

Appendix # 2

ANALYTIC REPORT: ABOLITION OF DEATH PENALTY IN UZBEKISTAN, FROM JANUARY 1ST 2008

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Starting from January 1st 2008 the Republic of Uzbekistan abolished death penalty as one of the types of punishment for committing the gravest crimes, and replacing the given type of the criminal punishment with life imprisonment or long-term imprisonment. **Veritas considers this decision of the Government of Uzbekistan as one of the first necessary steps towards liberalization of criminal justice system.**

In connection with the expected entrance into force of the new Law of the Republic of Uzbekistan “On changes and amendments into some legislative acts of the Republic of Uzbekistan in connection with abolishment of death penalty”, Veritas in the given analytical report analyzes the most important points of the given Law, provides its conclusions on the process of abolition of death penalty in the country, compares similar experiences from the practice of the foreign countries and offers recommendations on improvement of the expected reform in this area.

According to the Criminal Code of Uzbekistan till January 1st 2008 the exclusive measure of criminal punishment in the form of death penalty for committing the two gravest crimes - deliberate murder under aggravated circumstances (part 2 of art. 97 of the Criminal Code) and terrorism (part 3 of art. 155 of the Criminal Code) shall be kept in Uzbekistan.¹ Starting from January 1st 2008 punishment in the form of lifelong imprisonment and long-term imprisonment shall be applied for committing crimes under part 2 of art. 97 and part 3 of art 155 of the Criminal Code.

For the first time the two new concepts are introduced into the system of criminal punishment in Uzbekistan: life imprisonment and long-term imprisonment. The law of the Republic of Uzbekistan “On changes and amendments into some legislative acts of the Republic of Uzbekistan in connection with abolishment of death penalty” provides the following definition to these two concepts:

“Life imprisonment is an exclusive measure of punishment which consists of endless isolation of the condemned from the society by placing him in a colony of special regime for the execution of the punishment.

Life imprisonment is appointed only for deliberate murder under aggravated circumstances (part 2 of art. 97) and terrorism (part 3 of art. 155).

*Life imprisonment cannot be appointed to women, to the person who has committed a crime in the age of till eighteen years old and a man who is more than sixty years old”.*²

“Long-term imprisonment is appointed for over twenty, but not more than for twenty five years for deliberate murder under aggravated circumstances (part 2 of art. 97) and terrorism (part 3 art. 155).

*Long-term imprisonment cannot be appointed to women, to the person who has committed a crime in the age of till eighteen years old and a man who is more than sixty years old”.*³

¹ It has to be noted that those articles of the Criminal Code do suggest such punishment as “imprisonment” as an alternative to death penalty, - Veritas’ comment.

² Section (4) of art. 1 of Law “On changes and amendment into some legislative acts of the Republic of Uzbekistan in connection with abolition of death penalty”.

³ Section (3) of art. 1 of the above mentioned Law.

Studying the experience of the foreign countries on abolition of death penalty shows that there is not any universal model or the conventional script or program in the world for abolition of death penalty and its replacement with lifelong imprisonment or long-term imprisonment. Having abolished death penalty, each state replaces it with other types of criminal punishment, determines its terms and conditions of the imprisonment.

Thus, definition of the concept of lifelong imprisonment remains very inconsistent and not unified in the field of international human rights. Here we would like to refer to a fragment from a judgment in case of Lord Mustil, R v Home Secretary, Ex parte Doody, 1994, which was heard in Great Britain:

“Life imprisonment is very unique because the words which are said by the judge, do not give their direct meaning... Though everyone understands what these words do not mean, nobody knows what they really mean, because the duration of lifelong imprisonment in many respects depends on the recommendations of the experts and decision of the prison administration”.

Regardless of distinctions in practice of abolition of death penalty and its replacement with lifelong imprisonment in various countries the following general characteristics of lifelong imprisonment can be mentioned:

- Life imprisonment does not always mean imprisonment of the condemned in the prison till the end of his biological life. In some countries a life prisoner has the right to conditional pre-schedule release;
- And in some countries life imprisonment even concerning children not always comes to an end with release of a prisoner from the prison. The life prisoner hasn't the right to be released;
- In a number of countries there are procedures allowing the release of the life prisoners, though those procedures do not always correspond to the international recommendations.⁴

Regardless of distinctions in practice of abolition of death penalty, the increasing number of countries worldwide aspire to abolish death penalty. In November 2007 the General Assemblée of the United Nations adopted a Resolution calling to introduce a moratorium on death penalty. The Resolution was supported by 99 states, 52 states voted against it, 33 states refrained.⁵ The Resolution of the General Assembly has no binding force, however it send a political signal to the leaders of the world. Currently 136 states in the world have said “no” to "the legalized murder". At the same time in 51 countries of the world death penalty is practiced, and quite often it is publicly executed. Starting from 1990 9 states have executed 54 persons who have not reached at the moment of crime 18 years old. These countries are China, Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, the USA and Yemen.

