

## Relevant problems of humanisation of the execution of liberty deprivation under the legislation of Kazakhstan: An international comparative analysis

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**Abstract.** This research's relevance lies in the nation's continuous initiatives to reform Kazakhstan's criminal justice system, reduce recidivism rates, and coordinate its penal policies with international restorative justice standards, especially as it aims to reduce dependence on incarceration and improve the efficacy of probation and alternative sentencing strategies. The purpose of the study was to identify new forms of influence on criminals in the context of restorative justice. This study utilised comparative legal analysis, doctrinal legal research, and functional legal analysis to assess the efficacy of restorative justice and alternative sentencing in Kazakhstan, Germany, Spain, and the United States. The analysis of the fundamental international documents that regulate the legal status of persons convicted of a criminal offence using mitigating penalties and their impact on the formation of national criminal law is conducted. The study indicated that restorative justice procedures, including probation, suspended sentences, and mediation, result in reduced recidivism rates and enhanced rehabilitation efficacy relative to solely punitive methods in Kazakhstan. The comparative analysis indicated that Germany and Spain have systematically incorporated restorative justice into their legal frameworks, facilitating more effective offender reintegration, while Kazakhstan continues to emphasise incarceration, leading to elevated recidivism rates and financial burdens for the penal system. The results substantiated that alternative sentencing alleviates prison congestion and diminishes state costs, reinforcing the assertion that Kazakhstan's legislative system necessitates more modifications to conform to worldwide best practices. The practical importance of this study is to identify new instruments of influence on persons who are criminally responsible from the standpoint of restorative law, humanisation of criminal law, rehabilitation practice, and international experience in influencing offenders

**Keywords:** restorative justice; criminal offence; mediation; out-of-court settlement mechanisms; mediation

### Introduction

The development of international law has led to increased social standards and radically changed the approach to the issue of correction and adaptation of offenders. In many countries, the practice of reducing the use of deprivation of liberty and replacing it with alternative methods has

emerged. The rising need to overhaul Kazakhstan's criminal justice system, especially in relation to restorative justice methods and alternative sentencing, defines the importance of this study. Despite continuous improvements, Kazakhstan has high imprisonment rates and a mostly punitive attitude

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to criminal sanctions, which does not sufficiently solve problems including recidivism, rehabilitation, and social reintegration. At the regional level, as incarceration is still the major form of punishment, Central Asia struggles similarly in juggling punishing policies with restoring strategies. To lower the social and financial consequences of incarceration, the worldwide trend stresses, nonetheless, rehabilitation, community-based alternatives, and mediation techniques. International legal tools support criminal justice systems to embrace more humane methods by integrating the Bangkok Rules and the United Nations recommendations on non-custodial measures. This study adds to the theoretical and pragmatic debate in legal research on criminal mediation, its incorporation into national legal systems, and the efficacy of alternative sentencing in lowering recidivism and thereby fostering social reintegration. The results will offer insightful analysis of the institutional and legislative requirements for the effective use of restorative justice methods in Kazakhstan, therefore matching the national legal system with contemporary international norms.

A.A. Biebayeva *et al.* (2021) investigated the dynamics of the development of the criminal legislation of the Republic of Kazakhstan. They identified the trend of humanisation in criminal prosecution by way of exemption from criminal liability, expanding the grounds for exemption from criminal punishment and parole. The international community has drawn attention to the use of correctional labour as punishment for criminal misconduct. The Republic of Kazakhstan's young population is facing a situation of concern regarding the lack of employment.

Due to the development of international law and the growth of social standards in society, the approach to the issue of correction and adaptation of offenders has changed substantially. D. Mukasheva *et al.* (2023) concluded that in 2021, only three applications were sent to the national provider of social project funding for the social support of released citizens. This shows that non-governmental organisations are not giving rehabilitation services enough attention, even though Kazakhstan has made changes to improve social rehabilitation mechanisms for citizens who have been released from detention. Emphasising the need for exemption from punishment for people demonstrating genuine repentance and a dedication to lawful behaviour, A. Ryssaldiyeva *et al.* (2019) found that the effective realisation of the preventive functions of criminal punishment in Kazakhstan depends on a fair and lawful penal correction system. They support a mixed strategy that preserves liberalism and humanism in punishment, therefore assuring that these values do not compromise the fairness and inevitable nature of criminal penalties. I. Palvanov (2020) paid attention to the use of probation as an alternative to imprisonment. In world practice, probation is considered the best way to contribute to the correction and rehabilitation of a convicted person. Probation services in different countries perform different functions, ranging from monitoring convicts, conducting preventive and educational work, ending with the introduction of various innovative programmes that help reduce crime. There is also a problem in the implementation of prison system programmes due to insufficient funds for their implementation. Criminal punishment in the form of imprisonment has many negative properties. It should not violate generally accepted human rights and cause physical suffering. The strategy regarding persons, depending on the

severity of the offence, can be implemented in two directions: exemption from criminal liability and mitigation of punishment (Spytska, 2023).

