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GENERAL AMNESTY IN CRIMINAL PROCEEDINGS IN KAZAKHSTAN AND TURKEY: FEATURES OF APPLICATION TO UNFINISHED CRIMINAL CASES

Abstract

Amnesty is a legal institution that expresses the state's complete or partial renunciation of its power to prosecute and punish crimes, producing significant consequences for both substantive criminal law and criminal procedure law. This study first examines the concept and types of amnesty, and subsequently analyzes the legal effects of general amnesty within the framework of criminal law and criminal procedure law. An analysis of the legislation of Kazakhstan and Turkey is conducted, particular emphasis is placed on the procedural implications of applying general amnesty to ongoing investigations and prosecutions. In this context, issues such as the decision of non-prosecution during the investigation phase, the dismissal of the case during the prosecution phase, and the possibility of immediate acquittal in certain circumstances are discussed. It is essential to establish in the criminal procedure legislation of Kazakhstan and Turkey a mandatory requirement to ascertain a person's position regarding the application of amnesty at all stages of criminal proceedings, as the termination of criminal prosecution due to amnesty should not automatically deprive a person of the opportunity to seek a trial on the merits and establish their innocence.

Keywords: general amnesty, criminal procedure law, dismissal of public prosecution, investigation and prosecution, criminal law, criminal policy, humanism.

Introduction

In recent years, debates around the role of criminal amnesties as a tool for humanizing criminal policy have revived in various countries around the world. Amnesty is traditionally viewed as an act of state clemency, contributing to a reduction in the number of convicted offenders, a reduction in the cost of maintaining the penitentiary system, and the social reintegration of individuals who have committed minor and moderate crimes.

However, the effectiveness of an amnesty cannot be assessed solely by the number of individuals released. It is far more important to determine whether the stated goals have been achieved, what are the consequences of the amnesty for public safety, and whether it has led to an increase in recidivism.

This raises a logical question: to what extent is it justified to implement a new criminal amnesty if the state has not yet summarized the results of the previous amnesty and conducted a comprehensive analysis of it? It appears that such an approach contradicts modern requirements for evidence-based criminal policy and creates certain risks for both society and the legal system itself.

In criminal law systems, the institution of general amnesty is not merely a technical legal mechanism that eliminates penal consequences, but also a multidimensional legal instrument that produces significant outcomes in terms of social reconciliation, political transformation, restoration of public order, and restructuring of the criminal justice system. Since general amnesty removes all legal consequences of a crime, it directly affects pending criminal investigations and prosecutions. This situation necessitates a reconsideration of the relationship between substantive criminal law and criminal procedure law. The application of general amnesty during ongoing investigation and prosecution processes gives rise to important legal debates, including the dismissal of public prosecutions, termination of investigations, elimination of criminal convictions with all their consequences, and, in certain cases, the establishment of a delicate balance between victims' rights and public conscience. In particular, the effects of general amnesty on the principles of the rule of law, legal certainty, equality before the law, and the right to a fair trial are evaluated differently in both legal doctrine and judicial practice. Furthermore, determining the boundary between the political and legal dimensions of general amnesty constitutes an important area of discussion in contemporary criminal law.

This study aims to examine the legal effects of general amnesty on pending criminal investigations and prosecutions within the framework of Turkish criminal law and criminal procedure law. Firstly, the legal nature of general amnesty will be analyzed, followed by an evaluation of its effects during the stages of investigation and prosecution in light of doctrinal opinions, judicial decisions, and normative regulations. In addition, the study will analyze the impact of general amnesty on individual rights, victims' rights, and public interest, while critically examining current legal debates on the subject. In this respect, the study seeks to demonstrate that general amnesty is not merely a legal mechanism producing criminal consequences, but also a multilayered legal institution with constitutional, social, and political dimensions. Amnesty, which refers to the elimination, together with all legal consequences, of finalized penalties as well as files in which investigations and prosecutions are still pending through a legal act adopted by the legislature or the executive, or by both jointly, produces significant consequences not only in terms of substantive criminal law but also in terms of criminal procedure law. This study first briefly discusses the concept and types of amnesty; then examines the consequences of general amnesty from the perspectives of criminal law and criminal procedure law; and finally evaluates, in particular, the issue of the application of general amnesty to pending investigations and prosecutions.

Materials and methods

In the process of writing the article, the methods of comparative historical and legal, dialectical analysis, transition from the general to the particular and from the particular to the general were used. In addition, theoretical research is based on the norms and provisions of national legislation. The study uses the method of comparative legal analysis and analyzes the current regulatory acts and academic publications in the field of procedural law on the application of general amnesty to cases under investigation and trial. The specific scientific methods used in the course of the study (systemic-structural, formal-logical, etc.) allowed the author to analyze and summarize individual issues of general legal relevance related to the subject of the study, as well as directly formulate the necessary conclusions and proposals.

Results and discussion

The essence of the idea of a criminal procedural compromise when criminal proceedings against a suspect or accused are terminated following an amnesty act lies primarily in the possibility of resolving the criminal dispute between the interested parties on mutual terms. Specifically, the person against whom criminal proceedings are terminated is not relieved of the obligation to compensate for the damages (harm) caused by their unlawful actions, as expressly stipulated in the amnesty act. In legal literature, amnesty is traditionally viewed not only as an act of humanism but also as an important element of state criminal policy.

