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THE CONCEPT OF PROBATION
AND THE IMPLEMENTATION OF PROBATION CONTROL
OVER PERSONS WITH A SUSPENDED SENTENCE
IN THE REPUBLIC OF KAZAKHSTAN

ПОНЯТИЕ ПРОБАЦИИ
И ОСУЩЕСТВЛЕНИЕ ПРОБАЦИОННОГО КОНТРОЛЯ
ЗА УСЛОВНО ОСУЖДЕННЫМИ ЛИЦАМИ
В РЕСПУБЛИКЕ КАЗАХСТАН

Abstract. The article is devoted to the issues related to the formation of the state probation service in the Republic of Kazakhstan and the legislative regulation of its activities. Possible prospects for the development of this service are outlined, taking into account foreign experience, and some aspects of improving the system of execution of non-custodial sentences are also studied. Probation is presented as criminal supervision (criminal guardianship). Based on the conducted research, the author comes to the conclusion that probation should be understood as a set of measures aimed at social rehabilitation and adaptation, protection of the legal rights and interests of persons who have been prosecuted and found themselves in the current difficult life situation, as well as control and supervision of their behavior. The essence of probation is that, along with serious restrictions on the daily living conditions of the offender, in case of violation of the order and conditions of serving a sentence without deprivation of liberty, probation period of a suspended sentence, they can be replaced by real imprisonment.

Keywords: probation, probation service, alternative to deprivation of liberty forms of punishment, penitentiary system, penal inspections.

Аннотация. В статье рассматриваются вопросы, связанные со становлением в Республике Казахстан государственной службы пробации, законодательным регулированием ее деятельности. Обозначены возможные перспективы развития этой службы с учетом зарубежного опыта, а также изучаются некоторые аспекты совершенствования системы исполнения наказаний, не связанных с лишением свободы. Пробация представлена в качестве уголовного надзора (уголовной опеки).

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На основании проведенного исследования автор приходит к выводу о том, что под пробацией необходимо понимать комплекс мер, направленных на социальную реабилитацию и адаптацию, защиту законных прав и интересов лиц, подвергшихся уголовному преследованию и оказавшихся в сложившейся трудной жизненной ситуации, а также контроль и надзор за их поведением. Суть пробации заключается в том, что, наряду с серьезными ограничениями повседневных жизненных условий правонарушителя, в случае нарушения порядка и условий отбывания наказания, не связанного с лишением свободы, испытательного срока условного осуждения возможна их замена на реальное лишение свободы.

Ключевые слова: пробация, служба пробации, альтернативные лишению свободы виды наказания, пенитенциарная система, уголовно-исполнительные инспекции.

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The history of probation development in Kazakhstan dates back to February 15, 2012, when the head of state signed the law “On amendments and additions to certain legislative acts of the Republic of Kazakhstan on Probation Service issues”. The Law provided for the creation of a probation service in the structure of the penitentiary system, formed to assist convicts in obtaining social and legal support. The need for the institutional development of a specialized body responsible for the execution of criminal law measures not related to the isolation of convicted persons from society was also noted in the Concept of the Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020.

Probation – a foreign word (from Lat. *probatio* – testing). In the legislation of a number of countries (USA, UK, etc.) it means a suspended sentence. The effectiveness of this institute cannot be assessed without studying foreign experience. In this regard, we have analyzed the most advanced probation systems of foreign countries.

In the penitentiary systems of many countries of the world, the probation service is the most important institution in the field of criminal justice and crime prevention. In the materials of the United Nations, probation is defined as a conditional suspension of the execution of a sentence with the placement of the offender under individual supervision for this time, with the provision of guidance or a correctional course (*The concept of probation in the criminal law of modern foreign countries* n. d.). The criminal legislation of a number of countries (for example, Sweden, Finland, Latvia) defines a suspended sentence as a criminal punishment, in other countries (England, Denmark), a suspended sentence is attributed to other measures of criminal legal influence, and in Estonia it is defined as an institution of exemption from criminal punishment. In practice, this important institution of crime prevention is implemented in the form of a probation service. In different states, this service has differences in the

performed functions. For example, in Sweden, the peculiarity of probation as an independent measure is that it can be combined with a number of criminal legal measures: the payment of a fine, the performance of free socially useful work, etc. In the Republic of Latvia, the probation service is a state institution that takes care of public safety and works with persons serving criminal sentences in society (suspended sentences, forced labor), that is, probation is applied as a punishment. In Denmark, the institution of probation is another measure of a criminal nature. There are also states where probation is associated with release from punishment, for example in Estonia. It can be said that the essence of probation consists in the establishment of certain restrictions and duties imposed on the convicted person and carried out under the supervision of the probation service for the purpose of his rehabilitation. In addition, the probation institute provides for other measures designed to assist the convicted person. The main distinguishing feature of probation is the conditional non-execution of the sentence (or the punishment is not imposed at all, as, for example, in England, the United States and France) with the appointment of a special official (agent, assistant, commissioner, etc.) who monitors the behavior of the convicted person and the performance of certain duties and conditions of probation.

