The effectiveness of probation as a probationary period following sentencing for criminal offences in the management of transboundary water resources

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Abstract: The article is devoted to the theoretical and practical significance of issues related to the application of probation as a probationary period after the application of punishment for criminal offenses that encroach on the normal functioning of the management of trans boundary water resources. The legislation of the Republic of Kazakhstan has the task of protecting the legitimate interests of individuals and legal entities, society and the state in the context of the application of probation as a probationary period after the application of punishment for criminal offenses that encroach on the use of geo-information technologies in water management and irrigation. Encroaching on the use of geo-information technologies in water management and irrigation

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Introduction
In many modern states, probation is the most important alternative to imprisonment. UN Council Resolution No. on Economic and Social Issues (1951) characterized probation as a "regime of placing on trial" a certain part offenders [1]. In essence, in a broad sense, it can be considered as a form of social and legal control and resocialization in relation to certain categories of persons who have committed crimes and are at large under probationary conditions.

Having arisen in the middle of the XIX century, as a sanction not related to imprisonment and designed to reduce the "fullness" to a certain extent in penitentiary institutions, probation has passed a significant and bright trajectory in its development, becoming a whole method of modern criminal policy, clearly expressed in the recommendations of the European Rules on the Application of Public Sanctions and Measures (1992) [2].

The UN Standard Minimum Rules on the Application of Non-Custodial Measures (1990) pay considerable attention to probation as one of the key alternatives to imprisonment. Its main goal, in accordance with the Tokyo Rules, is to "... reduce the recurrence of offenses and promote the inclusion of the offender in the life of society ..., including psychological, social and material assistance" [3]. Having appeared as a criminal law institution in the USA and Great Britain, probation, since the XIX century, has become very widespread in many states.

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Currently, it has also come to the post-Soviet space. In particular, since 1998, the Probation Supervision Service has been functioning in Latvia, the National Probation Service has been operating in Georgia within the structure of the Ministry of Corrections and Legal Aid, and this system has been successfully operating in Estonia [4]. The crisis socio-economic and socio-political conditions of post-war Europe, accompanied by a new surge in crime, led to the need to organize international police cooperation at a qualitatively new level. In 1946, at a session of the International Criminal Police Commission in Brussels, it was decided to revive its activities in a new format. In 1956 In Paris, the 25th session of the International Criminal Police Commission adopted a Charter in which the Commission was transformed and renamed the International Criminal Police Organization – Interpol (The International Criminal Police Organization – INTERPOL) [5].

**Methods**

As a result of the continuous criticism expressed by the majority of prestigious international organizations and forums, traditional alternatives to direct imprisonment (fines, postponement of imprisonment and probation, as well as public censure and various forms of socially useful work) In the second half of the XX century, they became part of the system of criminal penalties in a number of countries. And despite the fact that in the 1970s imprisonment (including short-term) it was overestimated for various reasons, anyway In Western Europe, this did not affect the independent formation of alternatives as strong elements of the sanctions system [6].

At the same time, new methods of conflict resolution have become widespread in many countries, which should not only replace imprisonment, but also allow avoiding the official criminal justice system. And although these methods are considered informal in nature and are actually carried out without any legislative framework, as mentioned above, in the current conditions they need the support of the official criminal justice system. That is why the new methods, called in the Finnish report "new alternatives", are gradually legalized and receive legislative registration.

Unlike conditional imprisonment, when the court appoints a term of imprisonment and then postpones its execution for a certain period, in the case of probation, the sentencing itself is postponed for the probation period. If the established conditions are not met, the case proceeds to the sentencing stage for the original crime. (The term "probation" is also used in a different meaning – an institution accompanying conditional imprisonment, or postponement of a sentence).

The logic of such a measure as probation suggests that the possibility of application can be established at an abstract level: the legislator determines the criminal offenses to which probation can be applied, specifying the maximum sentence established for these crimes. Probation is usually provided for criminal offenses that are punishable by imprisonment for a maximum of two to three years.

As the term "probation" itself shows, an offender against whom a probation order has been issued is usually subject to certain supervision by a probation officer within a specified period [7]. (In some countries, the execution of a sentence may be delayed even without establishing supervision over the offender. As an example, Hungary can be cited, where the establishment of supervision by a probation officer is mandatory only for minors and repeat offenders, and in other cases the decision of this issue is left to the discretion of the court).