Unlike pardons, which are applied individually, amnesties apply to predetermined categories of individuals and impact a significant number of participants in criminal-legal relations. Therefore, the consequences of amnesty affect the interests of not only convicted individuals but also victims, law enforcement agencies, courts, probation agencies, and society as a whole.

Any government decision of this magnitude must be based on an analysis of the results of previous similar measures. Otherwise, criminal policy devolves from a system of consistent and scientifically based decisions into a set of ad hoc actions.

First, it is necessary to determine whether the goals of the previous amnesty were achieved.

If the stated goal was to humanize criminal policy, the level of social adaptation of released individuals should be assessed. If the goal was to reduce the burden on the penitentiary system, it is necessary to determine how sustainable the achieved result was. If the amnesty was aimed at reducing budget expenditures, an analysis of the relevant economic indicators is required.

Equally important is a study of the recidivism rate among amnestied individuals. The absence of such data makes it impossible to objectively assess the effectiveness of the decision. Furthermore, the analysis allows us to identify legislative shortcomings, gaps in legal regulation, and problems in law enforcement that inevitably arise during the implementation of any large-scale amnesty.

The term amnesty (or avf), derived from Arabic, literally means forgiveness, pardoning, and the remission of faults and sins [1, p. 119]. Under Turkish law, amnesty refers to the complete or partial abandonment of the exercise of public authority through prosecution or punishment of an individual who has committed an offense, on grounds of justice, public interest, or even personal considerations such as severe illness [2, p. 90]. According to another definition, amnesty constitutes a legal ground eliminating punishment in substantive criminal law and terminating public prosecution in procedural law [1, p. 120]. Özek defines amnesty as: "...legal acts enacted by competent authorities that abolish the right to impose punishment for acts constituting criminal offenses and prevent the execution of imposed penalties, either partially or entirely." [3, p. 1291]. Pursuant to Article 87 of the Constitution, which states: "The duties and powers of the Grand National Assembly of Türkiye include enacting, amending and repealing laws; deliberating and approving budget and final account bills; deciding on the printing of currency and declarations of war; approving the ratification of international treaties; deciding, by a three-fifths majority of the total membership of the Grand National Assembly of Türkiye, on the declaration of general and special amnesties; and exercising powers and fulfilling duties prescribed by other constitutional provisions." amnesty, in its formal sense, may be defined as a legal act concerning crimes and/or penalties adopted by a three-fifths majority vote of the total membership of the Grand National Assembly of Türkiye (TBMM).

Although amnesty may be categorized under various classifications, Turkish legal doctrine and legislation generally distinguish between general amnesty and special amnesty, depending upon their legal consequences, timing of application, and scope. Both the Constitution and the Turkish Penal Code recognize the distinction between general and special amnesty, while the legal consequences attached thereto are regulated under the Turkish Penal Code. Pursuant to Article 87 of the Constitution, the competent authority empowered to declare general and special amnesties is the Grand National Assembly of Türkiye. By contrast, the amnesty power vested in the President under the Constitution is described as an individual special amnesty. The President may exercise this authority only in cases of permanent illness, disability, or old age as prescribed under Article 104 of the Constitution. This authority was first introduced under Article 97 of the 1961 Constitution and subsequently maintained under Article 104 of the 1982 Constitution. In contrast, the amnesty power granted to the Grand National Assembly is not subject to any specific conditions.

In recent years, debates around the role of criminal amnesties as a tool for humanizing criminal policy have revived in various countries around the world. Amnesty is traditionally viewed as an act of state clemency, contributing to a reduction in the number of convicted offenders, a reduction in the cost of maintaining the penitentiary system, and the social reintegration of individuals who have committed minor and moderate crimes.

However, the effectiveness of an amnesty cannot be assessed solely by the number of individuals released. It is far more important to determine whether the stated goals have been achieved, what are the consequences of the amnesty for public safety, and whether it has led to an increase in recidivism.

This raises a logical question: to what extent is it justified to implement a new criminal amnesty if the state has not yet summarized the results of the previous amnesty and conducted a comprehensive analysis of it? It appears that such an approach contradicts modern requirements for evidence-based criminal policy and creates certain risks for both society and the legal system itself.

In legal literature, amnesty is traditionally viewed not only as an act of humanism but also as an important element of state criminal policy.

Unlike pardons, which are applied individually, amnesties apply to predetermined categories of individuals and impact a significant number of participants in criminal-legal relations. Therefore, the consequences of an amnesty affect the interests of not only convicted individuals but also victims, law enforcement agencies, courts, probation agencies, and society as a whole.

Any government decision of this magnitude must be based on an analysis of the results of previous similar measures. Otherwise, criminal policy devolves from a system of consistent and scientifically based decisions into a set of ad hoc actions.

Before deciding on a new amnesty, the state must answer several fundamental questions. First and foremost, it must determine whether the goals of the previous amnesty were achieved.