Drug use often leads to criminalisation, especially among the younger generation of people. R. Tanwar (2023) conducted an analysis of the situation that has developed in connection with crimes committed by minors in India. The country's legislative framework allows for the prevention, treatment, and rehabilitation of drug abusers. Despite this, there are problems in the implementation of the rights of minors, namely: limited access to specialised medical institutions, low awareness of the population, lack of coordination between departments. Violations of the rights of such persons were observed in court proceedings and in correctional institutions. The humanisation of responsibility for criminal offences generates new forms of influence on offenders. A. Korenyuk (2019) described one of the most popular alternative ways to resolve conflicts – mediation. The involvement of a mediator helps the parties to the conflict to establish a communication process, analyse the conflict situation in such a way that the parties themselves can choose a solution that satisfies the interests and needs of both parties to the dispute. Mediation between the victim and the offender is designed to conclude agreements reflecting the offender's responsibility for the loss and suffering of the victim through compensation (Khovpun *et al.*, 2024). Mediation is especially common among juvenile offenders. With its help, schoolchildren and students learn to resolve conflicts not through violence but through negotiations and compromises.

Despite the adoption of a number of documents regulating the legal status of persons who have committed crimes, the problem of humanisation in relation to them remains open. In the context of criminal proceedings, restorative justice has found its place. Given the nature of such relationships, the issue of introducing innovative forms of influence on people who have crossed the law requires additional study. The purpose of the study was to identify effective methods within the framework of existing legal norms that contribute to the correction, rehabilitation, and socialisation of convicts.

## Materials and methods

This study's approach includes a comprehensive investigation of both international and national legal frameworks that influence the implementation of restorative justice and alternative sentencing systems. The primary legislative texts examined are the Criminal Code of the Republic of Kazakhstan (2014) and the Criminal Procedure Code of the Republic of Kazakhstan (2014), which delineate the principles of criminal culpability, sanctions, and procedural mediation frameworks. Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016) was analysed to comprehend Kazakhstan's progressive methodology for rehabilitation and reintegration. The analysis also assesses the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011), which governs out-of-court resolutions for light and moderate offenses but lacks thorough incorporation into prosecutorial processes. A comparative legal analysis was conducted, examining the German Criminal Code (2021) and the German Code of Criminal Procedure (2024), both of which systematically incorporate mediation and alternative sentencing. Likewise, the Spanish Criminal Code (2015) and the Spanish Judiciary Act (1985) were examined for their stipulations on sentence suspension by reconciliation.

The study examines the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules, 2010) and the Principles of Restorative Justice (2021), highlighting the need for gender-sensitive rehabilitative strategies. Additionally, the research analyses Latvian Criminal Law (2000) to compare methodologies in mediation and dispute resolution. In evaluating probation and alternative sentencing frameworks, the U.S. Code: Title 18 “Crimes and criminal procedure” (1970) was examined, specifically concerning suspended sentences and parole. The dynamics of prisoner populations were assessed utilising statistical data from sources like the World Prison Brief (2021) and reports from Kazakhstan’s Prosecutor General’s Office, concentrating on variations in imprisonment rates subsequent to law amendments. The dynamics of criminal offences were examined through an analysis of official crime statistics, identification of trends in offence categories, and evaluation of the impact of restorative justice initiatives on crime reduction.

The comparative legal method is fundamental to this research, enabling an investigation of various legal systems to discern optimal practices and areas necessitating modification. This approach entails a comparative analysis of the Criminal Code of the Republic of Kazakhstan (2014) with analogous laws in Germany, Spain, and the United States (U.S. Code: Title 18 “Crimes and criminal procedure”, 1970; Spanish Criminal Code, 2015; German Criminal Code, 2021). The selection of these jurisdictions is predicated on their unique legal traditions: Germany’s systematic incorporation of mediation, Spain’s judicial discretion in sentence suspension, the U.S. paradigm of probation and parole, and Kazakhstan’s developing legal framework. Data from the World Prison Brief (2021) and reports from the Prosecutor General’s Office of Kazakhstan are utilised to evaluate imprisonment rates and alternative sentencing practices in these nations. A systematic and structural analysis is utilised to assess the interplay of criminal policy, legislative efforts, and their actual execution.

