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Mercy in Russian Law

Lidia V. Bakulina and Valery K. Bakulin
Department of Criminal Law, Kazan Federal University, Kazan, Russia

Abstract: This study is devoted to the research of an interbranch institute mercy which is also determined in the legislation of many Foreign countries. An ambiguous attitude of scholars to this institution is noted. Ch. Beccaria, I. Kant, N.S. Tagantsev and others are among the opponents of mercy. Modern researchers of this institute are not opposed to mercy but they emphasize the existence of serious competition from the institute of parole and the presence of regulatory framework gaps that provide this institution. This study emphasizes that the unification of the regulatory framework demands not only the improvement of Criminal Law enforcement procedural rules but also the adoption of the Federal Law "About amnesty in Russia", taking into account international experience. We analyzed the issue of the humanism principle limits during the legal activities implementing rights. We talk not about dehumanization and the abolition of humanism principle. The thing is about the limits of humanity. With regard to the persons sentenced to imprisonment the principle of humanism is taken into account twice at the appointment and the execution of punishment and in the case sentenced to death, it is not considered at all. In relation with this, we offer to realize mercy for the purposes of justice in Russia only for the persons sentenced to the death as it is stated in the International Covenant "On Civil and Political Rights" issued on 16th December 1996.

Key words: Convicted, mercy, the principle of humanism, humanism limits, the law on mercy, legislation

INTRODUCTION

The Institute of Mercy has a long history. It is inherent in almost all the existed and existing empires, monarchies, democracies, legal and non-legal states. Any ruler always had the right to provide mercy. Azaryan (2004) wrote that this "royal prerogative" in the form of a historical relic and is reflected in the constitutions and the current legislations of most countries, even though the legal basis of this phenomenon, in our opinion, is more than doubted but the thing is that the possible things on the level in the field of religion and morality are not always realistic and feasible in the field of law and it is not lawful to mix these highly interrelated areas without seeing their significant features.

In general, agreeing with the researchers judgment, we believe that a mercy is a great tradition, i.e., that it passes from one generation to another and is confined to some other events than a relic.

The institute of mercy extended over time to the whole categories of persons according to the authors of "Short Course of Russian criminal law" and was timed to any events. Mercy is usually accompanied by the events in the life of the ruling house. By the way, being attacked by scientists and Beccaria, taking into account those abuses that were allowed by the means of mercy, the Institute was stopped but came to life again in the 19th century on the basis of the following grounds:

- Real life creates such cases when an act encompasses all the elements of the legal components of a crime without being really such a crime
- Sometimes a crime is committed in such a situation that a certain punishment determined by law is too strict. In such cases, the shortcomings of the law may be amended only by an act of mercy (Belogorits-Kotlyarevskiy *et al*., 2015)

There is no consensus regarding the institution of mercy which is an interdisciplinary one by nature in the theory of criminal and criminal-executive right and this only actualizes this problem.

MATERIALS AND METHODS

To give mercy means the release (partially or completely) from judicial punishment (Ozhegov and Shvedova, 1999) by cancelling a sentence. To show mercy means to spare, to forgive someone's guilt.

The most ardent opponent of the mercy as was pointed out above is Beccaria (1995) who wrote: "pardoned then show people that crimes can forgive and that the penalty is not a mandatory consequence of their means to generate in others allegory of impunity". It's hard not to agree with the position of this commonly

Corresponding Author: Lidia V. Bakulina, Department of Criminal Law, Kazan Federal University, Kazan, Russia

recognized expert and in this case we can't talk about the principle of justice. The violation of the justice principle during mercy is seen by Kant (2010): "the right to mercy an offender, he said whether this is a mitigation of punishment or exemption from it, is the most delicate of all the rights of a sovereign: it proves the brilliance of his greatness and at the same time leads to a remarkable degree of injustice". Tagantsev (1902) shares this point of view. There is no mercy in a perfect law where penalties are mild and the proceeding is fair and swift".

Khartulari (1899) has a different point of view, stressing that only the head of a state has the opportunity to be treated impartially and with full composure to all urgent social issues of the moment while remaining remote from any hostile party intrigues and aspirations which are provided, generally, by the activities of the constitutional chambers.

Currently, there are no opponents of the mercy institute but the regulatory base that provides this institution is not without gaps and conflicts which entails various discussions. So, in 2009 in an interview with RIA "Novosti" RF Justice Minister Konovalov (2009) said: "The problem is that the Institution of Mercy undergoes pretty serious competition from the institution of criminal parole due to the fact that the Institution of Mercy is rather bureaucratic. Often the decision about mercy may take >6 months".