The very essence of probation, that is, the offender's obligation to simply maintain contact with a probation officer, led to a crisis of this institution in those countries where it was deeply rooted and was considered the "basis of alternative punishments". In the United Kingdom, probation orders were issued for about 30% of all offenders convicted on indictment during the 1930s; since then, the use of this punishment has significantly decreased. In addition to the wider use of warnings and a wide variety of public sanctions available to the court, the reason
for this reduction is the loss of confidence in the probation service and the perception of probation as social rehabilitation. Currently, it is emphasized that probation is a type of punishment and is aimed at preventing crimes, attempts are being made to encourage wider use of probation as an alternative to prison conclusion.

Thus, in Germany, the law of 1992, which expanded the scope of application of the refusal of criminal prosecution, is officially called the "law on facilitating the process of administration of justice" [8].

In the United States, after a period that passed under the slogan "conscientiousness in sentencing", which led to the extension of prison sentences, it was for financial reasons that experiments were conducted to introduce alternative sanctions that cost society much cheaper than imprisonment [9].

The emphasis on financial considerations also implies not only the appointment by the court of alternative punishments instead of imprisonment, but also the search for solutions that will make it possible to dispense with legal proceedings in general. At the same time, this has led to the fact that countries that have traditionally relied on mandatory criminal prosecution have become somewhat freer to apply the so-called principle of legality. Thus, in Germany, as a result of the spread of various forms of non-prosecution, it is almost not officially applied the proclaimed "principle of legality" in relation to minor offenses.

However, compared to what it was a hundred years ago, we are also seeing a change in the basic approaches.

At that time, first of all, they sought to avoid sentencing for a short term of imprisonment.

In this sense, traditional sanctions - fines, conditional sentence or probation – seemed to be the most acceptable options. The mentioned types of punishments served in the strict sense of the word as a substitute for short-term imprisonment. This was especially evident in the case of conditional imprisonment, which was considered rather as a way of executing a sentence to imprisonment.

Recognizing the fact that traditional ways of fighting crime are not very effective, legislators are trying to develop new types of sanctions that should solve independent tasks, and are designed not only to avoid imprisonment. The essence of the punishments served in society and developed in the last ten years is to get the offender to fulfill certain requirements that will help him or her to become a normal member of society again. It also means that there is no time the discredited concepts of "social rehabilitation" and "social reintegration" are once again finding support. But they seek to solve all these problems within the framework of society, and not in totalitarian prison conditions. By introducing public sanctions, legislators give courts the right to choose those penalties that differ from traditional ones. In this sense, some of the sanctions considered in the report are alternatives to traditional punishments in general (for example, fines), but not necessarily a replacement of the punishment in the form of imprisonment. They are independent sanctions that pursue their own goals.

The seriousness of probation as a type of punishment is expressed in the fact that, in addition to significant restrictions in the daily life of the offender; they are "hedged" by the threat of direct imprisonment in case of non-compliance with the conditions set.

In the case of a suspended prison sentence, the court sets the sentence in the form of imprisonment, but postpones its execution for the probation period. The possibility of applying a suspended prison sentence, respectively, depends on the term of imprisonment imposed in this particular case and subject to postponement. Most laws allow for postponement in relation to average prison sentences, that is, when the appointed term of imprisonment does not exceed two years. This is the case, for example, in Germany, Italy and Finland. Some jurisdictions, in particular Germany, apply a grading scale. In the case of sentences of up to 6 months, the only precondition for postponement is the failure of the offender to commit further criminal acts. If the issue of postponing a sentence to imprisonment for more than 6 months is considered, the "protection of law and order", that is, general positive preventive aspects, is taken into account.
An additional precondition for postponing a sentence to a term of imprisonment of more than one year is the presence of specific mitigating circumstances in this case.

In addition, additional limiting factors for the application of conditional imprisonment are the personal characteristics of the offender: a criminal record in the past or imprisonment for a certain period before the commission of the act in question in many jurisdictions does not allow the offender to use a suspended sentence. At the same time, there are examples of the abolition of such restrictions in relation to the offender's past misdemeanors: In 1993, Hungary adopted an amendment to the Penal Enforcement Code, which abolished the previous provision that does not allow the postponement of punishment in the form of imprisonment in relation to repeat offenders [10].

With regard to the obligations imposed on the offender during the postponement, first of all, it should be noted that in the classical or conservative form, the conviction of the offender to conditional imprisonment does not provide for any specific obligations, except for the inadmissibility of re-commission of the offense. Such a "pure" form of conditional imprisonment pursues the exclusive goal of protecting the offender from the harmful effects of real imprisonment (mainly short-term).