Doctrinal legal research is employed to examine main legal sources, such as national criminal codes, procedural statutes, and international treaties. The study assesses the German Code of Criminal Procedure (2024), the Spanish Judiciary Act (1985), and the Criminal Procedure Code of the Republic of Kazakhstan (2014) to evaluate the regulation of restorative justice and alternative sentencing within these legislative systems. The functional legal analysis evaluates the practical operation of criminal legislation, probation systems, and mediation procedures. Data from the World Prison Brief (2021), and A.L. Roddy and M. Morash (2020) are employed to assess the influence of restorative justice initiatives on recidivism rates. A sociological and criminological approach is applied to assess the comprehensive effects of restorative justice initiatives on criminals, victims, and society. This approach synthesizes insights from criminology, psychology, and social sciences to assess the impact of alternative punishment on social reintegration.

## Results

Society needs new measures to counter crime since punitive measures are not effective enough to ensure public order. In the last few decades, the concept of restorative justice has been introduced into these structures. Victims engaged

in restorative justice conferencing indicated a decrease in post-traumatic stress. Meta-analysis by C.S. Kimbrell *et al.* (2023) found that victims in restorative justice programs reported higher satisfaction levels compared to those in traditional justice systems. In experimental restorative justice groups, 80% of victims expressed satisfaction with the process and outcomes, indicating more contentment than victims in control groups, while offenders engaged in restorative justice committed fewer offences in the following two years compared to the control group (Evidence briefing, 2022). A meta-analysis has shown that restorative justice programs are superior in enhancing victim-offender satisfaction, augmenting offender compliance with reparation, and reducing offender recidivism relative to conventional criminal justice solutions. Adolescents engaged in conferences had a markedly lower likelihood of rearrest six months post-incident, with rearrest rates of 20% for those who participated in conferences, in contrast to 34% for the control group (Department of Justice Canada, 2022). It is aimed not at the application of punitive measures but at the correction, re-socialisation, and rehabilitation of offenders. Against this background, many alternative methods have emerged that are applied to offenders, which should positively influence them and thereby improve the overall well-being of society. A special place in restorative justice is occupied by the world practice of working with persons who have committed minor and moderate offences.

Based on the priority of human values, the nature of criminal penalties has changed towards mitigation. Punishment should be rehabilitation and correction and not a method of infringing on human rights. This idea is reflected in the norms of criminal law, exemplified by Article 72 of the Criminal Code of the Republic of Kazakhstan (2014), which permits parole and conditional release based on rehabilitative potential. Article 56 of the German Criminal Code (2021) also stipulates suspended sentences for offenders who exhibit regret and a desire for societal reintegration. Article 84 of the Spanish Criminal Code (2015) stipulates that the suspension of a sentence is contingent on the offender’s adherence to restorative measures. These laws exemplify the legal evolution favoured by rehabilitation above punitive measures, in accordance with international human rights principles. It is necessary that law-making follows generally accepted objective and formal legislative rules to coordinate the goals of criminal policy (Jassim, 2020). The adoption of legislative acts is closely linked to the criminal policy of the state. The combination of a consistent criminal base with criminal policy, together with practical application, will serve as a guarantee of legality for those who have committed a criminal offence.

Restorative justice does not stop at generally accepted methods of mitigating the punishment of criminals. The international experience of foreign countries shows that probation is an alternative form of imprisonment. Globally, probation is acknowledged as a feasible substitute for imprisonment, with several nations establishing legislative structures to facilitate offender rehabilitation and diminish recidivism (Kolb *et al.*, 2023). This method corresponds with the worldwide transition to restorative justice, prioritising rehabilitation rather than retribution. Multiple countries have implemented probation statutes, facilitating the resocialisation and reintegration of criminals into society,

regarded as a strategy to mitigate prison congestion, diminish the adverse impacts of prolonged imprisonment, and eventually decrease recidivism rates.

