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The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

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Contents

Artur Vagharshyan	
DEFENSIBILITY AS THE PRINCIPLE OF STATE CONSTRUCTION: CONCEPT AND NORMTIVE CONTENT	9
Taron Simonyan	
CONTROLLED REALITY AND THE FICTION OF FREEDOM: SYNERGY ALGORITHMS	25
Viktorya Ohanyan	
INTERSECTORAL AND INTEGRAL APPROACHES AS A RESPONSE OF THE THEORY OF LAW TO THE CONTEMPORARY ISSUES OF THE IMPLEMENTATION OF LAW	36
Karen Amiryan	
NATURE OF RELATIONS BETWEEN THE CONSTITUTIONAL COURT AND LEGISLATIVE AUTHORITY IN THE REPUBLIC OF ARMENIA	47
Vardan Ayvazyan	
SYSTEMATIZATION OF CONSTITUTIONALITY	57
Gevorg Danielyan	
EVOLUTION OF TERMINOLOGY IN THE CONTEXT OF ARMENIAN JURISPRUDENCE.....	72
Anahit Manasyan	
CONSTITUTIONAL DEVELOPMENTS REGARDING THE INSTITUTE OF CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF ARMENIA.....	88
Rustam Makhmudyan	
KEY QUESTIONS (ISSUES) OF REALIZATION OF CONSTITUTIONAL-LEGAL STATUS OF LEGISLATION OF SUPREME JUDICIAL COUNCIL.....	95

Vahram Avetisyan	
	CORPORATE GOVERNANCE AND RESOLUTION OF CORPORATE DISPUTES IN THE REPUBLIC OF ARMENIA .. 110
Davit Serobyán	
	THE PROBLEM OF INTERPLAY OF THE CONCEPTS OF ECONOMIC ACTIVITY AND ENTREPRENEURIAL ACTIVITY IN THE LIGHT OF CONSTITUTIONAL AMENDMENTS..... 127
Arpine Hovhannisyan, Narine Avagyan	
	TRADEMARKS AND BRANDS: WHAT ARE THE DIFFERENCES? 138
Grikor Bekmezyan	
	ON SOME ISSUES PERTAINING TO COMPENSATION OF NON PECUNIARY DAMAGE IN CIVIL LAW OF THE REPUBLIC OF ARMENIA 153
Arsen Tavadyan	
	REGULATION OF INVALID CONTRACTS UNDER ARMENIAN LEGISLATION..... 166
Tatevik Davtyan	
	PROMOTING A PRO BONO CULTURE IN ARMENIA’S LEGAL PROFESSION 173
Harutyun Khachikyan	
	THE RESOCIALIZATION OF THE CONVICT AND THE NEW CRIMINAL AND PENITENTIARY LEGISLATIONS OF ARMENIA..... 190
Ara Gabuzyan	
	SOME ISSUES PERTAINING TO LEGISLATIVE DEFINITION OF “CRIMINAL OFFENSE” 203
Gagik Ghazinyan	
	THE CONSTITUTIONAL FOUNDATIONS OF THE INDEPENDENCE OF THE JUDICIAL POWER IN THE REPUBLIC OF ARMENIA 210

