

SOME FEATURES OF THE PENITENTIARY SYSTEM OF THE REPUBLIC OF KAZAKHSTAN

MUSSEKENOVA Aizhan Aidynovna

teacher-lecturer Higher School of Law and Economics, Master of Law

KARASSAYEVA Adiya Bagdatqyzy

teacher-lecturer Higher School of Law and Economics, Master of Law

Zhetysu university named after Ilyas Zhansugurov

Taldykorgan, Kazakhstan

The authors of the article consider the issues of the formation of the penitentiary system of the Republic of Kazakhstan. They reveal the essence of the country's penitentiary system and touch upon some issues of the penitentiary policy of the Republic of Kazakhstan. The purpose of this article is to reveal the legal essence of the probation institute in Kazakhstan. The authors also consider the activities of probation services in modern conditions.

Key words: deprivation of liberty, punishment, correctional institutions, convicts' rights, penitentiary system, probation, probation control.

Describing the positive aspects in the field of humanization of the penitentiary system of the Republic of Kazakhstan, it is important to emphasize that Kazakhstan is one of the leaders in reforming the penal system of the CIS countries. «Probation» is a legal term that is used mainly in Anglo-Saxon countries. This term is not translated into Russian in its direct meaning. According to many scientists, it can be designated as work with conditionally convicted persons, who are subject to certain obligations for the execution of punishment. The main task of the probation service is to assist the client in solving his problems that led to the commission of a crime, to help him return to normal life. According to the supporters of this method, the advantages are obvious. «Firstly, a person does not break away from his family, from home, and maybe does not lose his job; secondly, prisons are unloaded; thirdly, dubious prison experience does not multiply, which benefits few people» [1, p. 55]. The UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) give a high assessment of this form of socio-legal control over convicts. The essence of probation is «to test certain categories of criminals with special legal duties connected with providing them with various rehabilitation assistance» [2, p. 4]. The purpose of probation is to effectively correct convicts, social and legal control over the behavior of persons sentenced to punishments not related to isolation from society, probationers, sentenced to restriction of freedom, to minimize, as far as possible, criminal recidivism on

their part. The popularity of «probation» in modern conditions in many countries of the world is determined by the significant potential for preventing recidivism, economic expediency for society, as well as its moral value, which allows achieving the goals of criminal policy by the most humane means [3, p. 30].

As it is known, the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 indicates the need for institutional development of a specialized body responsible for the execution of criminal law measures not related to the isolation of a convicted person from society [4]. In this connection, the Government of the country included in the Plan of legislative work a clause prescribing the development in 2011 of the draft Law of the Republic of Kazakhstan «On amendments and additions to some legislative acts of the Republic of Kazakhstan on probation service issues».

At the current stage of reforming the penitentiary system in Kazakhstan, its own model of probation service has been created. Thus, in order to develop the probation service in Kazakhstan, the Law of the Republic of Kazakhstan «On Probation» was adopted on December 30, 2016, and the Order of the Ministry of Internal Affairs of the Republic of Kazakhstan No. 511 «On approval of the Rules for organizing the activities of the Probation Service» was adopted on August 15, 2014. October 23, 2014 Resolution of the Government of the Republic of Kazakhstan No. 1131 «Rules for providing social and legal assistance to persons registered with

the probation Service». The implementation of probation control is carried out in accordance with the verdict, the court order that has entered into force. Probation control over the performance of the duties assigned by the court to conditionally convicted persons and their behavior with assistance in obtaining social and legal assistance during the probation control period is carried out by the probation service at the place of residence of the convicted person.

Local executive bodies, non-governmental organizations and other organizations assist the probation service in the implementation of social and legal assistance to convicts, in accordance with an individually developed program.

The resolution of problems related to the effective implementation of the norms of legislation concerning the probation service is essential for the state and society, as it affects both the general criminogenic situation in the country and the level of criminalization of society as a whole. Thus, the issues of organizing an effective probation service system, proper organization of the activities of the authorized state body and its interaction with other bodies are of particular relevance [5].

The Penal Enforcement Code of the Republic of Kazakhstan contains a number of new novelties that were previously absent in the national penal enforcement legislation. Important provisions of international documents ratified by Kazakhstan were implemented. In addition, significant changes and additions were made to the provisions of the current Penal Enforcement Code, which, in our opinion, will significantly increase the effectiveness of the execution of certain types of criminal punishment. Moreover, the very content of the new Penal Enforcement Code allows us to conclude that this law will create the necessary conditions for reforming the preventive activities carried out by law enforcement agencies, the system of these bodies and the criminal policy of the country as a whole. According to article 19 of the Criminal Executive Code of the Republic of Kazakhstan, probation control is carried out in respect of persons: 1) sentenced to punishment in the form of restriction of liberty; 2) sentenced to probation; 3) released on parole from serving a sentence of imprisonment. The duration of probation control is determined by a verdict or court order [6].

