

ABSTRACT

of the dissertation by Primkulova Almagul Almatovna on the topic «Legal regulation of the execution of punishment in the form of restriction of freedom in the Republic of Kazakhstan», prepared for the degree of Doctor of Philosophy (PhD) under the educational program 8D12301 – «Law enforcement»

The dissertation work is a scientific study based on theoretical and legal foundations devoted to a comprehensive analysis of the institution of restriction of freedom as a leading alternative punishment to imprisonment in the Republic of Kazakhstan. Within the framework of the dissertation research, the author analyzed the legal nature of the institution in question, the procedure and conditions for the appointment and execution of this punishment, and also gave socio-demographic, criminal-legal and criminal-executive characteristics of convicts, in respect of whom a punishment in the form of restriction of freedom was applied. The results of the dissertation research were conclusions and proposals of a theoretical, legislative and practice-oriented nature aimed at improving the institution of restriction of freedom in the national system of punishment.

The relevance of the dissertation research is due to the socio-economic and legal transformations taking place in the state, which required further improvement of national legislation, including those aimed at combating crime. The modern criminal policy of the Republic of Kazakhstan is aimed at the formation of non-traditional forms and methods of criminal proceedings that meet global trends in the development of the justice system. An important link, along with the criminal law and criminal procedure directions, is the penal enforcement, which is responsible for the implementation of the restoration of social justice, the formation of the offender's legal and moral consciousness, as well as private and general prevention.

The Concept of the Legal Policy of the Republic of Kazakhstan until 2030 reflects the key aspects aimed at the further development of criminal proceedings. Thus, maintaining a balance between punitive, restorative and preventive elements is of particular importance in the regulation of criminal legal relations. Based on this, compliance with the principle of proportionality of punishment with the criminal law prohibition remains strict.

For a long time, deprivation of liberty has been the main and dominant coercive measure in the punishment system. This experience led to inevitable negative consequences (loss of socially useful connections, personality deformation, loss of reputation, termination of labor relations, growth of post-penitentiary crime, large economic costs, etc.), which had to be solved in a humane, cost-effective and standard ways. In this regard, the most correct solution was the widespread use of alternative punishments to deprivation of liberty, in which restriction of liberty took a central place as a promising and appropriate punishment measure.

To date, this type of punishment is used most often among other measures not related to isolation from society. In 2024, the number of sentences in the form of restriction of liberty amounted to 42,198 (in 2023 – 47,711, in 2022 - 47,537, in

2021 – 46,435,) out of a total of 56,926 convicts in 2024 (2023 – 64274, 2022 – 66532, 2021 - 67295,) the number of criminal law measures not related to isolation from the company, which totaled 74.1% (in 2023 – 74.2%, in 2022 – 71.4%, in 2021 – 69%).

As a result of the consistent implementation of the state policy on humanization and the reduction of the repressiveness of criminal legislation and criminal procedure, in recent years the number of persons sentenced to restriction of liberty in the Republic of Kazakhstan has been increasing every time. Based on this, the relevance and significance of the subject under study is beyond doubt.

It should be noted that since the legislative consolidation of the restriction of freedom as a type of criminal punishment, a number of domestic representatives of the scientific community have noted its unconditional effectiveness, meeting the social and political and legal needs of modern society, allowing solving the problems of justice in the context of the idea of humanization and justice. Nevertheless, the issues of achieving the goals of punishment in the form of restriction of freedom by correlating the tasks set with the current legislative regulation and law enforcement activities remain unchanged. Significant problems arise at the stage of execution of the restriction of freedom in terms of the implementation of probation control, bringing the convicted person to disciplinary responsibility, his re-socialization and preventing him from committing new criminal offenses.

These circumstances indicated the need for a comprehensive study of punishment in the form of restriction of freedom, in the context of the analysis of the current criminal law and penal enforcement mechanism of implementation, as well as the development of proposals for the development of the legal institution in question.