From our point of view, the procedure of applying for a mercy may be less bureaucratic due to the exclusion of the highest official of the relevant RF subject from this "chain" which brings understanding of the appropriateness concerning the application of a mercy act in respect of a convicted person or a person who served the sentence with a conviction. We believe that the commission on the issues of mercy on the territory of a RF subject may independently apply to the Russian Federation President, thus saving 15 days. According to Gudkov (2008), the Head of the Russian Federation is an excessive authority. It is necessary to enhance the role of the regional commissions on the issues of mercy.

Within the comparative approach to the problem the experience of Foreign countries is interesting. At the legislative level, mercy is determined in Aticle 68 of the Criminal Code of Argentina (Anonymous, 2003a) in Articles 394-396 of the Criminal Code of Switzerland (Anonymous, 2002a), in Article 98 of Turkish Penal Code (Anonymous, 2002b), in Articles 112, 113 of the Criminal Code of the Republic of San Marino (Anonymous, 2003b), in Articles 133-7, 133-8 of the Criminal Code of France, etc. In England and Japan, this institution is almost never used.

It is necessary not only to improve the procedural rules of criminal law enforcement but also to adopt the Federal Law "On amnesty in Russia", taking into account international experience for the unification of this regulatory base.

RESULTS AND DISCUSSION

The adoption of the Federal law "On amnesty in Russia" would unify the most appropriate recommendations for the legal regulation of the Mercy Institute, a lingering scientific and practical discussion from the viewpoint of legality, expediency and efficiency in one legal act.

The law in addition to the goals, objectives should provide the definition of mercy. The Part 2 of the Article 85 of RF CC states that by an act of mercy a person convicted of a crime may be released from further punishment or his sentence could be reduced or replaced with a milder penalty. The person who has served the punishment, the conviction may be removed by an act of mercy. Nikitin (2011) defines mercy as a constitutional and legal institution, manifested in the manifestation of mercy and humanity of the president in the form of change or cancellation of a court decision with respect to a convicted who applied the petition for a mercy.

The definition given in Article 6 of the Federal Law draft "On amnesty" is more successful: "Mercy is the decision of the Russian Federation President, it improves the legal status of a particular individual person convicted of a crime, serving a sentence or who served, the sentence and has a criminal record (Mikhlin, 2002). According to this definition, an act of mercy can not only significantly improve the legal status of a convict and if overturned an act of mercy may recover the general legal status of a citizen.

The issue of the subjects applying the petitions for mercy shall be regulated more clearly. According to Article 176 of the RF Criminal Executive Code, the convict has the right to appeal to the president of the Russian Federation with the petition for mercy. The petition for mercy is applied by a convict through the administration of an institution or a body carrying out the sentence. The RF Constitution in Article 50 also stated the right of every convicted person to seek a mercy or the mitigation of a sentence. According to the Swiss Criminal Code, an application for mercy may be filed by a convicted, his legal representative and with the consent of a convicted person, by his defense counsel or a spouse. When political crimes and misdemeanors are considered, the process of mercy may be initiated by the Bundesrat or the canton government (Anonymous, 2002a).

The handling of appeals on parole and the replacement of a punishment with a milder one in the

framework of Article 175 of the RF Criminal Executive Code, since 2012 may be performed by a convict and his lawyer (a legal representative).

In connection with the stated above, for the purpose of uniformity, we consider it is necessary to expand the list of persons entitled to petition for a mercy at lawyer (a legal representative) expense with the consent of the convict and his/her spouse.

As to the grounds for a mercy application, they may be represented only by exceptional circumstances connected with the commission of a socially significant act by a prisoner while serving his sentence (saving the life of another person, the prevention of violent or serious crimes in prisons, an active participation in the liquidation of natural disasters, etc.) rather than the serving of a significant of an imposed sentence or the damage compensation for victims.

So, Koretsky (2003) defines mercy as an exceptional measure which unlike parole can only be used in rare cases associated usually with positive actions of a condemned. For the persons convicted of murder, the infliction of serious harm to health, terrorism, racketeering, kidnapping, mercy may only be applied in exceptional circumstances, for example, during the heroism of prisoners in the fire where he had burns, etc..

At the legislative level, it is necessary to solve the problem of periods after which a convicted person may apply for mercy. The fact that the RF Criminal Code, the RF Criminal Executive Code, the regulations on the procedure of petition for mercy consideration in Russian Federation does not provide the terms after which which prisoners may apply for mercy, although the decree of the RSFSR Supreme Council Presidium issued on August 25, 1967 noted that the use of mercy in respect to sentenced persons may be applied, as a rule, after the serving of at least half of his sentence.

The controversy regarding the time required for a mercy application continues. Vitsin (2002) noted that according to the constitution a convicted person is eligible for mercy, in principle and thus according to law, each person may apply for mercy on the day after the sentence came into force.