If the stated goal was to humanize criminal policy, the level of social adaptation of the released individuals must be assessed. If the goal was to reduce the burden on the penitentiary system, it is necessary to determine how sustainable the achieved result was. If the amnesty was aimed at reducing budget expenditures, an analysis of the relevant economic indicators is required.

Equally important is a study of the recidivism rate among amnestied individuals. The lack of such data makes it impossible to objectively assess the effectiveness of the decision. Furthermore, the analysis allows us to identify legislative shortcomings, gaps in legal regulation, and problems with law enforcement that inevitably arise when implementing any large-scale amnesty.

"Amnesty" in translation from Greek means "forgetfulness" or "forgiveness" and traditionally in modern criminal proceedings is a special, including compromise, form of state forgiveness of individuals who have committed crimes. International practice shows that states pursuing balanced criminal policies typically seek to assess the impact of previous amnesties before making new decisions.

In Italy, the issue of amnesty has repeatedly become the subject of heated public debate. Following the large-scale amnesties of the second half of the 20th century, Italian researchers and parliamentarians drew attention to the need to assess the impact of such decisions on recidivism and public safety. It was precisely criticism of the ineffectiveness of individual amnesties that subsequently led to significant limitations on their passage. Currently, an amnesty in Italy requires a qualified majority vote in parliament, significantly complicating its use and forcing legislators to carefully justify its use.

In France, amnesties were long linked to presidential elections and the inauguration of new heads of state. However, in the late 20th century, this practice came under serious criticism. One of the arguments used by opponents of regular amnesties was the lack of convincing data on their long-term effectiveness. As a result, the practice of broad criminal amnesties was significantly curtailed, and the emphasis shifted to individualized criminal justice measures.

Spanish legal doctrine views amnesty as an exceptional measure, permissible only in the presence of compelling political and legal justifications. Academic literature has repeatedly emphasized that decisions regarding amnesty must be accompanied by an analysis of its social and criminological consequences.

Although regulations concerning general and special amnesty in comparative legal systems largely resemble those existing in Turkish law, significant differences among states may be observed with respect to the scope and limits of amnesty, whether a qualified parliamentary majority is required for enactment, and whether certain constitutional limitations exist regarding specific offenses such as treason. While some constitutions impose restrictions concerning amnesty for offenses such as treason, it is observed that, except in a limited number of states, most constitutional systems do not require a qualified parliamentary majority. Furthermore, unlike Türkiye, numerous countries do not impose limitations upon the amnesty powers of heads of state, while in parliamentary systems such authority is frequently exercised through countersignature procedures [4, p. 198]. In countries such as the United States, Austria, the Czech Republic, Finland, Ireland, Israel, Iceland, Portugal, and Greece, the authority to grant amnesty is vested in the executive branch. France and Italy, on the other hand, stand out as examples of mixed systems. In Belgium, the Netherlands, Denmark, Norway, Sweden, and Spain, such authority belongs to the King; in the United Kingdom to the Queen; and in Japan to the Emperor [5, p. 11].

Amnesty in Turkish Law. The principal source of amnesty in Turkish law has been constitutional law since 1876. While the power of amnesty initially belonged to the Sultan under the first Constitution, it was transferred to Parliament through the 1908 constitutional amendments. Likewise, Article 26 of the 1924 Constitution expressly provided that both general and special amnesties constituted exclusive powers of the Grand National Assembly of Türkiye. The 1961 Constitution maintained this approach. Similar to the 1961 Constitution, the 1982 Constitution adopted the distinction between general and special amnesty and included the authority to declare such amnesties among the powers of Parliament under Article 87. The presidential authority to mitigate or abolish penalties due to permanent illness, disability, or old age was first introduced under Article 97 of the 1961 Constitution and subsequently preserved under Article 104 of the 1982 Constitution.

In international criminological literature, the effectiveness of amnesty is assessed not only by the number of individuals released. International practice shows that several groups of indicators are typically used to objectively evaluate the results of amnesty.

First and foremost, the recidivism rate among amnestied individuals is analyzed. This indicator allows us to determine how successfully the released individuals have integrated into society and whether the amnesty has led to an increase in repeat offenses. In some countries, recidivism is assessed one, three, and five years after release.

A second important indicator is the level of social adaptation of amnesty individuals. This typically includes data on employment, education, permanent residence, participation in social support programs, and compliance with probation requirements.

Special attention is paid to the impact of amnesty on the penitentiary system. Changes in the number of convicted prisoners, the occupancy rate of correctional facilities, changes in government spending on prison incarceration, and the sustainability of the achieved effect in the medium term are analyzed.

A number of countries are assessing the economic impact of amnesty. The budget savings resulting from the reduction in the prison population are examined, as well as the additional costs associated with the resocialization and post-penitentiary support of released individuals.

An important area of analysis is the impact of the amnesty on public safety. This is accomplished by examining crime rates in the relevant regions, the dynamics of specific crime types, and the level of public trust in the judiciary and law enforcement.