A person found guilty of committing a criminal offense is given a fair punishment within the limits established by the relevant article of the Special Part of the Criminal Code of the Republic of Kazakhstan. Article 44 of the Criminal Code of the Republic of Kazakhstan states: «Restriction of freedom consists in establishing probation control over a convicted person for a period of six months to seven years and involving him in forced labor for one hundred hours annually during the entire term of serving the sentence. Restriction of freedom is served at the place of residence of the convicted person without isolation from society. Forced labor is organized by local executive bodies in public places and is served no more than four hours a day» [7].

The punishment in the form of imprisonment is no exception in this respect, unfortunately, does not always achieve its goals, which explains the improvement of convicted criminal offenses while serving a sentence. It can be said that the realization of such a goal of punishment as the prevention of crimes by convicts is closely interrelated with specific reasons caused by the situation objectively inherent in places of deprivation of liberty. The most characteristic are the following:

a) the circumstances that lie in the sphere of the order of execution and serving of punishment (regime), namely the lack of necessary isolation of convicts and constant supervision over them. This is evidenced by data on the time, place, and method of committing these crimes, as well as materials of criminal cases, official investigations, and survey data of practitioners [8].

Speaking about the Law of the Republic of Kazakhstan «On Probation», it should be noted that with its adoption an important task has been solved – to create the necessary conditions for social rehabilitation and adaptation of persons caught in the field of criminal proceedings. Thus, if the Penal Enforcement Code regulates the implementation of penitentiary policy, then the said law provides legal regulation of the process of social adaptation and rehabilitation of persons caught in the sphere of criminal proceedings. In other words, the state will solve the problem of reducing the social environment for the spread of criminal subculture, improving the preventive activities of law enforcement agencies to prevent crimes, reducing the level of

crime (including recidivism), etc. [9].

In conclusion, we would like to note that the Law «On Probation» of December 30, 2016 introduced a change that has no analogues in the functions of the penitentiary system, expanding and bringing its competence to the pre-trial stage. Thus, if earlier the functions of the penal enforcement system began from the moment the sentence entered into force and ended at the time of the expiration of the sentence, today its functions begin before the court finds the person guilty.

The National Plan «100 Concrete Steps» defines a number of successive stages for the implementation of Five institutional reforms proposed by the Head of State Nursultan Nazarbayev. The second of them is the rule of law. For citizens, the evidence of the triumph of legality and justice is not only the disclosure of a crime, but also the appropriate punishment for those who committed it. However, as world practice has shown, an exclusively punitive system that simply isolates a criminal from society often not only does not lead to his re-education, but, on the contrary, criminalizes the person even more and in the future, after release, makes it very difficult to re-socialize the ex-convict. Therefore, most developed countries of the world have been following a different path for a long time – actively using alternative methods of punishment, developing probation services, modernizing the infrastructure of correctional institutions. Almost since gaining independence, Kazakhstan has also begun to humanize the penitentiary system in accordance with international standards. These positive changes, as well as work under the conditions of the new criminal, penal enforcement and criminal procedure codes, contributed to a reduction in the number of «prison population» [10].

And so, wanting to reduce the «prison population», Kazakhstan turned to international experience. The result of the search was the introduction of a legal institution already known in Europe – probation – into the Kazakh legislation. On December 30, 2016, an independent Law «On Probation» was adopted, which gave the Kazakh probation model a certain system, builds a logical chain of its varieties, laid down the main organizational provisions. The main essence of probation, as before, was the provision of social and legal assistance, which now

extended not only to convicts and former convicts, but also suspects and accused.

But there are significant differences between Kazakh and foreign probation.

As the candidate of Legal Sciences, associate Professor E.A. Salamatov notes in his article «Problems of Kazakhstan probation», the most important difference lies in the essence of probation. In foreign legislation and law enforcement practice, this essence lies on the very surface. The word «probation» is from the English «probation», and literally translates to «trial». And this is not an empty phrase, the whole probation, all its varieties, is permeated with the test mode.

The idea of probation is to reduce the «prison population» by giving the offender the opportunity to avoid imprisonment or reduce his term, but on condition that he successfully passes the test. This test is expressed through the duties imposed on him by the court: to compensate the victim and bring him a public apology, to perform free work at socially significant facilities, to undergo medical treatment, not to drink alcohol, not to engage in certain activities or vice versa to engage in specific useful activities, to undergo training, not to visit certain places or institutions, to live at a specific address and at a certain time not to leave the dwelling, to appear at the probation service on her call, etc.

Being under probation supervision is voluntary, which is consistent with the UN Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) of December 14, 1990 (hereinafter referred to as the Tokyo Rules). In some countries, subject to the defendant's agreement on probation, imprisonment is appointed for a short time, for example, the courts of the state of Hawaii of the USA initially stipulate in the sentence the terms of imprisonment and probation. This approach is based on the offender's natural desire to preserve his freedom, and in prison to speed up his release, so he agrees to many restrictions and duties.