Veritas thinks that the absence of the universal human and fair standard of the abolition of death penalty and its replacement with life imprisonment or long-term imprisonment is a serious lack of the international community. The universal principle is that a criminal goes to jail as a punishment, not for punishment. Imprisonment itself already brings to a series of other serious deprivations.

The issue of adequate alternative to death penalty is directly related with:

- Determination of the minimal and maximal terms of imprisonment;

⁴ See. “Facts and information” section at the end of the report for informational facts on the practice of death penalty abolition and its replacement with lifelong imprisonment in other countries.

⁵ The Republic of Uzbekistan has also supported the introduction of the moratorium on death penalty, - the RRG's comment.

- Conditions of imprisonment for prisoners, conditions of prison protection and safety;
- Exact calculation and study of possible criminal psychological consequences of life imprisonment and accepting measures for their prevention;
- Training and preparation of prison personal;
- Economic issue - construction of one corrective facility on the average costs 8-10 million dollars, the maintenance of one prisoner for a year roughly (depending on the region) costs for the government 3 thousand euros (for comparison - expenses for one life prisoner in the USA costs nearly 34 thousand dollars a year);
- The possibility of conditional pre-schedule release;
- Progressive system of the execution of punishment;
- Fair and human conditions of the maintenance and treatment of the life prisoners;
- Provision of necessary medical services at needed level level;
- The possibility of public monitoring of prisons;
- Reconsideration of criminal cases of the persons sentenced to death penalty;
- Revealing information concerning the places of burial of persons against whom death penalty has already been executed.

The above mentioned criteria of adequate replacement of death penalty with life imprisonment or long-term imprisonment pursue the following overall goals of treatment of life prisoners:

- Providing safety in corrective facilities for prisoners, prison personnel and those who visits prisons;
- Prevention and reduction of harmful influence of life or long-term imprisonment;
- Expansion and improvement of possibilities of successful return and rehabilitation of such prisoners back to the society and their law-abiding behavior after being released.

The expected reform on abolition of death penalty in Uzbekistan and its replacements with life imprisonment or long-term imprisonment do not conform with the above mentioned overall goals of the treatment of the life prisoners and breaks them. In our opinion, there are some reasons, why it is so. While considering those reasons we would refer to the Principles of the Council of Europe on management of the prisoners sentenced to life imprisonment and other prisoners with long-terms of imprisonment.⁶

First, having cancelled the most severe by its nature measure of punishment (death penalty), instead of them Uzbekistan introduces two new types of punishment (life imprisonment and long-term imprisonment) almost as severe as death penalty which, inherently, make useless all efforts on abolition of death penalty in the country. Under Law “On changes and amendments into some legislative acts of the Republic of Uzbekistan in connection with abolition of death penalty“, the right of prisoners sentenced to life imprisonment or long-term imprisonment to submit a suit for pardon appears over too long period of time:

⁶ Those Principles were secured in the “Recommendations of the Council of Minister of the Council of Europe addressed to the States-Parties and prison administrations for management of prisoners of life sentenced to life imprisonment and long-term imprisonment”, October 9th 2003, See. at <http://www.coe.int/cm>

“... A suit for pardon can be submitted by a person condemned to life imprisonment after actual serving of twenty five years of the appointed punishment, and if while serving the appointed punishment the life prisoner has firmly followed a way of correction, has no disciplinary punishments record for violation of the established prison internal order, holds honest attitude toward work and training, takes active part in educational activities in the prison - after actual serving of twenty years of the appointed punishment.

*The suit for pardon can be submitted by the person condemned to long-term imprisonment after actual serving of twenty years of the appointed punishment, and if while serving the appointed punishment the prisoner has firmly followed a way of correction, has no disciplinary punishments record for violation of the established prison internal order, holds honest attitude toward work and training, takes active part in educational activities in the prison - after actual serving of fifteen years of the appointed punishment”.*⁷

Moreover, the possibility of pre-schedule submission of the suit for pardon is put under very strict dependence from the will of the administration of the prison, giving to the prison administration the right to determine “...whether the prisoner has risen firmly on a way of correction, whether he has broken the established prison internal order, whether the prisoner holds honest attitude to work and training, whether the prisoner takes part active participation in educational activities in the prison”. In conditions of closeness of the prison facilities and absence of any public rules on management of prisons in Uzbekistan, it is obvious that the above named powers of the prison administration are carried out without any public control.

It means that the Government of Uzbekistan avoids applying individual approach to every life prisoner or long-term prisoner. The Government tries to bring all life prisoners under identical conditions of imprisonment.