There is no consensus within legal doctrine regarding which organ should possess authority to declare general amnesty. According to the view which we also endorse that confers this authority upon the legislature, since the legislative body determines which acts constitute criminal offenses and prescribes sanctions accordingly, it likewise possesses authority to undertake legal acts in the opposite direction [6, p. 349]. Just as the legislature determines which acts shall be classified as criminal and which shall not, it may also decide, for certain periods and under specific conditions, to refrain from considering particular acts as criminal. This approach is supported by the principle: qui potest plus, potest minus ("whoever may do the greater may also do the lesser"). Accordingly, the authority to declare both general and special amnesties belongs to the legislature, namely the Grand National Assembly of Türkiye [7, p. 390]. A different group of scholars, however, argues that amnesty powers should be vested in the executive branch. According to this view, parliamentary deliberation on amnesty issues may generate social divisions rather than social reconciliation. Proponents argue that the executive branch possesses superior knowledge regarding social conditions and can determine the most appropriate timing for amnesty measures. Excessive parliamentary debate may cause such opportunities to be missed [8, p. 303]. Nevertheless, the principal drawback of this perspective lies in the heightened possibility of abuse in political systems lacking transparency.

The first and most widely recognized distinction concerning amnesty is the differentiation between general amnesty and special amnesty. General (public) amnesty refers to a type of amnesty that results in the termination of ongoing or prospective prosecution or the removal of an imposed punishment and abolishes the offense, prosecution, and conviction without prejudice to private rights. Special (individual) amnesty, on the other hand, constitutes a waiver regarding the complete or partial execution of a sentence [9, p. 25]. It concerns the abolition (ilga), mitigation (tahfif), or conversion (tahvil) of a sentence into another measure. In other words, while general amnesty eliminates the public prosecution and the conviction attached thereto, special amnesty gives rise to consequences affecting the type, extent, and execution method of imprisonment sentences [10, p. 93].

Certain amnesty laws may apply to periods prior to judgment, others may apply only after judgment, and some may apply to both periods [11]. Amnesty applicable to the period before judgment is referred to as full amnesty, whereas amnesty applicable after judgment is designated as partial (incomplete) amnesty [12, p. 327]. Other classifications concerning amnesty include individual amnesty, collective amnesty, conditional amnesty, unconditional amnesty, legislative amnesty, and executive amnesty. As an example of conditional amnesty, reference may be made to the Law on the Surrender of Firearms, Explosive Materials, Knives and Similar Instruments under Article 264 of the Turkish Penal Code and Law No. 6136 concerning Firearms, Knives and Other Instruments dated 25 September 1980. Under this regulation, eligibility for amnesty was made conditional upon the requirement that no offense had been committed by means of the weapons or similar instruments constituting the subject matter of the amnesty [13, p. 58].

The legal institution that terminates the execution of imprisonment in penal institutions, reduces the duration of incarceration, or converts imprisonment into a judicial fine is referred to as special amnesty. According to Article 65/2 of the Turkish Penal Code: "By means of special amnesty, the execution of imprisonment in penal institutions may be terminated, the duration to be served may be shortened, or imprisonment may be converted into a judicial fine." Accordingly, under special amnesty, the sentence may be abolished (ilga), mitigated (tahfif), or transformed into another measure (tahvil). No fourth legal consequence beyond these categories may arise, as these consequences have been exhaustively enumerated by law [14, p. 666].

Special amnesty may be either individual or collective in nature. Under individual special amnesty, the person or persons covered by the amnesty, the relevant offenses, and the extent of the pardon are explicitly specified. In collective special amnesty, however, the names of beneficiaries are not individually listed; rather, the categories and types of sentences subject to amnesty are determined. Any person serving a sentence possessing the characteristics and duration specified by law at the time of its entry into force may benefit from such an amnesty.

Pursuant to Article 104/16 of the Constitution, the clemency authority vested in the President also constitutes a form of special amnesty power. The Constitutional Court of Türkiye likewise emphasized this issue by stating: "Pursuant to Articles 87 and 104 of the Constitution, the authority to grant individual special amnesty belongs to both the Grand National Assembly of Türkiye and the President." [15, p. 118].

The President may exercise this authority where the convicted person suffers from circumstances such as permanent illness or advanced age. These circumstances are subject to the principle prohibiting analogy. Since the Constitution does not define the precise scope of these conditions, the President enjoys discretionary authority in determining their existence.

General amnesty constitutes a legislative act that extinguishes all or certain criminal offenses and imposed penalties, together with all their legal consequences, on the basis of considerations of social utility and public benefit [1, p. 121]. Various doctrinal opinions have been advanced concerning the legal nature of general amnesty. According to Roxin, general amnesty constitutes a temporary veil placed over criminal legislation. This approach has primarily been defended by those opposing amnesty measures. According to the opposing view – which we likewise endorse – general amnesty does not abolish the offense itself but rather eliminates public prosecution and the state's authority to impose punishment. Indeed, none of the constituent elements of the offense are removed through general amnesty; therefore, the act does not cease to constitute a criminal offense and cannot be deemed legally extinguished.