Marogulova (1999) believes that a subject of mercy may be a person who has completed no <1 quarter of an imposed sentence. A similar point of view is held by Levashova (2007) but she offers to serve half of imprisonment period.

The regulation on the procedure for the consideration of mercy petitions in Russian Federation indicates that during the consideration of petitions for mercy the following things are taken into account: the behavior of a convicted person while serving his sentence as well as the term of a served sentence, etc. However, the assessment of a sentenced person behavior can be given only after a prolonged observation of his behavior. A certain period is required in order to identify the behavior of a convicted person during the execution of punishment. On the basis of these considerations, one should state in the law the time period after which a convicted person may apply for mercy. All the more the practice is oriented traditionally on half a term of imprisonment. Therefore, from our point of view, an appeal for mercy shall be performed after half of a punishment period.

The procedure of a mercy petition consideration should not remain without a legislator's attention, because it is protracted. The procedure consists of seven steps which takes 72 days: a convicted→administration agencies and bodies carrying out the sentence→territorial body of a correctional system→commission for mercy on the territory of RF subject→higher official of RF subject→the body ensuring the constitutional rights of citizens→president.

It seems that a higher official of RF subject may be easily removed from this "chain" as we mentioned above and also the territorial body of a correctional system may be removed which will reduce the time required for the procedure. The procedure for a parole application is much easier (a convict→prison administration→court) and it is performed in a reasonable period (1 month).

Some attention of a legislator requires the following question: what convicts may apply for mercy? Based on the Constitution and the RF Penal Code these are any of 13 types of criminal punishment, determined in Article 44 of the Criminal Code. Mercy is the manifestation of humanity on the part of the president. The court at the determination of a sentence is guided by the principles of law listed in the RF Criminal Code, in particular, the principle of humanity (Article 7 of the Criminal Code). Zakharov (2003) emphasizes that the principles of law are undeniable, universal cannot be repealed or amended in the course of a legal affair and during the legal activity which realizes the rights.

Indeed, the principles of the rule of law, justice, equality, democracy are unassailable, unlimited and cannot be dispensed. As for the principle of humanism, in our point of view, it should not be limitless and boundless.

Courts in sentencing are guided by the principle of humanity. RF criminal code states that a penalty applicable to a perpetrator cannot be aimed on physical suffering or humiliation of a human dignity. RF penal legislation during the execution of penalties is also based on the principle of humanism. Inmates do not have to be subjected to cruel, inhuman or degrading treatment or recovery. Coercive measures for inmates may be applied only according by law (Part 2, Article 12 of the RF Executive Penal Code). As we noted above mercy is the

manifestation of humanism for convicted to any kind of criminal punishment. It turns out that convicted appear in the area of the principle of humanism three times. Of course, someone will say that humanism is limitless but there still should be some limits. As for the sentenced to death (the death penalty was not abolished but only suspended in Russia), the principle of humanity does not apply at the stage of sentencing or at the stage of a sentence execution. Therefore, in order to perform justice we offer to provide mercy in Russian Federation only in relation to the persons sentenced to the death and life imprisonment (as the most severe punishment now a days) as it corresponds to the Part 4 of Article 6 of the International Covenant "About Civil and Political Rights" where everyone who is sentenced to death may apply for mercy or a sentence mitigation.

Furthermore, the statistics shows convincingly that actually over the past 10 years, i.e., the number of presidential decrees reduces since 2004. So in 2004, 72 people were pardoned. In 2005; 42 people, 2006; 9, 2007; no people were pardoned, 2008; 1 person was pardoned. 2009; 12 people 2010; 98 people 2011; 109 people. In this scenario, the question arises: is the institute of mercy necessary in Russia? Yes, of course, it is necessary but only with respect to persons sentenced to death penalty and life imprisonment. We believe that other mechanisms releasing of criminal liability work better: parole (Article 79 of the RF Criminal Code), the replacement of an unserved part of a punishment with a milder one (Article 80 of the RF Criminal Code), amnesty (Article 84 of the RF Criminal Code RF, etc.

Summary: Of course, the institute of mercy in Russia as a historical tradition as the manifestation of humanity on the part of the president in respect of convicts must be saved but only with respect to persons sentenced to death penalty and life imprisonment. There is a need to adopt a federal law "On amnesty in Russian Federation" and in regulation of the list of persons entitled to apply for mercy; the periods beyond which a convicted person may apply for mercy as well as the regulation of criminal penalty types. The convicted according to these types of penalty may apply for mercy and other issues.

CONCLUSION

In respect of convicts to other types of criminal sanctions other release mechanisms from punishment and criminal liability may operate more effectively.

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