Vahe Yengibaryan	
THE KEY ISSUES OF THE CRIMINAL PROCEDURE GROUNDS FOR THE FORENSIC EXPERTISE.....	232
Tatevik Sujyan	
PECULIARITIES OF JUDICIAL ACTS APPEAL AND CASSATION REVISION IN CRIMINAL PROCEDURES	242
Armen Hovhannisyan	
JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS AS A BASIS FOR EXCEPTIONAL REVIEW IN CRIMINAL PROCEDURE IN A FORM OF NEW CIRCUMSTANCE	258
Nelli Aghababyan	
PECULIARITIES OF JUVENILE PROCEEDINGS IN THE CRIMINAL PROCEDURES OF THE REPUBLIC OF ARMENIA.....	270
Vahe Hovhannisyan	
THE CHALLENGES OF RIGHT TO EXAMINE THE CASE AT CIVIL COURT WITHIN A REASONABLE TIMEFRAME	278
Sergey Meghryan, Hayk Hovhannisyan	
APPORTION OF BURDEN OF PROOF IN WORKS AND/OR SERVICES CONTRACTS: ARMENIAN PERSPECTIVE: THEORY AND PRACTICE.....	291
Aida Iskoyan, Heghine Grigoryan	
THE ANTHOLOGY AND THE SYSTEM OF ENVIRONMENTAL LAW OF THE REPUBLIC OF ARMENIA	309
Tirayr Vardazaryan	
GENERIC DESCRIPTION OF EMPLOYMENT PROTECTION IN TRANSFERS OF UNDERTAKINGS (TUPE) UNDER THE ENGLISH LAW: DEFINITION AND CLASSIFICATION	332
Tigran Markosyan, Lilit Petrosyan	
GENERAL LEGAL CHARACTERISTICS AND FEATURES OF OBLIGATORY ACTION.....	350

Tigran Grigoryan, Mher Mkrtchyan
SOME CRITICAL REMARKS ON THE JUDGMENT OF THE
EUROPEAN COURT OF HUMAN RIGHTS CONCERNING THE
CASE AYVAZYAN v. ARMENIA 358

Ani Simonyan
RIGHT TO DEVELOPMENT:
KEY CONCEPTS AND OUTLOOK..... 373

THE RESOCIALIZATION OF THE CONVICT AND THE NEW CRIMINAL AND PENITENTIARY LEGISLATIONS OF ARMENIA

Harutyun Khachikyan¹

In the fields of crime prevention, protection of human life and health, other human and civil rights and freedoms, property, public order and public security, the environment and the protection of the constitutional order of the Republic of Armenia from criminal encroachments, a special significance is designated for state's fight against crime.

The policy of combating crime is the function of the state and its relevant bodies to detect and prevent crimes and other offenses, to ensure the responsibility of the perpetrators, to impose punishment on convicts, and to ensure the attainment of the purposes of the punishment. The policy of the state in this sphere is diverse.

It can be divided into three categories: politics for crime prevention policy, criminal policy and punishment enforcement policy or penitentiary policy. In terms of their ultimate goal, these policies constitute a whole and are closely interlined to each other.² Sometimes it is possible to differentiate one policy from another, for example another post-penitentiary policy that can be derived from the crime prevention policy, which is ultimately aimed at the re-socialization of the perpetrator and the prevention of double criminality.

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² See Бриллиантов А.В., Курганов С.И. Уголовно-исполнительное право Российской Федерации. М., 2008 (Diamonds A.V., Kurganov S.I. Criminal law of the Russian Federation. M), P. 11.

Penitentiary policy, being an integral part of the policy of fight against crime, completes the forms, methods, principles, objectives and main directions of the state's activities, including the re-socialization of convicts, prevention of new crimes, both convicts and other persons. One of the main directions of modern penitentiary policy in contemporary times of penitentiary system reform is the socialization of convicts, which fully complies with the purpose of punishment. The policy objectives and principles in this area are stable because they are based on the international legal standards and the achievements of science with regard to the treatment of convicts developed by the international community.

The role of punishment in the system of means fight against criminality can be considered as non-essential as the tendency of crime growth depends on other phenomena, which are more powerful than the possible impact of punishment, those are economic, political, organizational-administrative factors. When the state punishes the perpetrator, it also suffers certain losses/costs related to the administration of justice, the execution of punishment, and other circumstances. Obviously, no one has yet proved that punishment is good or bad. Apparently, it is both at the same time. Nonetheless, society has the wrong opinion, especially in times of increase of criminality, that the prevention of crimes is conditioned by toughening of criminal sentences. Punishment is one of the means, with the help of which the state is influencing crime, keeping it at a certain level. Punishment is the last extreme measure to be applied when the society is no longer capable of preventing the crime.