The degree of scientific elaboration of the problem. The development and research of problems related to certain aspects of the appointment and execution of punishment in the form of restriction of liberty and related institutions have previously been subjected to scientific research. Thus, the following works were devoted to the study of various aspects of criminal legal measures not related to isolation from society, including restrictions on freedom: Akimzhanova T.K., Ayubaeva M.A., Baltabaeva K.Zh., Bachurina S.N., Belyaeva L.I., Boyko S.B., Geta M.R., Dvoryanskova I.V., Zholdaskalieva S.M., Kairzhanova E.I., Kulmukhanbetova B.A., Pertli V.A., Rakhmetova S.M., Rakhimberdina K.H., Rogova I.I., Mikhlina A.S., Mukanova M.R., Salamatova E.A., Seleverstova V.I., Simonova Yu.I., Skakova A.B., Sleptsova I.V., Teplyashina P.V., Titarenko A.P., Utkina V.A., Shafigullina C.F., Shnarbayeva B.K., Shulga A.A. and a number of others.

The works of these authors have made a significant contribution to the disclosure of the essence and meaning of punishment in the form of restriction of freedom and the institution of probation. At the same time, the available works do not exhaust all the theoretical and practical problems of implementing punishment in the form of restriction of freedom. At the same time, a number of works were

prepared on the basis of foreign legal frameworks that have significant distinctive features with national legislative regulation and law enforcement activities.

The need for a special study of the effectiveness of probation control in relation to those sentenced to restriction of liberty is also due to the fact that until now this institution has not been subjected to a comprehensive study. At the same time, an analysis of the norms of the current legislation regulating the implementation of probation in relation to those sentenced to restriction of liberty, and the practice of its application shows that there are certain shortcomings in the regulation of this institution. Therefore, despite significant achievements, a number of important aspects of this problem still remain insufficiently investigated.

These circumstances determined the relevance of the topic of the dissertation research, and prompted us to address such a serious and important problem as a comprehensive study of the institution of restriction of freedom in the Republic of Kazakhstan to develop scientifically sound recommendations for its improvement.

The purpose of the dissertation work is a comprehensive study of theoretical and practical problems of execution and serving of punishment in the form of restriction of freedom to improve the legislation regulating it, as well as to increase the effectiveness of law enforcement activities of law enforcement agencies in the field under study.

The achievement of the presented goal necessitated the solution of the following **tasks:**

- to define the concept, essence and meaning of restriction of freedom in the system of criminal penalties;

- to study international documents and best practices of foreign countries in the field of regulation of the execution of the type of punishment under study;

- to investigate the directions of development of the legal regime for the execution of restrictions of freedom in combination with probation control as the main way of its implementation;

- to give socio-legal, criminal-legal and criminal-executive characteristics of the personality of those sentenced to restriction of freedom;

- to develop recommendations and proposals for improving legislation regulating the execution of punishment in the form of restriction of liberty, as well as to improve the effectiveness of law enforcement activities of law enforcement agencies in the field under study.

The methodological and theoretical basis of the study were the basic provisions of the dialectical method of cognition, which allow reflecting the relationship between theory and practice, the form and content of the subject of research, as well as the conceptual provisions of criminal, criminal procedure, penal enforcement law and other branches of law regulating the institute of probation. In addition, special methods of cognition were used: historical, logical, comparative legal, system-structural, and other private scientific research methods.

The theoretical basis of the study was made up of scientific developments of domestic and foreign specialists concerning the problems of execution of sentences not related to the isolation of convicts from society, in particular, restrictions on freedom and the implementation of probation activities.

The scientific novelty of the study is that, for the first time in the legal science of the Republic of Kazakhstan, on the basis of the current national legislation regulating the appointment and execution of criminal penalties not related to the isolation of convicts from society, the norms of other branches of law, international legal documents, a comprehensive study of the institution of restriction of freedom has been implemented.

Taking into account the analysis and critical understanding of the existing views on this issue, the dissertation outlined the author's definitions of "restriction of freedom" and "enhanced probation control". A number of provisions have been formulated aimed at improving the legislative regulation and law enforcement practice of the execution of punishment in the form of restriction of freedom in terms of calculating the term of punishment for a person released from a penitentiary institution on the basis of Article 73 of the Criminal Code of the Republic of Kazakhstan, as well as the implementation of forced labor performed by a convicted person to restriction of freedom. The author's system of disciplinary punishment has been developed, which arises in relation to a convicted person in case of violation of the order and conditions of serving the restriction of freedom. The problematic aspects of the system of assessing the risks of committing a criminal offense that take place at the institute of restriction of freedom are presented.

