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PROBATIONARY SUPERVISION: CONCEPT, SUPERVISORY REQUIREMENTS, LEGAL CONSEQUENCES, IMPLEMENTATION PROCEDURE

Abstract: The article considers a new probation institution, the relevance of which is associated with the policy of humanizing criminal punishment, implemented in the current criminal, criminal procedure, criminal executive codes of the Kyrgyz Republic. The problem of limiting the use of imprisonment in the practice of combating crime is very relevant for the Kyrgyz Republic. The maintenance of such a large number of citizens in correctional institutions places a heavy burden on the state budget, hinders the solution of many social problems, and promotes the spread of the customs and traditions of the criminal environment. Issues related to the development of alternative forms of punishment and the expansion of their application, the creation of an effective probation service is another contribution to the successful implementation of judicial reform. The development of a probation service is essential to reduce the amount of torture, inhumane treatment in closed institutions and the rate of recidivism committed by persons who have previously served their sentences.

Key words: probation, humanism, reform, probation, supervision, alternative, recurrence, correction of the convict.

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Introduction

In the context of criminal law reform, a new institution has been introduced in the Kyrgyz Republic - probation, which combines state coercion measures. The new probation law provides for the possibility of a more humane punishment, not related to the deprivation of liberty of persons who committed a minor crime. The idea of the depenalization of criminal punishment, which is one of the directions of the criminal policy of the state in combating crime, is outlined.

A modern understanding of probation did not take shape right away. This institute appeared in England in 1887, in connection with the adoption of the Law "On the test of the first convicts." In 1907, with the adoption of the Law on the Testing of Criminals, this institution was finally formed in English criminal law. Currently, probation rules are consolidated in the criminal justice laws of 1948 and

1967. In addition, in 1965, the Probation Rules were published [1]. In the XX century in the West, this term (from the Latin. Probation ozn. - test) was used as a synonym for conditional conviction along with parole - parole. Similarly, as well as supervision under probation, probation was also understood in Soviet penitentiary science [2]. The 1964 European Convention on the supervision of conditionally convicted or conditionally released offenders also does not apply this concept, limiting itself to the obligations of states to monitor offenders [3].

So, probation is a type of conditional punishment in which a person sentenced to a trial period established by a court is taken under the supervision of special authorities. Probation can be considered as: a type of criminal punishment; crime prevention measure; the system for the execution of alternative sentences; the process of correction of the convict; form of social and legal control. Probation consists in

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monitoring the behavior of the person under investigation or convicted, fulfilling the duties assigned to him by the court, with the aim of correcting and resocializing, correcting behavior, as well as preventing him from committing new offenses.

The purpose of the probation is to reduce recidivism and stimulate law-abiding behavior, promote the inclusion of the offender in society, and ensure the safety of society and the state. Typically, probation is provided for crimes of minor gravity and less serious. Probation can be chosen as a measure of responsibility only if the defendant expresses readiness to comply with all the requirements, to comply with all restrictions established by the court.

Already in the second half of the 18th century, in many developed countries of the world the use of imprisonment, especially for a short time, was sharply criticized for the inability to solve the main task of imprisonment for social rehabilitation and correction of offenders. The result of the concern of the world community at the present stage is the emergence of special international standards on legal sanctions; alternative to imprisonment. The UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), adopted by the UN General Assembly on December 14, 1990, indicate that “alternatives to imprisonment may be effective means of dealing with offenders in society as“ in the interest of of offenders and society.”The guidelines for the re-socialization of offenders are clearly expressed in Recommendation (92) 16 on the European rules on the application of public sanctions and penalties adopted in 1992 by the Council of Europe.

Today, world, and especially European civilizations, see international standards not as alternatives to imprisonment, but as basic penalties not related to deprivation of liberty, which should be applied in the first place. Deprivation of liberty should be resorted to only in exceptional cases, when this is in the interests of the safety of the victim, society and the process of re-socialization of the convicted person. And if the countries of the West already have quite a lot of practical experience in applying punishments without isolation from society, then many countries of Eastern Europe, Central Asia, including Kyrgyzstan, are just beginning to put them into practice. International standards do not offer an exhaustive list of alternative sanctions, but open up opportunities for the individual approach of the legislator in each particular country.

One of the elements of a system of measures not related to deprivation of liberty is probation, its varieties and modifications, as well as probation. As the studies of foreign authors show, it is precisely these institutions that attract the increasing attention of theoreticians and are widely used in the practice of many states. The works of Russian scientists P.I.I. are devoted to the formation and development of the

institution of probation abroad. Lublinsky, N.S. Tagantseva A.A. Piontkovsky, N.S. Timashev (end of IX beginning of XX century). A significant contribution to the study of probation was made by Russian scientists M.R. Geta, K.F. Gutsenko, B.C. Krylov, N.N. Polyansky, G.S. Merkulov, V.A. Utkin, N.B. Khutorskaya, V.P. Shupilov N.A. Struchkov, etc.