It is not the severity of punishment that is intimidating criminals, but practical, operative application of laws and reliable disclosure of crimes. It is more appropriate and effective for the state to prevent crime than to punish the perpetrator.

The content of the criminal punishment is not limited to

clarification of its essence. It is also necessary to define the objectives of punishment, the factual outcome of which the state seeks, by charging the perpetrator and enforcing a certain criminal punishment. The problem of purposes of the punishment is one of the more essential and controversial issues of the modern theory and history of criminal law. The purpose of the punishment is not only a legal issue, but a philosophical problem that has captured the minds of the greatest philosophers of the time.

In accordance with the part 2 of Article 46 of RA Criminal Code the penalty is applied for restoring the social justice, correction of convicts, and prevention of offenses. Unlike in 1961 Criminal Code Article 20, this rule defines the objectives of the purposes of the sentence in a new manner, by implementing the constitutional, first and foremost humanitarian and justice principles of criminal law (RA Criminal Code Articles 10, 11).

The draft of the new Criminal Code of the Republic of Armenia correctly outlines the objectives of the punishment in a different manner. The second part of Article 59 of the draft Criminal Code of the Republic of Armenia defines: the purpose of the punishment is to restore social justice, re-socialize the sentenced person, formulate his/her law abiding behavior and to prevent crimes.

Let us try to identify the essence of the objective of re-socialization of a person subjected to punishment as a new concept of criminal law and general doctrine of punishment.

After serving the criminal sentence, the transition to freedom of life is not an easy process, as it may seem at first glance. In jurisprudence it is called "re-socialization", which is a very complex and comprehensive phenomenon, both from theoretical and practical points of views. This concept is widely used in such sciences as criminology, criminal and penitentiary rights, sociology, psychology and other sciences. For example, the term "socialization" is used both in narrow and broad sense in the criminological literature.

In the narrow sense, it is a social process which takes place after serving a criminal sentence, in post-sentence period, when qualitative changes of a person, the reconstruction of the views are happening, which are expressed in the law-abiding behavior.

In the broad sense, re-socialization begins with the first day of the convict's deprivation of liberty and continues throughout the entire sentence, and implemented by the administration of the penitentiary institution more intensively at the end of administration of sentence. It is also important to note that prisoners may be provided with psychological care, not by the penitentiary administration but other persons.

The unequivocal perception of the concept discussed in the legal literature separates two types of re-socialization, voluntary and compulsory. Re-socialization is carried out voluntarily when a person has a positive attitude towards the phenomenon, the right to change his or her behavior, the possibility of applying for help to others, and so on. The purpose of compulsory re-socialization is the transformation of an individual to the extent required by the existing standards and restrictions in society.

Sometimes scholars consider the concepts re-socialization and correction as equivalent. We think resocialization is a broader concept, and correction should be viewed as an independent stage of resocialization. In the criminological literature, the notion of resocialization is often associated with social adaptation. Notwithstanding many common features, social adaptation i should also be viewed as a separate element of re-socialization.

Apart from the aforementioned elements, re-socialization is a new system of personality values and codes of conduct and rules that differs from those previously formed by the individual. So, re-socialization is the embodiment of new values, roles, skills, instead of the former, which does not conform to public morality.

In fact, the re-socialization of the convict should be understood

as a complex and long process of psycho-pedagogical, economic, medical, legal and organizational measures aimed at formulating each prisoner's abilities, skills and willingness to be involved in public life after serving the punishment. However, in order to ensure the re-socialization of the convict, certain requirements are also imposed on the conditions of punishment. Those should be sufficient in order to ensure that the prisoner does not lose in the course of his sentence the rules of behavior and skills he previously acquired.