Germany illustrates this concept through its legislative system that prioritises rehabilitation. The German Prison Act seeks to rehabilitate convicts for reintegration into society by emphasising resocialisation. This method has led to reduced imprisonment rates and recidivism. Article 56 of the German Criminal Code (2021) permits suspended sentences and probation, granting judges the discretion to impose non-custodial punishments for minor and moderate offences, especially where the offender demonstrates regret and a little risk of recidivism. Likewise, Spain has integrated probation into its legal framework under Article 84 of the Spanish Penal Code (2016), permitting the suspension of penalties contingent upon the offender's compliance with probationary stipulations, including community service or rehabilitation programs. Spain's legal system prioritises probation as a mechanism to promote social reintegration and diminish the probability of recidivism, especially for first-time and non-violent offenders. Spain's dedication to probation underscores its emphasis on alternative penalties rather than conventional imprisonment.

In the United States, probation is a prevalent alternative to incarceration, particularly for non-violent crimes. U.S. Code: Title 18 "Crimes and Criminal Procedure" (1970), Section 3563, delineates the terms of probation, which encompass counselling, employment obligations, and regular reporting to probation officials. Despite the extensive use of probation, the United States contends with elevated imprisonment and recidivism rates. Recent changes, exemplified by those in Georgia, indicate a transition towards diminishing the duration of probationary periods. The program in Georgia permitting early termination of probation for qualifying persons has resulted in a decrease in the probation population, perhaps aiding in the lowering of recidivism rates over time.

The international experiences of nations like Germany, Spain, the United States, and Finland demonstrate the efficacy of probation in diminishing recidivism and promoting rehabilitation. Research in the United States demonstrates that high-quality probation supervision can markedly enhance outcomes. For example, a study by HM Inspectorate of Probation (2023) revealed that improved supervision resulted in a 14% decrease in reoffending rates and a 24% increase in sentence completion rates relative to substandard supervision. In Germany, research by S.L. McGuire (2022) indicates that probationers who have organised support and therapy exhibit a lower likelihood of reoffending compared to those who do not receive such assistance. The emphasis on rehabilitative programs rather than punitive measures has been essential to reducing recidivism rates in several states.

Finland distinguishes itself by its unique probation strategy, which prioritises conditional detention and rehabilitation rather than conventional punishment measures. The Finnish approach has produced some of the lowest recidivism rates in Europe, with figures showing that about 30% of criminals reoffend after three years, in contrast to elevated rates in more severe systems (Linderborg *et al.*, 2020). This achievement is ascribed to extensive support networks that aid persons in reintegration into society, underscoring the capacity of probation to reconcile public safety with rehabilitation requirements. These findings highlight the significance of effective supervision and assistance in promoting fa-

vourable results for criminals, hence reducing the burden on correctional institutions and improving community safety.

Kazakhstan already has a probation law, which is spelt out in Article 4 of Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016). The country would benefit from adopting the best ideas from these other countries. This might guarantee that probation serves not just as an alternative to jail but also as an effective method for diminishing recidivism and facilitating social reintegration. For probation to be genuinely successful, it is imperative for governments to invest sufficient funding for support services, including education, employment programs, and psychological counselling. In the absence of these tools, probation may devolve into a simple administrative formality instead of serving as an instrument for rehabilitation. Although incarceration is essential for certain crimes, overdependence on imprisonment may result in detrimental social effects, such as elevated recidivism rates and stretched public resources. Implementing probation, accompanied by extensive services, addresses the root reasons of criminal behaviour, promotes human growth, and improves public safety. The efficacy of probation programs relies on adequate execution, which encompasses personalised case management and ongoing assessment to guarantee their performance.

Differentiation of crimes for which a suspended sentence can be applied due to the insignificance of crimes, the presence of mitigating circumstances, and the social characteristics of the offender (Yusupdzhanova, 2022). In Germany, a court issues a suspended sentence on the condition that the convicted person has promised not to commit crimes in the future, repents of what they have done and treats them positively. In such cases, they are sentenced to imprisonment for up to one year (Dünkel, 2019). In Japan, probation is based on a suspended sentence. If, during the probation period, the duties assigned by the court are violated, and the offender commits a crime again, the postponement of serving a sentence is cancelled, and the previously imposed sentence enters into force. In US criminal law, there is a suspended sentence and a reprieve from punishment.

Deprivation of liberty, particularly during childhood, can result in numerous adverse outcomes, including psychosocial health issues, hindered cognitive development, substance use disorders, self-harm and suicidal tendencies, sexually transmitted infections, other infectious diseases, chronic illnesses, and violence-related injuries. It may exacerbate pre-existing health issues and result in the loss of educational and personal opportunities, along with stigma and challenges in societal reintegration. Restorative justice and alternative measures, such as fines and community service employed in Finland, seek to mitigate the adverse consequences of incarceration by substituting punitive actions with conditional detention. Legislative initiatives aim to enforce international laws and standards, explore alternative methods to incarceration, and develop recommendations for action at national, regional, and international levels to fulfil international obligations and decrease the number of children deprived of liberty. The objective is to guarantee that the denial of liberty is employed just as a measure of last resort and for the minimal necessary duration (Miller *et al.*, 2022).

