

PARTICIPATION OF A LEGAL REPRESENTATIVE AS A GUARANTEE OF THE RIGHT TO PROTECTION

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The article considers the content of the activities of the legal representative to ensure the right of minors to protection.

Key words: legal representative, right to defense.

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COMPARISON OF KAZAKHSTAN AND FOREIGN PROBATION SERVICES

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This scientific article examines the features of probation in the Republic of Kazakhstan and countries such as the UK, USA, Germany. Some systemic differences in the appointment and application of probation control are highlighted. The article also describes the penitentiary policy and the penitentiary system of our state in accordance with the current legislation. The purpose of writing this article is to study the problematic aspects of Kazakhstan's probation and penitentiary policy, to conduct a comparative legal analysis of probation services in some foreign countries. The analysis is necessary for a deeper study of positive foreign experience with the subsequent development of recommendations and proposals on improving penitentiary policy in the Republic of Kazakhstan. When writing a scientific article, the following methods of scientific research were used: analysis, comparison, legal method, statistical method, analogy and generalization.

Key words: institute of probation, socialization, resocialization, punishment, testing, international standards.

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, in most developed countries of the world, they 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» [1].

And so, wanting to reduce the «prison population», Kazakhstan turned to international experience. The result of the search was the introduction into the Kazakh legislation of a legal institution already known in Europe – probation. 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 be in 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 US state of Hawaii initially stipulate the terms of imprisonment and probation in the sentence. 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 violators of the law. 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 [2].

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 re-socialization 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 both be reduced and extended, for example, until the claim is fully settled, regardless of the originally established period [3].

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, the offender before the trial makes an initial 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 [2].

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 [4]. 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. In this regard, the example of Japan is also indicative, where the ratio of full-time probation officers and volunteers is very significant: 876 people work on a permanent professional basis, and the number of volunteer assistants is approximately 47 thousand people [5].

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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СРАВНЕНИЕ КАЗАХСТАНСКИХ И ЗАРУБЕЖНЫХ СЛУЖБ ПРОБАЦИИ

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В данной научной статье рассмотрены особенности probation в Республике Казахстан и таких странах как Великобритания, США, Германия. Выделены некоторые системные различия при назначении, применении probationного контроля. Также в статье описана пенитенциарная политика и пенитенциарная система нашего государства согласно действующему законодательству. Целью написания данной статьи является изучение проблемных аспектов казахстанской probation и пенитенциарной политики, проведение сравнительно-правового анализа служб probation некоторых зарубежных стран. Проведения анализа является необходимым для более глубокого изучения положительного зарубежного опыта с последующей разработкой рекомендаций и предложений по вопросам совершенствования пенитенциарной политики в Республике Казахстан. При написании научной статьи были использованы следующие методы научного исследования: анализ, сравнение, правовой метод, статистический метод, аналогия и обобщение.

Ключевые слова: институт probation, социализация, ресоциализация, наказание, испытание, международные стандарты.