For the purposes of academic disclosure of the content of the socialization process it is important to identify its objectives. Among those objectives should be enlisted the following:

1. Raising the educational level of convicts,
2. Vocational education or professional qualifications;
3. Protection of health, attitude to the procedure and conditions established in the penitentiary institution,
4. Neutralization of socio-psychological negative phenomena specific to the environment of the offenders,
5. Expansion of the possibilities for the preservation and development of the necessary social relations of convicts,
6. Forming the ability to respect the identity and the environment by reducing the negative aspects of imprisonment.

The listed is an approximate enumeration of the objectives the volume of which can actually be considered broader. Here you can also include knowledge of the requirements for society members, disclosure of underspiced abilities, preparation of legal action, psychological and social assistance, etc.

European countries have accumulated considerable experience in re-socialization of sentenced persons. Regardless of national and other peculiarities, this accumulated experience can avail the opportunity to save time and to avoid errors when restructuring the activities of penitentiaries. Taking into account the local conditions, one can develop an effective system of re-socialization for persons in

places of detention.

The main means contributing to re-socialization of criminals in European penitentiary institutions are general and vocational education, production activities. At the same time, there are certain differences, not only relating to the conditions of the sentence of the convicts, but also relating to resolution of number of different issues, among which a particular emphasis is put on social work with convicts, which requires a special study.

The prisoners are the most vulnerable layers of society around the world. For example, social work with criminals in Germany is being carried out by a well-known probation service, which, in addition to providing conditional release and social assistance to conditional release (e.g. housing, job placement, material support), is working hard to prevent repetition.

Historically in Germany, the role of the church is great for social assistance, so not only the state, but also the religious organizations deal with the problems of convicts.

Social work with convicts in France is part of the country's social policy and is implemented by local self-governing bodies.

In the United Kingdom and in Finland, along with state institutions there are also non-governmental, public or semi-public associations that are funded and controlled by the state. Their functions include developing social programs for convicts, providing social assistance, and more.

In penitentiary institutions in foreign countries, the social work with convicts is carried out both by the staff of these institutions and by volunteers. At the same time, the attitude of penitentiary institutions to the number of social workers in different countries is different. For example, in the UK in every penitentiary institution groups of social workers are engaged, not less than two employees. In the penitentiary institutions in the United States, there is one designated social worker for each forty prisoners.

Western experts believe that the openness and accessibility of penitentiary institutions for the public, and the participation of social workers who are not directly involved in the law enforcement system in the work of the convicts, i.e. when the convict directly communicates with civilians and feels as an ordinary citizen, fosters the re-socialization of prisoners.

Differentiated social programs are needed for those released from places of detention. Penitentiary institutions can not prepare prisoners for their release without the support of civil society organizations. To this end, it is necessary to assist the public and non-governmental organizations working with former convicts to start their work before the release of convicts and to plan their reintegration into society.

The Church and religious education have a special role in the re-socialization of convicts and the formation of law-abiding behavior. Religion acts as a regulator of human behavior, originating from universal moral values, revealing the internal problems of man, deviations of moral consciousness. The religion with its methods of influence on humans corresponds to the requirements of the penitentiary sphere of work with convicts more than any other phenomenon.

The reinstatement of their social connections with the outside world is of primary importance in the re-socialization of convicts. Our penal legislation has made serious progress in this regard.

The Penitentiary Code of the Republic of Armenia enshrines that prisoners should communicate with the outside world, including correspondence, visits (long and short), telegrams, literature and possible media outlets, from the shop or booth of the penal institution, first necessity items, money transfers, deliveries and parcels, as well as right to leave the prison premises without guard or without accompanying, etc.