U.S. Code: Title 18 "Crimes and criminal procedure" (1970) pertains to activities deemed detrimental to society, differentiating itself from civil law, which resolves conflicts between people. Every state, working alongside the

federal government, possesses a distinct criminal code that defines offences and corresponding penalties, illustrating discrepancies in the conduct deemed criminal. The U.S. criminal justice system functions through federal and state courts, with state courts generally managing a wider array of cases, encompassing familial conflicts, traffic infractions, and criminal acts, whereas federal courts focus on breaches of federal law, bankruptcy, and other specialised domains (Makhambetsaliyev *et al.*, 2024). The scope of criminal law is extensive, including the formulation, implementation, and enforcement of regulations pertaining to unlawful behaviour, and it evolves with society transformations to uphold justice. Criminal law aims to safeguard society, uphold order, and guarantee public safety by establishing parameters for permissible conduct. U.S. sentencing rules are strict, with policies established in the 1980s and 1990s leading to extended jail sentences that have exacerbated mass imprisonment (Lattimore *et al.*, 2021). Notwithstanding small legislative modifications, comprehensive reform is essential. Title 18 of the U.S. Code mandates minimum sentence provisions that restrict judicial discretion, frequently resulting in excessively severe punishments.

The American punitive system needs to be reformed, namely: changes in the norms on life imprisonment without the right of early release; the introduction of the principle of fairness in sentencing; creating conditions for the introduction of the practice of probation and parole; the creation of treatment and rehabilitation programmes. The Marijuana Addiction Recovery Programme was introduced in Madison, Wisconsin, with the goal of reducing drug-related crime and thereby strengthening public health and safety (Diversion and Deflection Programs, 2023). By offering drug addiction treatment instead of arrest and prosecution on criminal charges, the programme exempted its clients from punishment before arrest. The project involved law enforcement agencies and the court, public health authorities, and the scientific community. In the process of cooperation between law enforcement agencies and medical partners, an assessment of the need for treatment is formed according to the procedural legislation of the state (Zgierska *et al.*, 2021). The disadvantage of this project is that, despite the evidence of the effectiveness of treatment in reducing the harm caused to society by drug addicts, very few people receive it.

Deprivation of liberty has a more pronounced criminogenic effect on drug offenders than on other categories of offenders. Recent legislative changes, including the implementation of life imprisonment for severe drug-related offences, signify a punitive strategy aimed at preventing drug trafficking and manufacture, which have become increasingly pervasive in the nation. Nevertheless, this stringent punitive structure may unintentionally intensify the criminogenic impacts on drug offenders. Studies demonstrate that prolonged incarceration might elevate recidivism rates among drug offenders, as imprisonment frequently neglects to tackle fundamental concerns such as addiction and socioeconomic variables that drive criminal behaviour. In Kazakhstan, the government recognises substantial deficiencies in the rehabilitation and treatment of drug users; the emphasis on punitive measures, lacking sufficient reintegration assistance, may sustain a cycle of criminality among this population (Khamzin *et al.*, 2022). Consequently, although the state seeks to address drug-related crime with stringent punishments, the absence of thorough rehabilitation techniques may result in a more ingrained criminal identity among of-

fenders, underscoring the necessity for a balanced strategy that incorporates both deterrence and assistance.

The research conducted by V. Tomaz *et al.* (2023) shows that incarceration for drug-related offences in Belgium is inefficient, since it does not address organised crime, recidivism, rehabilitation, or the specific requirements of individual offenders. The effectiveness was assessed by analysing recidivism rates, rehabilitation results, and the cost implications of imprisonment for the state. Kazakhstan has faced similar challenges in addressing its criminal justice system's effectiveness in rehabilitating convicts and reducing recidivism. Notwithstanding attempts to diminish the jail population, the system continues to be punitive, with a substantial percentage of convicts (95%) convicted of violent offences. Recidivism following incarceration continues to be a significant problem in Kazakhstan. Around 18,000 individuals have served two or more jail terms, indicating a lack of success in rehabilitation and reintegration efforts. The expense of imprisonment is considerable. For instance, incarcerating a person for the theft of things valued at 10,000 tenge (\$67) incurred a cost of 2 million tenge to the state (Mukasheva *et al.*, 2024). The budget for the penitentiary system rose by 54% over four years, totalling 50 billion tenge, not including infrastructure costs. The criminal system's emphasis on punishment over resocialisation has led to diminished rehabilitation rates. Insufficient alternatives to incarceration and obstacles to parole utilisation exacerbate this.