It is also demonstrated in the amendment to art. 136 (Order of serving of life imprisonment) of the Criminal Punishment Execution Code. This amendment was introduced in connection with abolition of death penalty in Uzbekistan:

“... During the first ten years the life prisoner serves the prison term under strict conditions of imprisonment.

After serving of no less than ten years of the prison term the life prisoner who does not have violation of the established prison internal rules in his personal records can be transferred from strict conditions of imprisonment to general conditions of imprisonment.

*After serving of no less than fifteen years of the prison term the life prisoner who does not have violation of the established prison internal rules in his personal records can be transferred from general conditions of imprisonment to facilitated conditions of imprisonment”.*⁸

Such order of application of measures of encouragement on the life prisoners (transferring from strict conditions to the general conditions and then to the facilitated conditions of the imprisonment, established in the Criminal Punishment Execution Code of Uzbekistan, contradicts a Progression Principle of management of life prisoners. The Progression Principle means that individual planning of management of the life prisoner should be aimed at maintenance of his progressive promotion throughout the prison system with simplified and fair transfer from strict conditions of imprisonment to the general and facilitated conditions of imprisonment.

Persons who have committed crimes, differ as well as the crimes they commit. Some of them have long and serious criminal records in the past, are members of criminal gangs and ready to commit any crime for the sake of gaining any benefit, while others (the majority) are respectable citizens who before committing crime have led a stable and normal way of life. Circumstances of crimes can widely vary. Hence, the execution of the punishment by life imprisonment should

⁷ Section (11) of art. 1 of Law “On changes and amendments into some legislative acts of the Republic of Uzbekistan in connection with abolition of death penalty”.

⁸ Sections (4), (5) and (6) of Art. 136 of the Criminal Punishment Execution Code.

take into account the circumstances existing between crimes and persons who committed those crimes.

The conditional pre-schedule release from the prison should always be available for the life prisoner and the minimal term of serving the life imprisonment before the life prisoner's case should be considered for conditional pre-schedule release should take into consideration all factors. Most life prisoners can be released conditionally and pre-scheduled much earlier than other life prisoners.

Veritas thinks that appearance of the right to submit a suit for pardon for the life prisoners and prisoners sentenced to long-term imprisonment cannot be attached to achieving of some minimal term. We think that the life prisoners should have the right to submit a suit for pardon or a petition to replace the life imprisonment with fixed imprisonment term at any time of imprisonment. There is no guarantee that while sentencing a person to life imprisonment the courts do not let the miscarriages of justice happen.

Secondly, the reform with abolition of death penalty in Uzbekistan and corresponding amendments made into the existing laws are based on an erroneous assumption. According to this assumption life imprisonment or long-term imprisonment assumes that such categories of prisoners are very dangerous. As a result of such assumption the presumed conditions of imprisonment for life prisoners and prisoners sentenced to long-term imprisonment cannot be called human. A test mechanism to determine whether such prisoners represent any threat to themselves, to each other and other prisoners, to the prison personnel or the persons who visit the prison for this or that reason does not exist. The choice of conditions of the imprisonment, the prison type, transfer of the prisoner from one condition of imprisonment to a different one, the offered programs of educational work with prisoners - all of this depends on an estimation of the nature and degree of threat the prisoner represents for himself, other prisoners, prison personnel and persons visiting the colony.

The main purpose for the prison administrations should be maintaining safety for prisoners, prison personnel and other persons visiting prisons for various reasons. But it is not reasonable to assume that all or even the majority of life prisoners are dangerous.

The nature and degree of threat which a life prisoner or a prisoner sentenced to long-term imprisonment can represent should be studied carefully. As the life imprisonment should be executed taking into consideration of all existing variety of circumstances there is no aprioristic reason to state that all life prisoners should be held under strict conditions of imprisonment during the whole period of imprisonment. It is also impossible to state that all life prisoners are dangerous. But even in this case it is impossible to be completely confident that the solitary confinement in a special prison will be the best way of reduction of such danger.

Instead of the conditions of imprisonment of life prisoner it is more necessary to pay attention to the nature of the committed crime, personality and behavior of life prisoner, and the most important, to correction progress achieved by life prisoner while serving the prison term. The estimation of the risks and criminal psychological needs should be a part of planning of the guilty verdict in aspects concerning determination of the conditions of the appointed life or long-term imprisonment for the prisoner.

Recommendation of the Council of Europe (2003/23), section (9) addressed to the States-Parties and administrations of prisons, says:

"...in order to achieve the overall aims of life imprisonment it is necessary to develop the all-around plan of imprisonment for every prisoner. While developing such plans the prisoner himself should take active part, and by the end of the prison term the special bodies which are responsible for supervising over rehabilitation of the released prisoner and other corresponding bodies should participate in this process".