The Penitentiary Code of the Republic of Armenia essentially expanded the right of persons sentenced to imprisonment to leave the

borders of penitentiary institutions. Short-term departures are familiar to the history of penitentiary law in case of personal exceptions, while the departures for social rehabilitation is a completely new phenomenon. The convict may be granted a short-term leave for a period of up to one month for the purpose of social rehabilitation outside the penitentiary institution. This innovation is extremely humanitarian and is being implemented for reintegration of convicts (especially for persons who have been serving sentences for a long time in places of detention). It contributes to the regulation of the life and work of convicts, strengthening family and friendship ties, and, ultimately, a serious socialization of the perpetrator. In the draft Penitentiary Code of the Republic of Armenia, we have retained the right of convicts to depart and set more detailed regulations.

Article. 94. Departures of persons sentenced to imprisonment outside the penitentiary institutions;

1. Convicts, who are sentenced to imprisonment and serving sentences in detention facilities, may be allowed departures outside the penitentiary institutions.

1) Short-term leave for a period of seven days, not including the time required for departure and return, which can not exceed three days, in case of personal exceptional circumstances, death or serious disease of a close relative, a natural disaster, which has caused considerable material damage to the convict or family.

2) Short-term leave for a period of seven days, not exceeding the time required for departure and return, which can not exceed three days, with the purpose of placing the child in the orphanage or relative of the child in the orphanage adjacent to the penitentiary institution;

3) long-term departure, not exceeding thirty days, the time required for departure and return, which can not exceed three days, inmates who are serving sentences in an open prison for the purpose of social rehabilitation, as well as for prior regulation of daily,

2. Convicted women with juvenile delinquents outside the penitentiary institution shall have the right to travel short-term for a period of up to seven days in order to visit the children.

3. Expulsion of a negatively characterized prisoner shall be provided only by the representative of the administration of the penitentiary institution or representatives.

Changes in the conditions of punishment are of great importance in re-socialization of convicts. The essence of the institute of change of prison terms is the change of the legal status of convicts, in particular, the expansion or reduction of their rights (the progressive punishment system).¹

The modification of the terms of punishment is carried out in two ways: within one penitentiary institution and by transferring the convict from one institution to another.

Changing the conditions of punishment within a penitentiary institution is an increase or reduction of rights and privileges envisaged by the law, that is, the scope of rights and freedoms of prisoners who are positively characterized during their sentence may be expanded (additional short-term or long-term visits, up to two hours of walking, etc.), or, on the contrary, the scope of the rights of those with a negative attitude may be limited. The diversity of the rights of convicts pursues certain goals, regulates and promotes the process of re-socialization of convicts, prepares and helps prisoners to live in freedom, and so on.

In order to make the change of the conditions of punishment more effective, we envisage a norm in the new draft Penitentiary Code of the Republic of Armenia, which defines different conditions of punishment in one penitentiary, mild and severe.

Different conditions of punishment under one penitentiary

¹ For more details see Ткачевский Ю.М. Прогрессивная система исполнения уголовных наказаний. М., 1997 (Tkachevsky Yu.M. Progressive system for the execution of criminal sentences. M., 1997)

institution will allow for more effective use of disciplinary measures and will promote re-socialization of convicts.

At the same time, it should be noted that, besides the above-mentioned circumstances, the success of the socialization depends on the degree of social deviation of the prisoner, as well as the effectiveness of the educational, psychological, legal and rehabilitative work carried out by the administration of the penitentiary.

The urgency of the issue is conditioned by the shift in social and economic development of our country towards new social relations, in line with international legal standards applicable to prisoners. Taking into consideration the complexity of the concept of "re-socialization" and the fact that the new draft of the Criminal Code of the Republic of Armenia re-socialization of the person subjected to punishment is enshrined as a goal of the criminal punishment, so we envisage the following legislative formulations in the RA Penitentiary Code:

Article. 2. Purposes, tasks and content of penitentiary legislation of the Republic of Armenia

1. The objectives of the penitentiary legislation of the Republic of Armenia are: re-socialization of the sentenced person, the formation of his / her law-abiding behavior and the prevention of new crimes;

2. The objectives of the penitentiary legislation of the Republic of Armenia are to define the procedure and conditions for imposing and holding punishments, the use of other forms of criminal-law enforcement, the means of re-socialization of the convict and the shaping of the legitimate conduct, protecting his rights and freedoms, rendering social assistance after serving his sentence.