In the Republic of Kazakhstan, the criminal legislation does not define the legal nature of a suspended sentence, but, despite this, a suspended sentence is associated with one main goal – to achieve the correction of the convicted person without actually serving a criminal sentence. The use of a suspended sentence, in addition to solving this problem, affects the reduction of persons serving sentences with isolation from society, saves budget funds for their maintenance in correctional institutions, and also contributes to a more effective solution of the tasks of general and special prevention. Conditional sentences are widely used in the practice of Kazakhstan

courts. In accordance with the requirements of Article 63 of the Criminal Code of the Republic of Kazakhstan, the courts impose on convicted persons the performance of certain duties during the probation period. The criminal and criminal procedure legislation of the Republic of Kazakhstan does not contain norms that would disclose the concept and content of probation, from which it should be concluded that in accordance with the previously named Law, probation is not a category of criminal law and not criminal procedure. We believe that it is important as a type of criminal punishment under the conditions of the convicted person's stay in society, but under the supervision of a special service for a period of time and with certain restrictions (fulfillment of obligations) established by the court. Thus, probation belongs to the penal categories.

Not so long ago, a new progressive institute of probation has been operating in the penitentiary system, which provides for the provision of social and legal assistance to convicts. The creation of such a service is another step towards reducing the level of crime, especially recidivism, taking care of the state's citizens who have stumbled, helping them to correct themselves without the use of extreme measures of liberty deprivation. The creation of a probation service in Kazakhstan is currently particularly relevant in connection with the humanization of the penal system. In addition, the expansion of the scope of punishments without isolating convicts from society makes it possible to reduce the burden on the state budget from an economic point of view.

For quite a long time, the counteraction to crime was limited to the identification, disclosure, investigation, and prosecution of persons who committed criminal offenses. Previously, the topic of preventing new criminal offenses by persons who previously committed them remained secondary and did not have a legal, systematic, permanent and consistent character, that is, everyone was engaged in it little by little and purposefully.

As a result, recidivism persisted and a fairly small percentage of individuals returned to a normal, law-abiding social life. The situation began to change in 2012, when the process of legislative introduction of probation elements in the state's penal system began. It was most fully expressed with the adoption on 30.12.2016 of the consolidated Law of the Republic of Kazakhstan No. 38-VI "On Probation" for the first time. This Law regulates relations in the field of organization of probation functioning, establishes the goals, objectives and principles of its activities, as well as the legal status of persons in respect of whom probation is applied. According to the law, probation is understood as a system of activities and individually defined measures of a control and socio-legal nature aimed at correcting the behavior of persons whose categories are defined by criminal and criminal procedure legislation, in order to prevent them from committing new criminal offenses.

The purpose of probation is to correct the behavior of the suspect, accused in the pre-trial stages of the criminal process; resocialization of the convicted person in places of deprivation of liberty as one of the types of social rehabilitation of the person; social adaptation and rehabilitation of the person released from the correctional institution. These innovations are the implementation of the provisions of the draft concept "10 measures to reduce the prison population" as part of the withdrawal of Kazakhstan from the number of countries leading in the "prison population". Thus, according to Article 7.1 of the Penal Code of the Republic of Kazakhstan: "Probation in the penitentiary system is a set of social and legal measures developed and implemented by the probation service of penal inspection individually in relation to each probationer during the probation period and being under probation control for further correction of their behavior in order to prevent them from committing new crimes."

According to the Law of the Republic of Kazakhstan No. 38-VI adopted on 30.12.2016,

probation is understood as a system of activities and individually defined measures of a control and socio-legal nature aimed at correcting the behavior of persons whose categories are defined by law, in order to prevent them from committing criminal offenses. The key tasks of the probation service are to perform executive and administrative functions to ensure the execution of criminal sentences without isolation from society, to assist convicted persons who are on record in obtaining social and legal assistance. When creating the probation service, the experience of European countries in applying alternative non-custodial sentences to offenders was largely taken into account. The reform of the prison system, which is being conducted in accordance with international standards, is based on a clear understanding that isolation alone cannot improve the offender.

Based on the above, we believe that probation should be understood as a set of measures aimed at social rehabilitation and adaptation, protection of the legal rights and interests of persons who have been prosecuted and found themselves in the current difficult life situation, as well as control and supervision of their behavior. The essence of probation is that, along with serious restrictions on the daily living conditions of the offender, in case of violation of the order and conditions of serving a sentence not related to deprivation of liberty, probation of a suspended sentence, they can be replaced by real imprisonment.

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