The legal consequences arising from general amnesty are not confined solely to criminal law; rather, they possess a multidimensional character affecting various branches of law, including constitutional law, administrative law, execution law, criminal law, and private law. Constitutional provisions constitute the principal legal basis of amnesty regulations, and in many jurisdictions, constitutional texts expressly regulate general amnesty. Through the institution of amnesty, judicial processes such as investigations and prosecutions may be directly affected; legal consequences arising from criminal convictions may be abolished; and modifications may occur in relation to rules governing the execution of penalties. Accordingly, constitutional systems generally vest amnesty powers in legislative bodies, while the legal consequences and implementation mechanisms of amnesty are regulated under criminal legislation.

General amnesty produces diverse legal effects within criminal law. However, its principal function consists in the termination of public prosecution and the elimination of criminal convictions together with all legal consequences arising therefrom. Since criminal proceedings consist of several procedural stages, the applicable procedure following the declaration of amnesty differs according to the procedural phase in which the proceedings currently stand.

Where a declaration of general amnesty takes effect during the investigation phase, no prosecution shall be initiated regarding ongoing investigations. The competent authority must issue, ex officio, a decision of non-prosecution . Moreover, once general amnesty enters into force, conducting investigations regarding acts committed within the temporal scope of the amnesty becomes legally impossible. Even by modifying the legal characterization of the relevant act and assigning a new legal qualification thereto, initiating criminal proceedings remains impermissible.

The prevailing doctrinal view recognizes general amnesty among the legal grounds resulting in the dismissal of proceedings or punishment. As a general rule, the declaration of general amnesty concerning cases in the prosecution phase results in dismissal decisions. Through such dismissal, none of the legal consequences ordinarily arising from a criminal conviction may emerge. Nevertheless, even where general amnesty enters into force during the prosecution phase, certain circumstances may require the rendering of an acquittal judgment rather than a dismissal decision.

Pursuant to Article 223/8 of the Criminal Procedure Code: "Where grounds for dismissal prescribed under the Turkish Penal Code exist ... dismissal of the proceedings shall be ordered." However, Article 223/9 provides: "In cases where an immediate acquittal judgment may be rendered, decisions of suspension, dismissal, or non-imposition of punishment cannot be issued." Consequently, although dismissal may ordinarily be ordered under Article 65 of the Turkish Penal Code, depending upon the circumstances of the case, principles of fairness may require the court to issue an acquittal judgment where such a decision would operate more favorably for the defendant.

Upon the entry into force of general amnesty, suspicion regarding detainees charged with offenses covered by the amnesty disappears simultaneously with dismissal of the proceedings. Consequently, detention immediately ceases, and detained individuals are released.

Security measures regulated under Articles 53–60 of the Turkish Penal Code are sanctions imposed by courts while taking into consideration the dangerousness of the offender and aiming to protect society, rehabilitate offenders, reintegrate them into society, and prevent recidivism. These measures include: deprivation of specific rights (Art. 53); confiscation of property and criminal proceeds (Arts. 54–55); security measures specific to juveniles (Art. 56); security measures concerning mentally ill offenders (Art. 57); recidivism and dangerous offenders (Art. 58); deportation (Art. 59); security measures applicable to legal entities (Art. 60). While security measures cannot ordinarily be subject to special amnesty, no such restriction exists regarding general amnesty. In other words, because general amnesty extinguishes the offense together with all legal consequences, security measures should likewise cease automatically. The contrary interpretation previously adopted under repealed legislation differs from the current framework.

Where an offender initiate acts of execution but fails to complete the intended offense due to circumstances beyond his control or where the intended result fails to occur the conduct is classified as a criminal attempt. Although criminal law punishes prohibited conduct classified as offenses, attempted offenses likewise remain punishable. Accordingly, general amnesty concerning a particular offense also encompasses forms of that offense remaining at the attempt stage.

Chain offenses may arise where multiple offenses against the same victim are committed at different times pursuant to a single criminal intent (Article 43/1 TPC). Under the view we adopt – the plurality-of-offenses approach the acts constituting a chain offense preserve their independent character. Therefore, each act must separately be evaluated regarding whether it falls within the scope of amnesty.

General amnesty eliminates convictions together with all legal consequences attached thereto. Consequently, the requirement of a prior final conviction necessary for recidivism ceases to exist. Therefore, individuals benefiting from general amnesty cannot subsequently be subjected to sentence enhancement or special execution regimes applicable to repeat offenders.

Pursuant to Law No. 5352 on Criminal Records, the collection, classification, evaluation, preservation, and storage – through an automated processing system – of information concerning finalized convictions, criminal penalties, and security measures imposed upon Turkish citizens by Turkish courts or by foreign courts whose judgments are recognized under Turkish law, as well as foreign nationals who have committed offenses within Türkiye, is referred to as a criminal record (adli sicil). Such records are maintained in the Central Criminal Registry administered by the General Directorate of Criminal Records and Statistics under the Ministry of Justice. According to Article 4/1(i) of the Criminal Records Law No. 5352 dated 5 May 2005, information to be recorded in criminal records includes: "laws concerning general or special amnesty and presidential decisions concerning special amnesty."