3. The objectives of penitentiary legislation of the Republic of Armenia are to define the procedure and conditions for imposing and imposing penalties, the use of other forms of criminal-law

enforcement, the means of re-socialization of the convict and the formulation of a legitimate conduct, protecting his rights and freedoms, and rendering social assistance after serving his sentence.

4. The Penitentiary Legislation of the Republic of Armenia defines the general provisions and principles of execution of punishments, the procedure for the application of other measures of criminal law, the procedure and conditions for the execution and execution of sentences, the application of remedial measures of the convict, the legal status of the convict and guarantees of his rights and freedoms, the procedures for the performance of the institutions and the bodies responsible for exemption from punishment and assistance to those released The Rain.

Article. 6 Re-socialization of convicts and main means thereof

1. Re-socialization of convicts is a long-term process of psycho-pedagogical, traumatic, medical, legal and organizational measures aimed at formulating the capacity, abilities and willingness to be involved in public life after the punishment of each prisoner.

2. The main means of re-socialization of convicts are the established procedure and conditions for the execution and maintenance of sentences, the social, medical, psychological and legal work with the convict, the employment, educational, cultural, sports and other similar activities of the convict, as well as public influence.

3. Re-socialization measures shall be applied taking into account the type of punishment, the nature of the offense and the degree of public danger, the convict's personality and his conduct during the serving of the sentence, the convict's attitude towards the crime committed, the term of his sentence as well as other circumstance conditioned by the differentiation and personalization of the sentence.

The process of re-socialization of convicts in places of deprivation of liberty, irrespective of the quality of its

implementation, can not be considered complete because it is carried out in an artificially created condition of the individual from the isolation of society. A certain period of time is necessary until the newly released person is adjusted to and accepts the conditions of life in freedom, restores publicly useful contacts and the rights of a full member of society. In this regard, special measures should be taken with regard to those just released from places of deprivation of liberty.

We consider it necessary to cooperate with the penitentiary system and state authorities on post-retirement socialization, social adaptation and social rehabilitation of those released from places of detention. In our opinion, issues relating to pre-penitentiary and post-penitentiary social reintegration should be the job of those bodies, which are not related to the law enforcement activities. In this connection it is desirable.

1. Adoption of the RA Law on Social Rehabilitation and re-socialization of Released Persons. It would be necessary to envisage in the mentioned law the re-socialization system of former convicts, the principles, tasks, functions, competencies, mechanisms of cooperation of all interested departments. The central point of the system should be specialized state bodies, re-socialization centers, as well as various non-state bodies whose main task is to support the reintegration of convicts. The latter institutions should deal with the employment of former convicts should be considered as problems of these centers, organization of vocational education and training for those who need it.

2. Establish temporary accommodations (for up to six months) adjunct to re-socialization services centers for released persons. Here, former convicts can carry out economic support activities for the center to ensure partial compensation of expenses.

3. Develop and adopt a long-term program of rendering assistance and social rehabilitation to prisoners serving punishment

inn the form of imprisonment.

Concluding the discussion of the issues one can confirm that re-socialization of the sentenced persons is, in itself, a multifaceted concept. We can not consider it possible to think of formulating a single, correct concept and definition of this complicated process without errors. However, it is obvious that for the discovery and perception of the essence of re-socialization it is necessary to interpret this important process only in a broad sense.

We can formulate the most comprehensive definition of the essence of re-socialization. Re-socialization is the conscious restoration of the convict as a socialized full member of society in the social status of a prisoner with the use of legal, organizational, psychological, pedagogical, educational and other complex means with the purpose of preventing the repetition of unlawful acts.