For example, in America, probation has existed for more than 150 years, and during this time it has undergone a number of significant changes. Under US criminal law, probation is a form of punishment based on conditional conviction and deferral of execution. 1878 was established at the state level of the probation service in the USA. This service appeared in Massachusetts first. Attempts to enact federal probation legislation have been made since 1908, but the corresponding law was adopted only in 1925. The USA is the world leader in terms of numbers 2.2 million people serving sentences in correctional institutions, the total number of convicts in the country, this is a quarter of prisoners of the entire globe, although the US population makes up only 5% of the world's population.

In modern Japan, the probation institute occupies a very worthy place in the system of crime prevention measures. The Japanese probation combines the “western” features and characteristics of national traditions for the prevention of socially dangerous behavior. It seems that the probation institution in Japan currently has strong roots and is inseparable from its legal system. Obviously, the low crime rate in the country largely depends on the successful functioning of social control mechanisms in society. Among these mechanisms, probationary experience is very valuable, in which positive features of development undoubtedly prevail.

And Swedish law provides for probation. Moreover, it has its own characteristic features and is regulated in the UK Criminal Code in great detail. Probation may be assigned as an independent criminal law measure in cases where the court concludes that a fine is not sufficient. At the same time, probation as a set of specific measures may accompany parole.

In the Republic of Moldova, the Law on Probation has been in force since 2008. In early 2016, such a legislative act was adopted in Armenia, and in Ukraine it entered into force in 2015.

According to Article 83 of the Criminal Code of the Kyrgyz Republic “Exemption from punishment using probationary supervision”, the court, when imposing a sentence of imprisonment for a term not exceeding five years, taking into account the gravity of the crime, the identity of the perpetrator, his consent to the use of probation and other circumstances of the case, will conclude about the possibility of correction of a convicted person without serving a sentence, may decide to release him from serving a sentence using probation supervision (probation), which is a

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compulsory incentive measure of criminal law influence.

Probation does not apply to persons convicted of grave or especially grave crimes, foreign citizens and stateless persons temporarily residing in the Kyrgyz Republic, as well as to persons who have committed an infringement on the sexual inviolability of a minor.

The Criminal Executive Code of the Kyrgyz Republic contains article 165, which establishes probation supervision (probation) as the activity of a probationary body to monitor the execution of convicted duties assigned by the court and their behavior, as well as provide them with a set of social and legal measures developed and implemented individually in relation to a person under probationary supervision, to adjust his behavior in order to correct and re-socialize the convicted person, as well as to prevent him from committing new crimes, misconduct, and other offenses.

To date, Kyrgyzstan in the world prison index is 88 out of 200 (178 convicts per 100 thousand people). According to the general prison rating, Kyrgyzstan takes 92 place (10 thousand 574 convicts) according to the data provided by the State Penitentiary Service of the Kyrgyz Republic dated January 10, 2019 [4].

Probationary supervision is carried out by the probation authority and the command of military units and institutions (in relation to military personnel). During the probationary period, the court, on the recommendation of the probation authority, can completely or partially cancel or supplement the probationary obligations previously established for the convict. Probationary supervision is carried out in respect of clients released by the court from serving a sentence of imprisonment for the period established by a court decision. The term of probation supervision shall be calculated from the day the convicted person is registered with the probation authorities. The territorial probation authorities shall not later than 3

business days from the date of registration of the judicial act, which entered into force in the register of incoming messages, notify the border service of the Kyrgyz Republic of the establishment of restrictions on the departure of the client from the Kyrgyz Republic.

The grounds for lifting the restriction on the client's departure from the Kyrgyz Republic are:

- serving the sentence imposed by court order;
- annulment of the court decision with the termination of the case;
- expiration of probationary supervision;
- exemption from punishment by virtue of an amnesty act;
- a positive decision of the territorial probation authority (at the request of the client) on a short-term trip outside the Kyrgyz Republic due to exceptional personal circumstances (in case of death or serious illness of the spouse, close relative, client's business trip);
- death of a client or the need to treat a client outside of Kyrgyzstan.

Legal consequences of probationary supervision.

1. Upon the expiration of the probationary period, the convict who has fulfilled the supervisory requirements and the probationary duties assigned to him and has not committed a new crime or misconduct shall be deemed to have served his sentence.

2. If the convicted person has violated the supervisory requirements and the probation duties assigned to him two or more times during the year, without justifiable reasons, the probation authority shall submit a submission to the court to cancel the probation supervision.

3. If a convict commits a new crime or misconduct during a probationary period, the court shall punish him in accordance with Section 79 of the Criminal Code based on the aggregate of sentences.

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