scientific interpretations of amnesty, Professor K. Mirzazhanov writes this: «Amnesty in special literature is called an act of the supreme organ of government, which fully or

partially exempts punishment of certain people without repealing laws, or replaces it with lighter punishment and applies this without pointing to an individual, but to a specific group of people responding to «related» signs». In this case, we see that the approach of K. Mirzazhanov is close to the opinion of the Russian criminologist.

In practical studies of the European Convention on Human Rights, it is noted that appeal to the court, to the highest state bodies is the right of every citizen, including prisoners and persons who are accused of a crime. According to R. Bedord, human rights should act in all social life, even in special institutions for the deprivation of liberty. Following the procedure of «minimum law» is significant in that it affects the decriminalization of actions and activities of people [9]. He believes that amnesty is as much an inalienable right of a person as to live; he may at any time and in any circumstances wish to be exempted from the charges against him.

T. Zvart shows that a person can achieve the adoption of any of his appeals, even his appeal when he is in an institution that limits his activity [10].

If we proceed from the fact that the amnesty was originally related to treatment, the European Convention on Human Rights and the European Charter noted treatment related to amnesty as an «unrestricted right» of prisoners [11]. Some lawyers define that «an act of amnesty is a legal document that applies to persons who have committed an offense, that is, an administrative or criminal act» [12]. According to the authors, «the document is applied to an indefinite type of persons, that is, the number of persons that this document will influence is not limited. But the act of amnesty exempts persons who have committed certain types of crimes from criminal liability (not having great social danger, not very serious or serious crimes), and persons of another type may be exempted from liability before the issue of guilt is resolved or certain persons can be exempted from passing the punishment or imprisonment of some individuals may be reduced» [12]. In general, an amnesty is applied to an indefinite number of persons who have committed crimes of the same type and meet special requirements.

In our Independent Uzbekistan, amnesty was first adopted in honor of the independence of the republic in 1991 [13]. It was an act of our state in unison with the humanistic customs and desires of our people. According to this, more than 9 thousand people were released from punishment, almost half of them were women and people under 18 years of age at the time the crime was committed. Prior to the adoption of a presidential decree abolishing the death penalty in 2005, such acts, i.e. 19 amnesties, were announced until 2008. Today their number has



reached 30. Since the 1996 amnesty [13], a rule has been introduced that reduces the remainder of the unfulfilled punishment for certain types of prisoners. In 2000, the amnesty declared in honor of the ninth anniversary of the declaration of independence adopted the release of foreign citizens from punishment, and in the amnesty in honor of the tenth anniversary of the adoption of the Constitution starting in 2002, persons convicted of participating in extremist organizations, for committing a crime against the Constitutional system of the Republic of Uzbekistan in their composition or other acts against public safety were deprived of their liberty for more than ten years or were convicted for the first time of punishments not related to deprivation of freedom, in a word, those who are brought to punishment for participating in the activities of prohibited organizations, but who have completely switched to the corrective path, are exempted from punishment.

On August 28, 2008, the Senate of the Oliy Majlis established the implementation of amnesty acts by the courts. Later, according to this regulatory document, introducing changes and amendments to the current legislative documents, the Code of Criminal Procedure was supplemented by a separate chapter 63, which relates to the application of the amnesty act in the pre-trial stage and henceforth the amnesty acts will be applied only by the courts. It should be noted that during the 9 months of 2008 and 2009, the criminal courts completed cases against 132,996 people and against 36,639 of them, that is, 27.5% were granted an amnesty act» [15].

The entry into force of the Decree of the President of the Republic of Uzbekistan «On the abolition of the death penalty in the Republic of Uzbekistan» [16] from January 1, 2008 raised to a new level the humanity of the judicial system, the human attitude towards people who are sentenced to punishment. Along with this, the shift of amnesty towards pardon was applied, this became apparent in the Regulation «On the Procedure for Pardoning in the Republic of Uzbekistan» adopted on March 13, 2009. But this institute was not put into practice until 2017.

The time after the end of 2016 can be called a new stage in the field of amnesty and pardon. President of our republic Sh.M. Mirziyoyev took the initiative to accept amnesty and pardon. On August 11, 2017, the President adopted a Decision «On measures for the deep improvement of activities in the sphere of enforcement by the internal affairs authorities of sentences related to deprivation of liberty», decrees were adopted on November 30, 2017 «On additional measures to strengthen the guarantee of the rights and freedoms of citizens in judicial investigation activities», On the pardon of first convicted persons in honor of the adoption of

our Constitution, «September 19, 2018» On improving the procedure for exemption from criminal liability of citizens of the Republic of Uzbekistan who mistakenly have been implicated in terrorist, extremist or other banned organizations and groups». As a result, about 4 thousand prisoners, who sincerely repented of their deeds and went on the righteous path, were released from places of imprisonment» [17]. In 2017, more than 18 thousand repentant people were excluded from the list of persons inclined to participate in terrorist groups. «This year 156 of our compatriots, mostly women and children, were returned from Syria, where hostilities continue, and civil rights were returned to them. Of course, to be gracious and kind means to earn the disposition of both the people and Allah. Our good qualities ennoble our broad-minded people» [17].