Likewise, pursuant to Article 9 of the Criminal Records Law, where general amnesty is granted, the relevant offense is removed from the offender's criminal record. However, this does not amount to complete deletion. This is because the continuation of the same provision requires that deleted criminal record information be transferred to archival records. Consequently, it cannot be argued that general amnesty results in the complete erasure of criminal records. Indeed, pursuant to Article 9/1(d) of the same Law, in cases of general amnesty, criminal record information is deleted by the General Directorate of Criminal Records and Statistics and transferred to archival records. Retrial (renewal of proceedings), which constitutes an extraordinary legal remedy, is regulated under Article 311 of the Criminal Procedure Code. Pursuant to the relevant provision, a case resulting in a final judgment may be reheard in favor of the convicted individual through retrial where the conditions exhaustively enumerated (numerus clausus) within the article are satisfied. Whether an individual benefiting from general amnesty may request retrial remains a controversial issue within legal doctrine.

According to one view which we also endorse a convicted individual benefiting from general amnesty may still resort to retrial to establish his or her innocence. According to the opposing view, however, no legally effective final judgment remains in existence concerning an individual who has benefited from general amnesty. Therefore, such individuals cannot subsequently request retrial proceedings.

General amnesty is a legal proceeding and the legislative authority regulates its provisions by enacting a law and publishing it in the gazette. The provisions of this law are enforced by the executive and judicial authority [16, p. 94]. Amnesty is granted under the law and is considered a cause of prosecution and dismissal of criminal proceedings. Pardon is only oversight of punishment and is subject to revocation, on the recommendation of the judiciary and with the approval of the head of state [17, p. 89].

To date, there is virtually no information in open sources indicating that prior to the adoption of new criminal amnesty laws in Kazakhstan, a full public analysis of the results of previous amnesties was conducted, followed by the presentation of this analysis to Parliament in the form of a separate report, parliamentary hearings, or a special report. However, such materials have not been widely officially published and have not been the subject of independent parliamentary debate.

During the parliamentary discussion of the 2025 amnesty, members of parliament and representatives of the Ministry of Internal Affairs cited projected figures for the amnesty's coverage and the expected number of individuals released. However, publicly available information rarely references the results of the previous amnesty in 2021 as evidence of the success of the new initiative. Thus, the arguments in favor of adopting the amnesty law were built primarily around the humanization of criminal policy, the anniversary nature of the date, and the need for further liberalization of criminal legislation. From a scientific perspective, this can be considered a certain gap.

Currently, the Majilis of the Parliament of the Republic of Kazakhstan is considering an amnesty bill in connection with the adoption of the new Constitution of the Republic of Kazakhstan. Less than a year has passed since the last amnesty was carried out in connection with the 30th anniversary of the adoption of the 1995 Constitution of the Republic of Kazakhstan, the law on which the President of the Republic of Kazakhstan signed on June 23, 2025. However, the results of the amnesty have not been made public, and there have been no publications analyzing these results in the country's media.

If we approach the matter strictly from the standpoint of modern criminology and evidence-based criminal policy, as is common in other countries, then before a new amnesty, it is advisable to have at least three documents available:

1) An official report from the Ministry of Internal Affairs and the Committee for Penal Execution on the results of the previous amnesty;

2) A criminological analysis of recidivism among those pardoned;
3) The minutes of the parliamentary discussion of the results of the previous law.

An analysis of parliamentary materials and official publications on amnesty issues in the Republic of Kazakhstan shows that the primary focus during the discussion of relevant bills is on the humanitarian and organizational aspects of releasing convicts, while issues of a comprehensive assessment of the results of previous amnesties, the level of recidivism among those pardoned, and the long-term impact of the amnesty on the crime situation have not received comparable public coverage or special parliamentary consideration.

The problem lies not in the institution of amnesty itself, which is recognized as a tool for humanizing criminal policy, but in the lack of a dedicated mechanism for evaluating the results of previous amnesties. In this regard, it seems appropriate to consider formalizing (in the Rules of Procedure of the Kurultai or in a separate act) the obligation of authorized state bodies to submit an analytical report on the results of the previous amnesty to the Kurultai of the Republic of Kazakhstan when considering a new draft amnesty law.

This is precisely why, before adopting the next amnesty act, it is advisable to conduct a comprehensive parliamentary, legal, and criminological analysis of the results of the previous amnesty, followed by a public presentation of its findings to the public. This would ensure not only humanism but also the effectiveness of state criminal policy.

International practice shows that states pursuing balanced criminal policies typically seek to assess the impact of previous amnesties before making new decisions.

In Italy, the issue of amnesty has repeatedly become the subject of heated public debate. Following the large-scale amnesties of the second half of the 20th century, Italian researchers and parliamentarians drew attention to the need to assess the impact of such decisions on recidivism and public safety. It was precisely criticism of the ineffectiveness of individual amnesties that subsequently led to significant limitations on their passage. Currently, an amnesty in Italy requires a qualified majority vote in parliament, significantly complicating its use and forcing legislators to carefully justify its use.

In France, amnesties were long linked to presidential elections and the inauguration of new heads of state. However, in the late 20th century, this practice came under serious criticism. One of the arguments used by opponents of regular amnesties was the lack of convincing data on their long-term effectiveness. As a result, the practice of broad criminal amnesties was significantly curtailed, and the emphasis shifted to individualized criminal justice measures.