The main provisions submitted for protection:

1. In order to develop the national doctrine of penal enforcement law in the field of the system of punishment by expanding the conceptual and categorical apparatus, the author formulated the following definitions:

«Restrictions on freedom are one of the types of criminal penalties alternative to deprivation of liberty, consisting in the establishment of certain duties and prohibitions for the period provided for by criminal law, aimed at restricting the constitutional right of the convicted person in the form of freedom of movement»;

«Enhanced probation control is the activity of the probation service and the police to exercise intensive control over persons registered with them who have a high risk of committing new criminal offenses».

2. . In order to establish the historical aspect of the formation and development of restriction of freedom in the punishment system of sovereign Kazakhstan, the following periodization is proposed:

The first period (1959-1997) is characterized by the absence of such punishment as restriction of freedom, however, there is an institution of conditional imprisonment with mandatory labor, provided for in Article 23-2 of the Criminal Code of the Kazakh SSR, which has quite a lot in common with the type of punishment under study.

The second period (1997 – 2002) consists in the emergence of the institution of restriction of freedom as an independent type of punishment in the Criminal Code of the Republic of Kazakhstan adopted in 1997 and the Criminal Executive Code of the Republic of Kazakhstan. The restriction of freedom functioned according to the principle of "partial isolation", the essence of which is to keep a

convict in a correctional center, limited in freedom of movement, place of residence and place of work.

The third period (2002-2011) is based on the transformation of the procedural side of punishment, by serving it at the place of residence of the convicted person under the supervision of the penitentiary inspectorate. In addition, the restriction of freedom began to be applied to minors sentenced to one to two years of age.

The IV period (2011-2014) is expressed by an increase in the sentence from five years to seven years.

The V period (2014 – present) consists in the implementation of the restriction of freedom in the context of the current probation system in Kazakhstan. Its features include: the establishment of probation control, the use of forced labor, the execution by the probation service and the provision of social support to the convict.

3. In order to eliminate the existing legislative conflicts and shortcomings, as well as to increase the effectiveness of the execution of one of the measures of restriction of freedom in the form of attracting a convicted person to forced labor, it is proposed:

a) State the norm in the form of clause 6) Part 2 of Article 67 of the Criminal Code of the Republic of Kazakhstan in the following form: "evasion from performing forced labor without valid reasons provided for in paragraphs 1) and 2) Part 3 of Article 60 of the Criminal Code of the Republic of Kazakhstan".

б) Make an addition to Part 3 of Article 69 of the Criminal Code of the Republic of Kazakhstan in the form of the following norm: «In the case of employment or study of a convicted person, the probation service makes a submission to the court for the abolition of the established forced labor».

4. In order to establish the calculation of the term of serving a sentence in the form of restriction of liberty in respect of persons released from places of deprivation of liberty in accordance with Article 73 of the Criminal Code of the Republic of Kazakhstan, it is proposed to expand Article 64 of the Criminal Code of the Republic of Kazakhstan by introducing the following norm:

«In case of replacement of the unserved part of the sentence with a milder type of punishment, the term of serving the sentence in the form of restriction of freedom is calculated from the date of release of the convicted person from the institution of the penal system. The time of the convicted person's journey from the institution of the penal enforcement system to the place of residence or place of stay is counted in the term of serving a sentence in the form of restriction of freedom. В срок ограничения свободы не засчитывается время самовольного отсутствия осужденного по месту жительства свыше одних суток без уважительных причин».

5. a) In order to form an integral and progressive system of recovery of persons sentenced to restriction of liberty, disciplinary measures have been developed that arise for violations of the order and conditions of serving a sentence:

reprimand;

severe reprimand;

establishment of enhanced probation control;
a written warning about the possibility of replacing the restriction of freedom with deprivation of liberty.

b) On the basis of the above system of penalties against a person sentenced to restriction of liberty, the author proposes to amend and supplement Article 68 of the Criminal Code of the Republic of Kazakhstan, stating it in a new edition:

«1. For violation of the order and conditions of serving a sentence in the form of restriction of freedom, a penalty in the form of a reprimand is applied to the convicted person. In case of repeated violation within a year, a severe reprimand is announced to the person sentenced to restriction of freedom.

2. In relation to a convicted person who maliciously violates the order of serving a sentence, the probation service establishes enhanced probation control. For the subsequent commission of a violation under Article 67 of the Criminal Code of the Republic of Kazakhstan, the probation service submits materials to the court to resolve issues of replacing the restriction of liberty with deprivation of liberty».

v) Amend paragraph 1) of Part 2 of Article 67 of the Criminal Code of the Republic of Kazakhstan, replacing the word "repeated" with "repeated" and state it in the following wording: "repeated commission of violations specified in part one of this Article».