The replacement of a suspended sentence with a real one depends, of course, on the conditions that are put before the offender. If the law does not place any restrictions on behavior, then replacement can take place only in case of repeated violation of the law.

In almost all laws, a repeated offense leads to the actual execution of a suspended prison sentence if the newly committed offense has a certain degree of severity. In Finland, for example, in the case of a new offense punishable by imprisonment, the suspended sentence is annulled. A somewhat similar situation exists in United Kingdom: here, the commission of a new offense punishable by imprisonment automatically cancels the postponement of execution. In Germany, the condition cancellation is the fact that, by repeatedly violating the law, the offender actually showed that he did not meet the expectations that served as the basis for the postponement. In addition, cancellation does not take place if further offenses can be prevented by changing the probation conditions. Thus, in Germany there is a condition for cancellation, according to which it is carried out if a change in the conditions of probation cannot prevent further commission of offenses. In Belgium, the introduction is partially the aim was to make it possible to apply a suspended sentence, despite the pre-trial detention of the offender, as well as to appoint a short-term prison sentence as a punitive sanction, followed by a longer period of suspended sentence as a deterrent sanction.

In some countries (Senegal) conditional conviction is not an institution of criminal, but of criminal procedural law and is regulated accordingly not by the Criminal Code, but by criminal procedural legislation.

Results

The name of the institution in question may vary depending on the criminal law system or its variety within the same system: probation (most CIS countries, Latvia); conviction with conditional non-application of punishment; release from serving a sentence with probation; conditional release from punishment; suspended sentence; conditional suspension of punishment (Bolivia, Brazil, Guatemala); postponement of execution of the sentence; probation (countries of Anglo-American law).

Currently, the Institute of conditional sentence (probation) exists in almost all countries of the world. However, the laws of different States interpret its legal nature and conditions of application differently.

From the point of view of the legal nature of probation, the following approaches are observed among modern countries:
- conditional sentence (probation) - type of punishment;
- suspended sentence - a special type of criminal sanction along with punishment;
- probation is a special procedure for sentencing or postponement;
- its execution;
- probation is a type of release from punishment.

It should be noted that the legislation of foreign countries often provides for two or more types of conditional sentences. Thus, in a number of countries, simple postponement and postponement of execution (appointment) differ punishment with the transfer of a person under the supervision of a special official who monitors the behavior of the convicted person and the fulfillment of certain duties and rules of conduct (probation).

Probation is considered a more serious measure of criminal impact and can be established for a longer period than a simple postponement. For example, under the Macedonian Criminal Code, protective supervision is appointed in the case when, in the opinion of the court, just a suspended sentence will not have a sufficient corrective effect on the offender, but the purpose of a suspended sentence can be achieved if measures of assistance, supervision or protection are applied to the convicted person. In Japan, the establishment of protective supervision is mandatory only for persons already those who had a criminal record, in other cases, the issue is decided by the court at the discretion of the latter [11].

**Discussion**

If we consider probation from the point of view of procedure in modern criminal legislation, we can distinguish two types of conditional sentences: postponement of sentencing and postponement of execution of punishment. In a number of countries, both of these types are provided as independent institutions. At the same time, in most of these States, probation is established in the order of postponement of sentencing, whereas postponement of execution of punishment means a simple postponement. When postponing the imposition of punishment, the court indicates in sentence only probation period (probation period) and the conditions that must be met during this period. In cases of violation of probation conditions or commission of a new crime, the court determines the punishment. Thus, the appointment of a real punishment for the cancellation of probation depends not only on the fact that a person has committed a new crime, but also on the behavior of the convicted person during the probation period.

Along with the actual conditional conviction, the Criminal Code of some countries also provides for the following institutions that are similar in purpose, but differ in their legal nature:
- conditional suspension of criminal prosecution by the decision of the prosecutor (Iceland);
- conditional release from criminal liability (Moldova);
- conditional suspension of the trial (Argentina);
- conditional termination of criminal proceedings (Poland);
- postponement of sentencing (Peru).

Thus, in Poland, along with the possibility of postponing the execution of punishment according to the Criminal Code, the court may resort to conditional termination of criminal proceedings if the guilt and social harm of the act are insignificant, the circumstances of its commission are beyond doubt, and the appearance and behavior of the perpetrator, who does not have a criminal record for an intentional crime, the characteristics and qualities of his personality, as well as lifestyle in the past suggests that the contractor, despite the termination of production, will comply with the norms of law and order, in particular he won't commit a crime.