Probation and probation are very similar to each other and have many common features. But probation is a more advanced kind of conditional sentence. In the probation regime, unlike probation, the requirements are tightened at the expense of duties. It is no longer enough for a convicted person not to commit a new offense,

active positive actions are required from him, if necessary, assistance is provided to him.

In Western countries, there is a widespread thesis that literally reads: «every criminal must repay a debt to society». Therefore, it is widely practiced there to assign public works to socially significant objects: city parks, hospices, nursing homes, churches, etc. At the same time, these works are performed in special uniform clothing, which allows them to be identified in the eyes of others as lawbreakers. In the UK, in particular, it is required to wear a bright vest with the inscription on the back: «return the debt to society».

Under such circumstances, every convict experiences a natural sense of shame, especially if he encounters acquaintances, neighbors, friends, relatives, etc. But, refusing to work entails replacing probation with imprisonment. This is one of the elements of the test, which also has a very powerful preventive effect [11].

There is another feature in the European probation models – it is an emphasis on restorative justice, in the Tokyo Rules, as a fundamental goal, it is indicated to promote the development of offenders' sense of responsibility to society. The criminal is obliged not only to fully compensate for the damage, but also to make a public apology to the victim. An apology in the presence of society is considered very important, as it causes a sense of shame in the offender, and reduces aggression in the victim. In addition, in the future, this contributes to the conflict-free return of the already former convict to society. And victims of violent assaults, according to foreign scientists, a public apology allows you to look the criminal in the eye, throw out the accumulated emotions and get rid of fear.

For the probation test mode, a certain adjustment of the criminal legislation is necessary. In Germany, for example, the main types of criminal penalties are imprisonment and a fine, there is also an additional penalty – a ban on driving. Everything else relates to security measures and fixes. These measures are very diverse and the court, without limiting its choice, can combine them, the main thing is that they are aimed at the resocialization of the offender. For example, a fine, social (public) works and restriction of freedom can be imposed at the same time, which is impossible under the conditions of our Criminal Code,

since they are independent types of punishments and are imposed separately.

It is the combination of various duties and restrictions that creates a lot of inconvenience for the convicted person, but in order to avoid imprisonment or shorten his term, he agrees to a trial, that is, probation. The time spent under probation supervision depends on the convicted person, on the fulfillment of all court orders by him, respectively, it can be either reduced or extended, for example, until the claim is fully settled, regardless of the originally established period [12].

For example, the probation system in the United States is criticized for excessive rigidity. Thus, in the absence of a person at the place of residence, a probation officer, without clarifying the reasons, can immediately send information to the police, which in most cases entails arrest and replacement of probation with imprisonment on the grounds that he did not pass the test. In this regard, in some states, in the structure of the "prison population", the proportion of those who were initially assigned probation was replaced by imprisonment reaches 40%. But this also has a positive meaning, the essence of which is that many people have a chance to avoid imprisonment through probation, the main thing is to comply with the requirements stipulated by the court.

Another feature of foreign probation is that in the USA, which is the birthplace of probation along with the UK, private probation services also work successfully. For example, in the state of Indiana, an offender before trial makes a primary payment of \$ 50 or more to the probation service, depending on the severity of the committed act. For this money, an individual program is being developed for him, covering all aspects of probation.

Kazakhstan's probation differs significantly from established foreign models. If for them the essence of probation is testing, and the goal is to reduce the «prison population», then for us the essence is to provide social and legal assistance, and the goal is resocialization [11].

One of the most important components of the work of the Probation Service in all developed countries is not only cooperation with state institutions and local governments, but also with individuals, the public, namely with volunteers

(volunteers) to assist in the social adaptation of supervised. The British system of conditional punishment, or probation, has also undergone significant changes. Previously, it was based on the desire to help the convict. Now everything has changed. Probation, according to the famous Norwegian criminologist N. Christie, turns into a punitive body, in the American manner. It becomes a centralized service that keeps all its employees under vigilant control [12]. For example, in some US states, public organizations take on up to 98% of the burden of probation service inspectors to assist convicts in re-socialization [13]. In this regard, the example of Japan is also indicative, where the ratio of full-time probation offic-

ers and volunteers is very significant: 876 people work on a permanent professional basis, and the number of volunteer assistants is approximately 47 thousand people [14].

We believe that the set of measures for further reform and modernization of the penal enforcement system, which is being implemented in our country, will bring it as close as possible to international standards. Ensuring compliance with the human rights stipulated by the Constitution of the Republic of Kazakhstan and UN conventions, including for such categories as convicted persons, and will contribute to the maximum protection of the interests of law-abiding citizens, the state and society.

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