6. In order to improve the penal enforcement legislation in terms of the expiration of the term of serving a sentence while a person sentenced to restriction of liberty is on the wanted list, it is proposed to supplement paragraph 4 of Article 67 of the Criminal Code of the Republic of Kazakhstan and state it in the following wording:

«4. The duration of probation control is suspended from the moment the court decision on the wanted list of a person sentenced to restriction of liberty has entered into legal force, and is resumed by court order».

Description of the main results of the study. The most significant results achieved in the course of the study are the following aspects:

Result 1. Within the framework of the study of the doctrinal foundations in the field of the institution of restriction of freedom, the scientific definitions of "restriction of freedom" and "enhanced probation control" are formulated.

Result 2. In the course of the study of the historical aspect, a periodization of the formation and development of restriction of freedom in the punishment system of sovereign Kazakhstan is proposed.

Result 3. In the process of legal analysis of forced labor applied to persons sentenced to restriction of liberty, a number of problematic aspects have been identified, the solution of which is provided for by the proposed legislative provisions in Articles 60, 67, 69 of the Criminal Code of the Republic of Kazakhstan.

Result 4. Within the framework of the procedural procedure for the execution of restrictions of freedom, issues related to the calculation of the term of the punishment in question in relation to persons released from places of deprivation of liberty on the basis of Article 73 of the Criminal Code of the Republic of

Kazakhstan have been identified, in connection with which the author's version of the norm in Article 64 of the Criminal Code of the Republic of Kazakhstan is proposed.

Result 5.. In the course of a comprehensive study of the issue of disciplinary responsibility of persons sentenced to restriction of liberty, who committed a violation of the order and conditions of serving a sentence, the low effectiveness of existing measures was established. In order to increase the effectiveness of the law enforcement activities of the probation service in this area, an author's system of disciplinary measures against persons sentenced to restriction of liberty is proposed.

Result 6 One of the acute issues that arise in relation to convicts put on the wanted list is the lack of legislative regulation on the suspension of the expiration of the term of restriction of liberty. In this regard, a regulatory change and addition to paragraph 4 of Article 67 of the Criminal Code of the Republic of Kazakhstan is proposed.

Substantiation of the novelty and importance of the results obtained..

The scientific novelty of the dissertation research is characterized by obtaining exceptional scientifically based results. The degree of novelty of scientific conclusions and conclusions is determined by the author's approach to the problems of research.

Result 1 is new, since the dissertation on the basis of a comprehensive study of the theoretical base of the institute under study offers the author's vision of the definitions of "restriction of freedom" and "enhanced probation control".

Result 2 is new, since based on the analysis of the historical aspect of the formation and development of restriction of freedom in the punishment system of sovereign Kazakhstan, there was no formulation of periodization before.

Result 3 is new, since the current legislative regulation regulating the involvement of a convicted person to restriction of freedom to forced labor is insufficient. In this regard, the author proposes amendments and additions to Articles 60, 67, 69 of the Criminal Code of the Republic of Kazakhstan in order to improve the aspect under consideration within the subject of the dissertation research.

Result 4 is new, since the author proposes an author's version of the norm in the current Article 64 of the Criminal Code of the Republic of Kazakhstan regarding the calculation of the term of restriction of liberty in respect of convicts released from places of deprivation of liberty in accordance with a court order.

Result 5 is new, as it formulates disciplinary measures against persons sentenced to restriction of liberty who violated the order and conditions of serving their sentences.

Result 6 is new, since an amendment is proposed to the current norm in paragraph 4 of Article 67 of the Criminal Code of the Republic of Kazakhstan in the form of suspension of the calculation of the term of restriction of freedom in relation to convicts declared wanted.

The topic of the dissertation research corresponds to state programs.

