

ANNOTATION
of the dissertation for the degree of Doctor of Philosophy (PhD) in the
specialty "6D030100-Jurisprudence"
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ARREST AS A TYPE OF PUNISHMENT: CRIMINAL LAW AND
PENAL ASPECTS

The purpose of the study, the aim is to justify and propose recommendations for improving the institution of punishment in the form of arrest on the basis of a comprehensive criminal law and penal enforcement analysis of legislation regulating the procedure and conditions for the application of punishment in the form of arrest.

Research objectives:

- comparative legal analysis of the history of the occurrence of punishment in the form of arrest;
- to consider the essence, content and form of punishment in the form of arrest;
- to study the procedure and identify the problems of sentencing in the form of arrest;
- analyze the provisions of the penal enforcement legislation concerning the execution and serving of a sentence in the form of arrest;
- to investigate the corrective effect on those sentenced to arrest and the means of their correction;
- to develop proposals and recommendations for improving the criminal and penal enforcement legislation on the application of punishment in the form of arrest.
- Analysis of domestic legislation and international standards for regulating the legal status of convicts;
- Investigation of the punishment in the form of arrest in the modern criminal legislation of foreign countries;
- Study of the execution of punishment in the form of arrest in the modern penal enforcement legislation of foreign countries.

Methodological basis of the dissertation research. The methodological basis of the work consists of theoretical and legal prerequisites necessary for the author to solve specific problems of criminal law and penal enforcement legislation. The methods of formal-logical, historical, systematic, statistical, comparative and concrete sociological research are used in the work. The use of these methods made it possible to determine the stages of the emergence and development of punishment in the form of arrest in the criminal law of the Republic of Kazakhstan, as well as the problems of execution of this type of punishment in the criminal and executive law of the Republic of Kazakhstan.

The main provisions submitted for defense (proven scientific hypotheses and other conclusions that are new knowledge):

The main conclusions to be made for defense:

1. Taking into account the effectiveness of arrest as a type of criminal punishment associated with its short terms and strict isolation, and in comparison with imprisonment as a less costly type of punishment, it would be necessary to expand the application of this type of punishment by including arrest as the main type

of punishment and for committing crimes of small and medium gravity. So, Part 2 of Article 40 of the Criminal Code of the Republic of Kazakhstan should be supplemented with "arrest" after restriction of freedom.

To provide in the sanctions of the articles of the Special Part for arrest as an alternative to imprisonment and other types of criminal penalties.

For example, to provide for the introduction of arrest as an alternative type of punishment for such compositions of criminal offenses, for the commission of which this punishment of the convicted person will be more effective and effective in a short period of time, the so-called preventive shake-up, which can be carried out only when applying such a type of punishment as arrest, and not ineffective, long and costly for the state, with large social negative consequences of deprivation of liberty.

So, it would be logical and expedient to include in the sanctions of certain articles of the Special Part of the Criminal Code of the Republic of Kazakhstan arrest in addition to other types of punishment would significantly increase the effectiveness of the law enforcement process. It can be proposed to include arrest as an alternative type of punishment in the following articles of the Criminal Code of the Republic of Kazakhstan: Article 110 Torture of the Criminal Code of the Republic of Kazakhstan; Article 115 Threat of the Criminal Code of the Republic of Kazakhstan; Article 119 Leaving in danger of the Criminal Code of the Republic of Kazakhstan; Article 124 Corruption of minors of the Criminal Code of the Republic of Kazakhstan; Article 126 Unlawful imprisonment of the Criminal Code of the Republic of Kazakhstan; Article 131 Insult of the Criminal Code of the Republic of Kazakhstan; Article 132 Involvement of a minor in the commission of criminal offenses of the Criminal Code of the Republic of Kazakhstan; art. 133 Involvement of a minor in committing antisocial acts of the Criminal Code of the Republic of Kazakhstan; Article 134 Involvement of a minor in prostitution of the Criminal Code of the Republic of Kazakhstan; Article 200 Unlawful seizure of a car or other vehicle without the purpose of theft of the Criminal Code of the Republic of Kazakhstan; Article 267 Organization of an illegal paramilitary formation of the Criminal Code of the Republic of Kazakhstan; Article 273 Knowingly false report of an act of terrorism of the Criminal Code of the Republic of Kazakhstan; Article 293 Hooliganism of the Criminal Code of the Republic of Kazakhstan Article 417 Provocation of commercial bribery or bribery of the Criminal Code of the Republic of Kazakhstan; Article 419 Knowingly false denunciation of the Criminal Code of the Republic of Kazakhstan; Article 421 Refusal of a witness or victim to testify of the Criminal Code of the Republic of Kazakhstan; Article 426 Escape from places of deprivation of liberty, from arrest or from custody of the Criminal Code of the Republic of Kazakhstan and other compounds.

3. It is proposed to state Article 45 of the Criminal Code of the Republic of Kazakhstan "Arrest" in the following wording:

- in part 2 of Article 45 of the Criminal Code of the Republic of Kazakhstan, the norm "Arrest is established for a period of ten to fifty days" should be replaced with "Arrest is established for a period of one month to six months";

- Part 4 of Article 45 of the Criminal Code of the Republic of Kazakhstan "By military personnel the arrest is served in the guardhouse" should be stated as follows:

"By military personnel of the urgent military service, the arrest is served in the guardhouse".