Spanish legal doctrine views amnesty as an exceptional measure, permissible only in the presence of compelling political and legal justifications. Academic literature has repeatedly emphasized that decisions regarding amnesty must be accompanied by an analysis of its social and criminological consequences.

Although the institution of amnesty in its classic form is relatively rarely used in the United States, American criminology has accumulated significant experience evaluating early release and sentence reduction programs. Almost all major reforms in this area are accompanied by an analysis of recidivism rates, the effectiveness of resocialization, and the impact on public safety. Without such research, large-scale criminal policy decisions are subject to serious criticism from legislators and the expert community.

In Germany, one of the key principles of criminal policy is the scientific validity of decisions. Any large-scale reforms related to the execution of sentences and the release of convicted persons are typically accompanied by criminological research and statistical analysis. German legal scholarship proceeds from the premise that criminal law decisions should be based on verifiable data, and not solely on political expediency.

Currently, more than 34,000 individuals are serving sentences or are in custody in 64 correctional facilities and 16 pretrial detention centers in Kazakhstan. Kazakhstan ranks 100th in the prison population index. Over the 30 years of independence, Kazakhstan has conducted eight amnesties, the last four of which were timed to coincide with Independence Day. Comparing the substantive nature of these amnesties, they primarily affected individuals who had committed minor and moderate crimes, who were released from imprisonment in full or after serving a specified period (1/3, 1/2). Individuals who had been sentenced to non-custodial punishments were also released. Minors, disabled persons, women with dependent minor or disabled children, pregnant women, veterans of the Great Patriotic War, persons of retirement or pre-retirement age, and other socially vulnerable groups were also eligible for release. Persons convicted of serious and especially serious crimes only had their prison sentences reduced, provided they served, as a rule, at least half or two-thirds of their sentence. Moreover, the amnesty laws themselves contained a long list of crimes for which the amnesty was not applicable. Among them were crimes related to violence against the person, against peace and security, the constitutional order, against property (qualifying elements), etc. (Laws of the Republic of Kazakhstan of December 29, 2000 «On amnesty in connection with the tenth anniversary of the adoption of the Declaration of State Sovereignty of the Republic of Kazakhstan», of January 9, 2006 «On amnesty in connection with the celebration of Independence Day of the Republic of Kazakhstan», of December 28, 2011 «On amnesty in connection with the twentieth anniversary of state independence of the Republic of Kazakhstan», of December 13, 2016 «On amnesty in connection with the twenty-fifth anniversary of Independence of the Republic of Kazakhstan»).

Thus, regardless of the differences in national legal systems, a common approach emerges: decisions on large-scale release measures for convicted persons must be accompanied by an assessment of their consequences, primarily the recidivism rate and the effectiveness of resocialization.

Amnesty, as a compromise basis for terminating criminal prosecution, by its legal nature possesses all the characteristics of a discretionary nature, the core of which is the problem of harmonizing the wills of its stakeholders. On the one hand, it is an expression of state will, which includes a proposal for a non-rehabilitative method of terminating criminal prosecution and exemption from criminal liability, addressed to various categories of citizens. On the other hand, it is an expression of the will of an individual, who either agrees or disagrees with this proposal in the event of denial of guilt. By reaching a certain compromise and accepting the state’s terms of a possible amnesty, the individual agrees to the non-rehabilitative termination of criminal prosecution against them and undergoes corresponding changes, including mandatory compensation for damages. Thus, a contractual relationship exists between the state and the individual who has committed the crime.

Conclusion

Amnesty in criminal proceedings of the Republic of Kazakhstan and the Republic of Turkey is an act of the highest state authority, which entails a full or partial exemption from punishment, replacement with a more lenient one, or termination of criminal prosecution at the pre-trial and trial stages. In conclusion, general amnesty is not merely an institution concerning the elimination of penalties but rather a comprehensive legal measure affecting all stages of criminal proceedings. General amnesty results in decisions of non-prosecution during investigations, dismissal of proceedings during prosecution stages, and elimination of finalized convictions together with all legal consequences arising therefrom.

Moreover, it produces additional legal effects, including termination of detention, elimination of security measures, non-application of recidivism provisions, and deletion of criminal records through archival transfer procedures.

Accordingly, general amnesty constitutes a legal institution producing direct interaction between criminal law and criminal procedure law and significantly intervening in judicial processes. Particularly regarding ongoing investigations and prosecutions, application of amnesty generates differing procedural consequences depending upon the procedural stage involved and may, in certain cases, require acquittal judgments where more favorable to defendants. Therefore, general amnesty regulations should be evaluated carefully and systematically while taking into consideration their multidimensional implications within both criminal law and criminal procedure law.

Criminal punishment serves not only a punitive but also a preventative function. Therefore, any decisions that could significantly alter the actual scope of punishment must be made with due consideration of their potential impact on the preventative function of criminal law. Excessively frequent amnesties can lead to the perception among some of the population that a court-imposed sentence can be significantly reduced regardless of the severity of the offense. This negatively impacts the principle of inevitability of responsibility, traditionally considered one of the most important factors in crime prevention.