On May 5, 2018, the Presidential Decree «On Approving the Regulation on the Procedure for Pardoning in the Republic of Uzbekistan» [18] was adopted. This decree is fundamentally different from the decree adopted on March 13, 2009. Here the list of entities that have the right to petition for clemency has been increased. According to the old Decree, a convicted person could file a petition to the President; the new Decree states that a petition can be submitted by a convicted or serving person, another person (body), which, by law, has the right to file a petition. According to the new Decree, a Commission has been drawn up under the President of the Republic of Uzbekistan to deal with issues related to pardon. The proposals regarding the persons to be pardoned are decided by this commission and they submit them to the President. From the above measures and initiatives of the President, it becomes clear that today the pardon is formed as a kind of institution and has a legal regulatory framework. Of course, his internal system, institutional ties must still be established, improved. Despite this, one cannot fail to notice the more humanization of the judicial system in Uzbekistan, serious changes in the sphere of amnesty and pardon, even our foreign opponents declare this.

According to the deputy director of «Amnesty International», an international organization for Eastern Europe and Central Asia, D. Krivosheev, who expresses his harsh opinions regarding ensuring human rights and freedoms in our country if only five acquittals have been issued in Uzbekistan over the past five years, then for five months of 2018 their number exceeded 200. These figures are especially admirable, in conditions when in many other countries, including other CIS countries, the sentences of pardon are decreasing every day [19].



By functional qualities, amnesty and pardon are:

Full or partial exemption from the main or unfulfilled additional punishment;

Suspended release from punishment;

The sentence of life imprisonment or the unfulfilled punishment of imprisonment shall be changed to an easier punishment;

To cancel a criminal record.

In these functional qualities, punishment and attitude towards it or the execution of punishment is at the center. Burkhonuddin Marginoniy points out that punishment is made to frighten in order not to commit a crime, and an influential punishment is made to correct a person. Western philosophers L. Feuerbach,

I. Bentham, I. Kant, and Hegel put forward the concept that the severity of criminal laws creates conditions for people to restrain themselves from crime. Punishment is necessary not to punish a person, but in order to protect society. The Criminal Procedure Code of the Republic of Uzbekistan (Article 7) says: «the moral education of the prisoner consists of the education of law-abidingness in him, a respectful attitude to people, society, work, the rules and customs of public life». The basis for the execution of a court is a court verdict that has entered into legal force, a court ruling or decision, and an act of amnesty or pardon.

K. Mirzazhanov interprets amnesty and pardon as forgiveness of sin. He writes that amnesty has the following important elements:

1) Amnesty is an emergency right of the highest organs of state government;

2) This right does not change the responsibility and punishment for the crime. Its purpose is to facilitate the fate of a certain category of persons who have committed a crime. In essence, an amnesty does not impede the tasks of the fight against crime and does not impede the adoption of criminal legal measures in this struggle;

3) Amnesty is based on legislative requirements and on the basis of parole. It always has reasonable conditions and limits of application.[8]

According to K. Mirzazhanov, amnesty is a «state of emergency». Here, the word «emergency» means individual events, actions committed under special conditions, and not in the sense of an unexpected, non-occurring event. If we proceed from the work carried out in Uzbekistan regarding amnesty and pardon, we can say that these are not random events, but a political expression that is consciously, stage-by-stage and institutionally carried out in the humanization of the legal sphere from the judicial system of our state. The criminal and his family accept exemption from punishment as an act of humanity; and they express their joy and gratitude in

a cognitive way. Amnesty and pardon are not limited to gratitude with subjective qualities, but wish the liberated persons to confirm their gratitude in the form of real relationships in objective life. Therefore, it implies the liberated people to quickly adapt to social life, actively participate in the ongoing social, economic changes. Crimes, offenses cannot be explained only by objective factors. Objective life can never fully satisfy subjective desires; a person who improves his desires always finds flaws and shortages in objective being. Thus, the subjective cognitive factor of the legal consciousness of the individual is very important, associated with responsibility to society and relatives, with the correct awareness of one's duty.