Section (10) of Recommendation of the Council of Europe (2003/23) provides a definition of the estimation of risks and criminal-psychological needs. According to this recommendation “the estimation of risks is a thorough determination of whether a concrete prisoner represents threat for himself (suicide, causing bodily harms to himself), for other prisoners or the prison personnel (acts of violence), for the society (prison break) or risk of committing other heavy crime during lawful leave from the prison or after being released. The estimation of risks begins with determination of the personal needs, characteristics of the committed crime and / or dangerous behavior (criminal psychological needs). For example, dependency on drugs can be considered a criminal psychological need if it brings to theft of money for purchase of drugs”.

As a matter of fact the threat and criminal psychological needs can change from time to time, so the estimation of risks and criminal psychological needs should be periodically conducted in order to see whether the certain risks are increasing or decreasing over the time. The estimation of risks should be closely coordinated and lead to management of risk which includes transfer to a prison with different condition of imprisonment, changing of conditions of imprisonment or any other intervention into the situation, for example, in the form of council or psychological consultation.

It is necessary to regularly study the influence of life and long-term imprisonment on the prisoner, paying special attention to those factors which reduce negative influence on the prisoner and promote his constructive adaptation to a prison life.

Thirdly, expected replacement of death penalty with life imprisonment or long-term imprisonment, and also the stipulated conditions of imprisonment for those such category of prisoners Uzbekistan subject the prisoners to the maximal harmful influence of life imprisonment or long-term imprisonment (communication with family and outside world, education, work, access to newspapers, radio and TV, visits of relatives). Conditions of imprisonment for life prisoners are determined by articles 136 and 137 of Criminal Punishment Execution Code of the Republic of Uzbekistan. Moreover, even after replacement of death penalty with life imprisonment or long-term imprisonment reintegration (supporting the prisoner in overcoming a problem of transition from long-term imprisonment to a normal life back in the society) of the prisoner back into the society after serving a certain years of the life prison term and long-term imprisonment remains very difficult.

According to part 2 of Art. 136 of the Criminal Punishment Execution Code the life prisoner is placed in a chamber for no more than two prisoners. Following the special request of the prisoner or if it deems necessary the life prisoner can be put into a single chamber.

Art. 137 of the Criminal Punishment Execution Code says:

“The normative space for one life prisoner in a chamber can not be less than four square meters. The life prisoner serving his sentence under strict conditions of imprisonment has the right to purchase monthly food stuffs and items of daily prime necessity for the sum of up to seventy five percent of the established size of the minimal wages from money available on his personal account, be granted one short-term meeting with his relatives during a year, one telephone call, one food package from his family, and one parcel post.

The life prisoner serving his sentence under general conditions of imprisonment has the right to purchase monthly food stuffs and items of daily prime necessity for the sum of up to one minimal size of the wages established by the legislation from money available on his personal account, be granted one long- and one short-term meetings with his relatives within a year, two telephone calls, two food packages from his family, and two parcel posts.

The life prisoner serving his sentence under facilitated conditions of imprisonment has the right to purchase monthly food stuffs and items of daily prime necessity for the sum of up to one and a half size of the established minimal wages from money available on his personal accounts, be granted one long- and two short-term meetings with his relatives during a year, three telephone calls, three food packages from his family, and three parcel posts.

The life prisoners irrespective of their conditions of imprisonment have the right to daily walk for one and a half hour”.

Life imprisonment and long-term imprisonment ruin matrimonial and family relations. If matrimonial and family relations of the prisoner stay harmless, this becomes an important factor in maintenance of mental health of the prisoner and more effective serving of the sentence by him. Matrimonial and family relations are based on emotional contacts. Therefore it is important to out efforts, so that conditions of life and long-term imprisonment do not cause gradual destruction of those emotional connections. Frequent visits by the relatives of the prisoner to the prison play a crucial role for maintenance of family relations of the prisoner.

More liberal conditions for receiving and sending letters of the prisoners are also very important. Frequent and long visits by close relatives and providing private places for such meeting which allows physical contact between the prisoner and visiting relative are also very important. Phone calls also represent opportunities for maintenance of contact with family and should be accessible to a prisoner sentenced to life or long-term imprisonment. If there is a legitimate risk that phone calls are used for the organization of crimes, prison break or any other types of infringement of safety, law and order it is possible to monitor the phone conversations. In that case the prisoner and his relatives should be warned that the phone calls are monitored. The same rule should be applied with letters and visits - if they threaten safety, law and order, it is necessary to consider application of precautionary measures, for example, checking of the written correspondence or search before and after visits.

Art. 138 of the Criminal Punishment Execution Code provides that only life prisoners serving their sentences under general and facilitated conditions are eligible to work within the chambers they are held in. The RRG thinks that deprivation of the right to work for the life prisoners held under strict conditions of imprisonment during the first ten years of their prison term is a very cruel and severe punishment.

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