Understanding the reasons for amnesty decisions is crucial for victims and society as a whole. When the state fails to demonstrate the results of the previous amnesty and does not explain the need for a new one, doubts arise about the consistency of criminal policy. This can lead to a decline in trust in the judicial system and state institutions.

Every amnesty reveals certain shortcomings in legislation and law enforcement practices. If such problems are not studied and addressed, there is a high risk that they will recur during the next amnesty.

Thus, the modern criminal procedure institution of terminating criminal prosecution following an act of amnesty occupies a unique place among all existing grounds for exemption from criminal liability and, in essence, offers a unique compromise for the speedy resolution of a criminal case on its merits. The author's idea of considering the criminal procedure institution of terminating criminal prosecution following an act of amnesty as an original compromise makes modern criminal proceedings shorter and more effective, serving as a means of restoring the violated constitutional rights and legitimate interests of its participants.

Currently, there are certain unresolved problems related in general to the legal regulation of the functioning of the compromise criminal procedural institution of termination of criminal prosecution as a result of an amnesty act, as well as the insufficient scientific development, which does not ensure unambiguous law enforcement in investigative and judicial practice.

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ҚАЗАҚСТАН МЕН ТҮРКИЯДАҒЫ ҚЫЛМЫСТЫҚ ІС ЖҮРГІЗУДЕГІ ЖАЛПЫ АМНИСТИЯ: ӘЛІ АЯҚТАЛМАҒАН ҚЫЛМЫСТЫҚ ІСТЕРГЕ ҚОЛДАНУ ЕРЕКШЕЛІКТЕРІ

Аңдатпа

Рақымшылық – мемлекеттің қылмысты қудалау және жаза қолдану құқығынан толық немесе ішінара бас тартуын білдіретін құқықтық институт. Ол қылмыстық құқық пен қылмыстық іс жүргізу құқығы салаларында маңызды құқықтық салдарлар туындатады. Бұл зерттеуде алдымен рақымшылық ұғымы мен оның түрлері қарастырылып, кейін жалпы рақымшылықтың қылмыстық құқық пен қылмыстық іс жүргізу құқығы аясындағы құқықтық әсерлері талданады. Қазақстан мен Түркия мемлекетінің заңнамаларына талдау жүргізіліп, жалпы рақымшылықтың тергеліп жатқан және сотта қаралып жатқан істерге қолданылуының іс жүргізушілік салдарларына ерекше назар аударылады. Осы тұрғыда тергеу сатысында қылмыстық қудалауды бастамау туралы шешім қабылдау, сот талқылауы кезеңінде істі тоқтату, сондай-ақ белгілі бір жағдайларда бірден ақтау үкімін шығару мүмкіндігі мәселелері қарастырылады. Қазақстан мен Түркияның қылмыстық іс жүргізу заңнамасында қылмыстық сот ісін жүргізудің барлық кезеңдерінде рақымшылық жасауға қатысты адамның ұстанымын міндетті түрде анықтауды бекіту қажет, өйткені рақымшылыққа байланысты қылмыстық қудалауды тоқтату адамды істі мәні бойынша қарауға және өзінің кінәсіздігін анықтауға автоматты түрде жол бермеуге тиіс.

Тірек сөздер: жалпы рақымшылық, қылмыстық іс жүргізу құқығы, қылмыстық қудалауды тоқтату, тергеу және сот талқылауы, қылмыстық құқық, қылмыстық саясат, гуманизм.

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ОБЩАЯ АМНИСТИЯ В УГОЛОВНОМ СУДОПРОИЗВОДСТВЕ КАЗАХСТАНА И ТУРЦИИ: ОСОБЕННОСТИ ПРИМЕНЕНИЯ К НЕЗАВЕРШЕННЫМ УГОЛОВНЫМ ДЕЛАМ

Аннотация

Амнистия представляет собой правовой институт, выражающий полный либо частичный отказ государства от реализации своих полномочий по уголовному преследованию и наказанию за совершенные преступления. Она влечет существенные правовые последствия как в сфере уголовного права, так и в области уголовного судопроизводства. В настоящем исследовании рассматриваются понятие амнистии и ее виды, а также анализируются правовые последствия общей амнистии в контексте уголовного права и уголовного процесса. Проведен анализ законодательства Казахстана и Турции, особое внимание уделяется процессуальным последствиям применения общей амнистии к уголовным делам, находящимся на стадии расследования или судебного разбирательства. В этой связи исследуются вопросы вынесения решения об отказе в уголовном преследовании на стадии расследования, прекращения уголовного дела в суде, а также возможности немедленного оправдания в отдельных случаях. Представляется необходимым закрепить в уголовно-процессуальном законодательстве Казахстана и Турции обязательное выяснение позиции лица относительно применения амнистии на всех стадиях уголовного судопроизводства, поскольку прекращение уголовного преследования в связи с амнистией не должно автоматически лишать лицо возможности добиваться рассмотрения дела по существу и установления своей невиновности.

Ключевые слова: общая амнистия, уголовно-процессуальное право, прекращение уголовного преследования, расследование и судебное разбирательство, уголовное право, уголовная политика, гуманизм.

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