4. Exclude from Part 2 of Article 79 of the Criminal Code of the Republic of Kazakhstan the paragraph providing for the absence of a criminal record for the conviction of persons who committed criminal offenses. Part 2 of Article 79 of the Criminal Code of the Republic of Kazakhstan should be worded as follows: "A person released from punishment is recognized as having no criminal record." Since this provision violates the well-established concept in time that one of the signs and legal consequences of the imposed criminal punishment is a criminal record. In addition, this provision, that a person convicted of committing a criminal offense is recognized as having no criminal record, is not only not a sign of the humanity of the criminal law policy being pursued, but also contributes to the erosion of the preventive functions of criminal law.

5. In order to fully reflect the current legislation (criminal and criminal procedure), it is proposed to include among the grounds for the execution of the penalty in the form of arrest (Article 84 of the Criminal Code of the Republic of Kazakhstan of 2014), in addition to the court verdict, also to include court decisions that have entered into force in the case of replacing such types of punishment as fines, correctional labor and community service with arrest.

Description of the main results of the study. The main results obtained in the dissertation work include:

1) Taking into account the changing social, political and economic conditions prevailing in society recently, the main signs of punishment in the form of arrest are specified.

2) The legal regulation of the execution of punishment in the form of arrest is being investigated, which is carried out at the place of conviction in special receivers or isolated sections of pre-trial detention facilities intended for serving a criminal sentence in the form of arrest, on the basis of a court verdict that has entered into legal force. At the same time, the use of the method of statistical legal analysis made it possible to identify the most favorable conditions for studying the problem.

3) According to p. 1-1 of Article 467 of the Criminal Code of the Republic of Kazakhstan suspended until January 1, 2027 the operation of Article 45 of the Criminal Code, having established that its provisions apply to military personnel and in cases provided for in paragraph 1) part six of article 41, paragraph 1) part five of article 42 and paragraph 1) parts 2-1 of Article 43 of this Code, from January 1, 2017, and in respect of persons to whom the expulsion of a foreigner or a stateless person from the Republic of Kazakhstan has been imposed as an additional type of punishment, – since January 1, 2019, on the basis of this, the procedure for the appointment and execution of punishment in the form of arrest has been specified in the scientific work.

4) On the basis of foreign practice, Part 2 of Article 40 of the Criminal Code of the Republic of Kazakhstan should be supplemented after the word "restriction of freedom" with the word "arrest", set out Part 2 of Article 45 of the Criminal Code of the Republic of Kazakhstan "Arrest is established for a period of

one month to six months", we consider it correct to calculate the term of arrest not in days but in months.

5) The inclusion of "arrest" as a separate type of punishment will make it possible to determine the place of this punishment in the criminal punishment system and establish the procedure for the execution of punishment in the Penal Enforcement Legislation, which, in turn, will help to prevent gaps in law enforcement practice.

6) To increase the efficiency of the process of correction of convicts in institutions of the penal enforcement system by including as the main type of punishment arrest as a type of punishment associated with shorter periods of arrest and strict isolation, and a less costly type of punishment compared to imprisonment, and for the commission of crimes of small and medium gravity, taking into account its effectiveness is recommended to expand the appointment of arrest in the form of a separate main punishment.

7) In order to fully reflect the current legislation (criminal and criminal procedure), it is proposed to include among the grounds for the execution of the penalty in the form of arrest (Article 84 of the Criminal Code of the Republic of Kazakhstan of 2014), in addition to the court verdict, it is also proposed to include court decisions that have entered into force in case of replacement of such types of punishment as fines, correctional labor and community service for arrest.

To substantiate the novelty and significance of the results obtained. Scientific novelty of the dissertation research.

The scientific novelty of the dissertation research lies in the fact that for the first time the features of the appointment and execution of punishment in the form of arrest are comprehensively analyzed, an individual scientific, theoretical and practical analysis of the issues of arrest as the main punishment is carried out.

The practical significance of the results obtained is confirmed by the fact that the conclusions and recommendations presented in the dissertation are used in the following areas:

- In law-making activities in improving the norms of criminal, penal enforcement legislation;
- when developing comprehensive crime prevention programs;
- Can be used in the educational process for the training of legal specialists in higher educational institutions.

Compliance with the directions of scientific development or state programs.

The role and place of the state's criminal policy in the direction of the humanization of criminal legislation was justified by the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020, approved by the Decree of the Head of State. Also, the Concept of the Legal Policy of the Republic of Kazakhstan until 2030, approved by the Presidential Decree of October 15, 2021, emphasizes that the most important direction of legal policy is the state policy in the field of combating crime.

Description of the applicant's contribution to the preparation of each publication. Scientific articles and other research results published during the dissertation research - 12. In particular, 1 article in journals included in the Scopus database, 1 article in journals included in the web of science database, 7 articles

published in scientific publications included in the List of scientific publications recommended for publication of the main results of scientific activity approved by the authorized body, 2 published at international scientific conferences articles and 1 article at an international scientific and practical conference held abroad and 2 textbooks.

Certain provisions of the dissertation research have been tested and implemented in the organization of the educational process of the Caspian Public University, the Almaty Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after M.Esbulatov in the process of conducting lectures and seminars with full-time and distance learning students.