The dissertation research was carried out in accordance with the program

documents of national importance, which include long-term programs for the development of legal policy of the Republic of Kazakhstan, in particular the provisions of the «Concept of Legal policy of the Republic of Kazakhstan for the period from 2010 to 2020» approved by the decree of the President of the Republic of Kazakhstan dated August 24, 2009 and the «Concept of legal policy of the Republic of Kazakhstan until 2030» approved by Decree of the President of the Republic of Kazakhstan dated October 15, 2021 No. 674. The dissertation research correlates with industry policy documents on improving law enforcement and judicial systems with the «National Development Plan of the Republic of Kazakhstan until 2025» approved by Decree of the President of the Republic of Kazakhstan dated February 15, 2018 No. 636. The structure of the study establishes the relationship of the institute under study with program documents directly related to the activities of law enforcement agencies on the implementation of the probation mechanism and, in particular, with the Roadmap for the modernization of internal affairs bodies of the Republic of Kazakhstan for 2022-2024, approved by Order of the Prime Minister of the Republic of Kazakhstan dated September 9, 2022 No. 146-r, the Concept of ensuring public safety security in partnership with the society for 2024-2028 (in the field of crime prevention).

Description of the doctoral student's contribution to the preparation of each publication.

The main results of the dissertation are published in 8 papers, of which 1 article — in the rating magazine RIVISTA DI STUDI SULLA SOSTENIBILITA; 4 articles are in publications recommended by the Committee for Quality Assurance in the Field of Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan, 3 publications are in the materials of international scientific conferences.

Six articles were prepared by the author alone:

1. Примкулова А.А. «Теоретические и правовые аспекты наказания в виде ограничения свободы» // The journal «KHABARSHI — VESTNIK» of the Karaganda Academy №3(73). Karaganda c., 2021. – С.182-188. (204с.) (Recommended by CQAESMES RK).

2. Примкулова А.А. «Генезис и современное состояние института ограничения свободы в Республике Казахстан» // «BULLETIN OF THE ACADEMY OF LAW ENFORCEMENT AGENCIES» SCIENTIFIC JOURNAL No 4 (22). Kossy c, 2021. –С. 58-65. (106с.) (Recommended by CQAESMES RK).

3. Примкулова А.А. «Институт ограничения свободы по уголовному законодательству ряда государств-участников СНГ (сравнительно-правовой анализ)» // ORGANIZATION AND ACTIVITY OF THE INTERNAL AFFAIRS BODIES ON THE MODERN STAGE: PROBLEMS AND WAYS OF SOLVING THEM International scientific and practical conference dedicated to the 30th anniversary of the Independence of the Republic of Kazakhstan, October 23-26 2021, Kostanay Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Sh.Kabyibaev, 2021. –С.87-92. (554 с.).

4. Примкулова А.А. «К вопросу о применении принудительного труда в

отношении осужденных к ограничению свободы» // «BULLETIN OF THE ACADEMY OF LAW ENFORCEMENT AGENCIES» SCIENTIFIC JOURNAL No 1 (72). Kostanay c, 2022. –С. 165-169. (151с.) (Recommended by CQAESMES RK).

5. Примкулова А.А. «К вопросу о трудоустройстве лиц, осужденных к наказанию в виде ограничения свободы в Казахстане» // International scientific and practical online-conference «PARADIGM OF MODERN SCIENCE IN THE CONDITIONS OF MODERNIZATION AND INNOVATIVE DEVELOPMENT OF SCIENTIFIC THOUGHT: THEORY AND PRACTICE» devoted to the founders of the branch T.Zh. Atzhanov and A.M. Rodnov / Kostanay c., April 12-13, 2022, стр. 127-131. (895 с.).

6. Примкулова А.А. «О некоторых вопросах установления обязанностей и запретов в отношении осужденных к ограничению свободы в судебной практике Республики Казахстан» // International scientific and practical conference «Уголовное право: проблемы, поиски, решения», Belarusian State University, Minsk, October 7-8, 2022 – С. 110-113. (166 с.).

One article was co-authored:

1. Primkulova A., Saligerei I. Karakushev, Alissa K. Issergepova, Gulnara A. Abdirova, Malik R. Mukanov «Improvement of the legislation of Kazakhstan on the prevention of offences by persons sentenced to restriction of liberty» // RIVISTA DI STUDI SULLA SOSTENIBILITA' (ISSN 22391959). Volume 13, Issue 1, pages 267-277, 2023.

2. Примкулова А.А., Муканов М.Р. «К вопросу об исчислении срока отбывания наказания в виде ограничения свободы по законодательству Республики Казахстан» // International scientific journal "Science-Gylym" No. (70). Kostanay c, 2021. – С. 140-144. (150с.) (Recommended by CQAESMES RK). (substantiation of relevance, analysis and main conclusions were prepared by Primkulova A.A.; general correction of the text was carried out by Mukanov M.R.)