In Argentina, a person accused of a crime, upon the commission of which a criminal case is officially initiated and for the commission of which a sentence of hard labor or imprisonment for a term not exceeding three years is imposed, has the right to apply for a conditional suspension of the trial.

Under the Criminal Code of Moldova in relation to a person accused of committing a minor crime or a crime of medium to person who has admitted his guilt and does not pose a public danger may be conditionally terminated criminal prosecution with subsequent release from
criminal liability in accordance with the criminal procedure, if the correction of such a person is possible without the application of criminal punishment.

In France, the institution of deferral is fixed in the current Criminal Code in two main types: 1) in the form of a delay in the execution of punishment and 2) in the form of a delay in the imposition of punishment.

In the USA, there is a rather motley picture of a combination of different systems in the organization of the execution of imprisonment in the whole country and in individual states. The most common punishments are fines, probation and imprisonment. The Institute of probation is close in its essence to the criminal law institute of conditional sentencing operating in Russia, and in terms of its real content it is a kind of criminal punishment not related to deprivation of liberty. Mandatory probation conditions - imperfection during the term probation of a new offense provided for by federal or state law. If, simultaneously with the sentence to probation, the sentence to a fine comes into force, then the payment of the fine also becomes a prerequisite for probation.

Additionally, alternative probation conditions appointed by the court may be:
- material support of persons who are dependent on the convicted person, as well as the performance of other family duties;
- implementation of restitution in respect of the victim;
- conscientious work, passing a course of professional training in order to subsequently perform a suitable job;
- abstinence from any specific performance of an occupation, business or work;
- abstinence from visiting certain places and communicating with certain persons;
- abstinence from excessive alcohol consumption or unauthorized narcotic and other substances under control by a special medical worker;
- abstaining from possession of a destructive device, firearms or other dangerous weapons;
- undergoing affordable medical, psychiatric or psychological treatment (including for alcoholism, drug addiction) with a stay, if necessary, in an institution specified by the court.

If the convicted person violates the probation conditions during his or her departure, then at the initiative of the probation service, the court may make the following decisions:
- to continue probation with or without extension of the its term, with or without changing the conditions;
- cancel the sentence to probation and appoint another punishment that can be applied for the criminal act committed.

In the UK, non-custodial measures include: postponement of sentence, probation, provision of services to society [12].

**Conclusion**

The goals of the punishment have been achieved even before its appointment. The Crown Court or Magistrate's Court may delay the sentencing for a period of no more than six months after the indictment. The court, taking into account the criminal encroachment, the identity of the perpetrator and other circumstances, issues a probation order, according to which the convicted person will be under the supervision of the probation service for a period determined by the order (from one to three years). The court may impose on the convicted person duties that should contribute to his good behavior and the prevention of recidivism. At the same time, the convicted person is obliged to live in a correctional hostel, correctional facility or other institution. A court order on probation may include a requirement for a convicted person to visit a day-care center.

In case of violations of probation conditions, the court may:
- summon the convicted person;
- issue an order for his arrest;
- impose a fine on the convicted person.
The court, having established that the convicted person no longer needs the probation regime, on the basis of the application of the convicted person or a representative of the probation service, may issue an order to transfer from it to conditional release (for the remaining probation period) provided that a new crime is not committed during this period.

A serious type of punishment without imprisonment is an order "On the provision of services to society", which consist in performing free work (from 40 to 240 hours). This order is appointed with the consent of the offender and if there are conditions for its actual execution. The execution of the order is carried out by the probation service. The convicted person, in respect of whom the order on the provision of services to the society has entered into force, is obliged to inform the probation service about the change of place of residence, as well as to perform such work at the time specified by the head of the probation service. The work continues, as a rule, for a year. If the convicted person fails to comply with the requirements of the order for the provision of services the Magistrate's Court or the Crown Court may apply punitive or other measures to the convicted person, as well as cancel (in accordance with the competence of the court) this order and proceed to a different punishment by using the provisions of precedent and statute (criminal, criminal procedure, penitentiary) rights.

The analysis of foreign legislation on the use of probation as a criminal form of punishment in various foreign countries suggests that against the background of ongoing reforms in the system of execution of sentences in Kazakhstan, taking into account the reduction of colonies for those sentenced to imprisonment, this type of criminal punishment may have wider application in Kazakhstan.

References