The forgiveness of sin or pardon is also accepted by the supreme organ of the state. Here they are close to amnesty, but there are still some differences. «Forgiveness of sin is different from amnesty, it is not applied according to the general assessment of the situation related to the crime, but it is applied implying the circumstances of a particular situation, the characteristics of a particular person, the conditions of his living and educational environment, the effective results of educational work in relation to him». [8] So, a pardon implies a specific person, a specific crime and a specific situation; when exempted from passing the punishment «it makes an exception to the established procedure of punishment only once». It «is an emergency act, it is used in very complex and rare specific cases that cannot be put into specific norms and combined. This may be a situation related to the degree of danger of the difference between the crime committed and its causes, or a separate social and domestic situation, in this case, the person appears directly in front of society and cannot independently prevent the situation; and finally, it can be a case related to an emergency in the family, with the acceleration of the process of correctional labor, etc. Therefore, such situations are not judged, it is decided by the body that establishes the meaning and scope of the law». [8]

Amnesty and pardon, in its social essence, are not considered the forgiveness of a crime, but of a person who is the subject of law. «According to the general rule, an amnesty act shall be applied in relation to crimes committed before its release. An amnesty act applies to individuals who have committed long crimes if all continuous acts of the crime were committed before the entry into force of the amnesty act. The release of a person by the state from responsibility or punishment on the basis of an amnesty does not mean forgiveness of his crime, but forgiveness of himself». [21] The expression «forgiveness of the person» is found in legal literature. Thus, a legal philosophical question arises:



can a person be forgiven without forgiving his deed or crime? If the act, the crime is not forgiven, does this mean that the punishment imposed on him has not lost its force? If there is a subject of crime, that is, a criminal, then the crime itself exists, and vice versa, if there is a crime, then there is its subject.

The existence of a crime cannot be the reason for his forgiveness? Is it possible to forgive a criminal without forgiving his crime? Is it possible to separate actions from the person, from the subject who carried it out? There are no such discussions in the scientific and legal literature. If a person, even if he is deprived of his liberty and is in places of execution, has not lost that he is a subject of law, how can one separately consider a crime from a criminal? I. Kant expressed the idea and conclusion that the right is the objective being of a person, «human right is an objective right». [22] So committing a crime is also a human right.

Of course, this is not an event that will be supported by positive law or a positive society. To forgive a person, and from the point of view of humanizing the judicial system, to forgive his crime is certainly correct, but from the point of view of harmony and integrity of a person, this is not right.

If the crime is not forgiven, the danger of its recovery will always remain. Yes, we must not fight against a person; we must fight against flaws, destructive tendencies and deeds that are in him. Therefore, the forgiveness of a person and the forgiveness of sin, the forgiveness of a crime and the forgiveness of a criminal must be considered and interpreted together. Otherwise, there is no sense in the terms «forgiveness of a criminal» or «forgiveness of sin.»

One more step has been taken to form the institution of amnesty and pardon when exempting from criminal liability citizens who mistakenly joined terrorist groups. The Decree adopted by the President on September 19, 2018 «On improving the procedure for exemption from criminal liability citizens of the Republic of Uzbekistan who mistakenly entered terrorist, extremist or other prohibited organizations and groups» became the following regulatory document that is unique in the judicial history of the institution of pardon. According to it, if a citizen of our state wanted in foreign countries from a pure heart repenting him comes with a petition, he will be released from criminal liability.

The legal framework for amnesty and pardon primarily includes the Constitution of the Republic of Uzbekistan, Decisions of the Senate of the Oliy Majlis of the Republic of Uzbekistan on amnesty, the Criminal Code, the Code of Criminal Procedure, special articles in the Criminal Executive Code, Decrees, Decisions of the President of the Republic of Uzbekistan on amnesty and pardon, and

also concerning problems of the decision of the plenum of the Supreme Court of the Republic of Uzbekistan. Regulatory documents adopted and issued by these institutes establish the ways of activity of the courts, performing amnesty and pardon.

Regulatory documents regarding amnesty and pardon consist of these features. One who gives amnesty and pardon decides what crime to forgive, the terms of what types of crimes to reduce, suspended reduce, and what types of crimes cannot be forgiven. At first glance, this looks like a subjective desire of the head of state, in fact, it comes from the paradigmatic qualifications of the judicial system, a rational and fair solution to the problems that arise in society, and the requirements of social development. This objective situation puts on the agenda the formation of amnesty and pardon as a social right institution. The head of the country, which can definitely see the paths of national development, wants the people to strive to live building, will form it confidently, and will improve its regulatory framework.

CONCLUSION

Drawing conclusions, it can be said that amnesty and the forgiveness of sin or pardon are the supreme body of the government of the state and one of the functions of the powers of the head of state, including as an act of generosity, are considered a complex legal and socio-humanistic institution, effectively applied in a number of foreign countries. The reform of its socio-legal basis and improvement, to outline the ways for its further development is important in the implementation of human rights and freedoms in the country, in the full implementation of foreign and domestic policies in the formation of a new, democratic look based on the rule of law today.

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