

УДК 343.8(517)

DOI 10.33463/2712-7737.2021.03(1-3).1.031-034

Batbold G., Sanzhaasuren Z.-O.**Батболд Г., Санжаасурэн З.-О.****PROBLEMS OF PENALTY EXECUTION IN THE FORM OF DEPRIVATION OF THE RIGHT TO FREE MOVEMENT IN MONGOLIA****ПРОБЛЕМЫ ИСПОЛНЕНИЯ НАКАЗАНИЯ В ВИДЕ ЛИШЕНИЯ ПРАВА НА ПЕРЕДВИЖЕНИЕ В МОНГОЛИИ**

Abstract. Mongolia's criminal policy after the legal reform is focused on the use of non-custodial criminal penalties. For this reason, there is a problem of understanding the social and legal content of these types of punishment. The analysis of the current criminal legislation and the practice of sentencing allowed the authors to draw certain conclusions about the problems of application and execution of punishment in the form of restrictions on the right to free movement.

Keywords: criminal punishment, deprivation of the right to free movement, crime.

Аннотация. Уголовная политика Монголии после правовой реформы ориентирована на применение уголовных наказаний, не связанных с лишением свободы. По этой причине возникает проблема понимания социально-правового содержания этих видов наказания. Анализ действующего уголовного законодательства, практики назначения наказаний позволил авторам сделать определенные выводы о проблемах применения, исполнения наказания в виде ограничения права на свободное передвижение.

Ключевые слова: уголовное наказание, лишение права на свободное передвижение, преступление.

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Recommended citation / Для цитирования

Batbold, G. & Sanzhaasuren, Z.-O. 2021, 'Problems of penalty execution in the form of deprivation of the right to free movement in Mongolia', *International penitentiary journal*, vol. 3(1–3), iss. 1, pp. 31–34, doi: 10.33463/2712-7737.2021.03(1-3).1.031-034.

Батболд, Г. Проблемы исполнения наказания в виде лишения права на передвижение в Монголии / Г. Батболд, З.-О. Санжаасурэн // Международный пенитенциарный журнал. – 2021. – Т. 3(1–3), № 1. – С. 31–34. – DOI : 10.33463/2712-7737.2021.03(1-3).1.031-034.

At the end of the XIX century, the question of the expediency of widespread use of punishment in the form of imprisonment and alternatives to this type of punishment began to be discussed. At the Stockholm Congress in 1878, the preventive and rehabilitative role of probation was defined as a measure that provides many benefits to both society and convicts. At the congress held in Rome in 1885, the following alternatives to short-term imprisonment were proposed: a fine, a judicial reprimand, forced labor without deprivation of liberty and restrictions on the choice of work place. The United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955) attention was drawn to the importance of applying non-custodial sentences.

Over the past 5 years, the legal system of Mongolia has undergone considerable changes. A constitutional reform is currently under way. Many changes have taken place in the criminal and penal legislation. In 2015, the new Criminal Code of Mongolia was adopted, and in 2017 – the Law on the Court Decisions Enforcement. New types of punishments were introduced for persons who committed criminal acts: deprivation of the right, socially useful work, deprivation of the right to move. Article 5.2 of the Criminal Code of Mongolia states that the penalty of deprivation of the right to free movement will be applied as the main type of punishment. The penalty of restricting the right to travel cannot be replaced by a fine.

In connection with the adoption of the Criminal Code of Mongolia in 2015, in order to reduce the prison population and reduce the cost of maintaining prisoners sentenced to imprisonment, the court was given the opportunity to impose alternative sentences to imprisonment. But after the start of the Criminal Code, one of the five types of punishment was not applied. This applies to the penalty of restricting the right to move. It was planned to create an electronic monitoring center worth \$ 9.5 million and buy electronic bracelets from South Korea, where these devices are widely used.

It should be noted that in Mongolia there is an increase in crime, which indicates the need to apply modern technological advances to prevent new crimes. So, in 2017, 5,475 crimes were registered, in 2018 – 5,641, and in 2019 – 5,895. In recent years, there has been a trend towards an increase in the number of people sentenced to non-custodial sentences, but the number of people sentenced to imprisonment is also growing (Table 1). First of all, this is due to the non-application of an alternative punishment to deprivation of liberty in the form of restriction of the right to movement.

It should be noted that the punishment in the form of restriction of the right to movement is provided for by more than 100 elements of crimes as the main type of punishment, as an alternative to imprisonment. After the adoption of the Criminal Code of Mongolia in 2015, the

Table 1

Data on the number of imposed sentences

Type of punishment	Number of convicted persons by years		
	2017	2018	2019
Fine	2768	7437	8741
Socially useful works	710	1683	1820
Deprivation of liberty	4596	3245	3505

Source: data from the National Statistical Committee of Mongolia, http://www.1212.mn/tables.aspx-?TBL_ID=DT_NSO_2300_001V1, viewed 14 October 2020.

Table 2

Crime statistics in regions

Region	Number of committed crimes		
	2017	2018	2019
Cities	4191	4373	4607
Other regions	1284	1268	1288

Source: data from the National Statistical Committee of Mongolia, http://www.1212.mn/tables.aspx?TBL_ID=DT_NSO_2300_001V1, viewed 14 October 2020.

application of this type of punishment was postponed until 01.01.2019, and in February 2019 until 01.01.2021. The current situation can be explained by the following reasons:

1. Lack of necessary software and hardware. This should be treated critically, since the calculations for the purchase of such funds from South Korea were carried out in 2015, when the first-generation electronic bracelets were used there. In the future, South Korea will begin to use the latest generation of devices similar to the so-called smart watches, which can determine, in addition to the location, the pulse of a person. The Mongolian people have a proverb “Prepare a can before you milk the cow”, that is, first you should prepare technical means for the application of punishment in the form of restriction of the right to move.

2. As of 2018, Mongolia had a population of 3,238,479. 2,197,970 people lived in cities, 1,040,509 in the regions, and more than 80% of those living in the regions were engaged in cattle breeding (in the steppes). It is also worth noting those who were engaged in reindeer husbandry and lived far from civilization, where to some extent the so-called law of the taiga applies. Naturally, in these areas there are no mobile networks and electricity, which are necessary to maintain the operation of the electronic bracelet. Table 2 shows crime statistics in regions.

Although most crimes are committed in cities, more than 50% of the perpetrators are newcomers from remote areas. It should be noted that in the regions, most committed crimes are such as cattle theft, for which the penalty is provided in the form of restriction of the right to move from 6 months to 5 years. For example, in 2019, 1,681 cattle thefts were registered (in the regions).

So, restriction of freedom as the main type of punishment, not related to deprivation of liberty, was introduced in the new Criminal Code of Mongolia. But 3 years after the beginning of the Criminal Code, we could not see its real application and judge the shortcomings, develop measures for its further improvement. It remains questionable whether this type of punishment will be effective for people with a special way of life.

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