United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) (2010) recognise that conventional jail systems frequently neglect the distinct needs of female offenders and may intensify their vulnerabilities. In Kazakhstan, as in several other nations, this acknowledgement underscores the necessity for reform regarding the treatment of women within the criminal justice system. The regulations promote gender-sensitive strategies that emphasise non-custodial alternatives, acknowledging that imprisonment may be ineffective for women and might cause more harm, especially considering their responsibilities as primary carers. Consequently, there is a growing need for the implementation of alternative methods that take into account women's unique circumstances and prioritise rehabilitation over punishment. In the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules), it is recognised that prisons are usually ineffective in combating female crime and often cause harm to them. They hinder the social reintegration of women and limit their opportunities for a fruitful and law-abiding life after liberation. The costs resulting from recidivism go beyond the costs of victims, offenders, law enforcement agencies, courts, and probation authorities and require a new approach to offenders and the application of additional corrective measures. Working with female offenders, the probation service needs to facilitate women's job search and employment.

A.L. Roddy and M. Morash (2020) demonstrated a forward link between the communication styles of probation professionals and the job results for women on probation or parole. Criminal mediation is an alternative form of dispute resolution outside of court. It may occur in the case of minor crimes. The communication methods employed by probation officers might directly impact the job-seeking self-efficacy of female offenders, thereby influencing their employment prospects. The research by A.L. Roddy and

M. Morash (2020) indicated that a conversational communication style, marked by supportive and engaging dialogue, correlated with heightened job-seeking self-efficacy in women, whereas conformity-orientated communication resulted in diminished self-efficacy due to feelings of reactance, wherein clients perceive a threat to their autonomy. The probation and rehabilitation system in Kazakhstan markedly contrast with the techniques outlined in A.L. Roddy and M. Morash's (2020) study. The U.S. strategy prioritises supportive communication from probation officers to enhance job outcomes for women, whereas Kazakhstan's probation programs are at a developmental stage. Founded in 2012, Kazakhstan's probation agency emphasises the development of personalised programs for offenders with suspended sentences, while participation is voluntary. Initiatives like the Post-Release Monitoring and Probation of Returning FTFs and Violent Extremist Offenders, along with digital tools for risk and needs assessments, have been implemented to modernise the system (UNODC, 2024). Nevertheless, they predominantly address general offender categories rather than gender-specific requirements.

The Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016) signifies a pivotal transformation in Kazakhstan's criminal justice framework, intending to diminish imprisonment rates and foster rehabilitation via organised oversight and socio-legal assistance. The legislation defines probation as a series of corrective measures customised for individual offenders, highlighting a rehabilitative approach over a punitive one, in accordance with international best practices in criminal justice reform. The Act classifies probation into several phases, including pre-trial, trial, post-sentencing, and post-incarceration, facilitating continuous offender supervision and mitigating recidivism risks. An essential element of the law is the incorporation of social services, psychiatric support, and job help, acknowledging that effective reintegration relies on tackling the fundamental socio-economic problems that contribute to criminal conduct. The law's efficacy depends on sufficient finance, interagency collaboration, and the professional training of probation officers, which continue to pose obstacles in implementation. Moreover, the discretionary authority granted to probation officials and law enforcement authorities needs meticulous oversight to avert possible biases or discrepancies in implementation. The law represents a gradual advancement in humanising Kazakhstan's prison system. However, its efficacy relies on ongoing institutional dedication and public awareness to transform social attitudes toward non-custodial sentencing. Kazakhstan's criminal legislation acknowledges both judicial and non-judicial systems for addressing criminal matters. However, the implementation of alternative measures is yet insufficiently developed. Article 4 of the Law of the Republic of Kazakhstan No. 38-IV "On probation" (2016) delineates the requirements for supervised release, but its execution is deficient in the systematic rehabilitative components present in the probation frameworks of Germany and Spain. Article 2 of the Law of the Republic of Kazakhstan No. 401-IV "On Mediation" (2011) similarly characterises mediation as a voluntary settlement method, yet its use in criminal cases is restricted.

Even though the law of Kazakhstan recognises both judicial and non-judicial mechanisms for resolving criminal incidents, the stereotypical application of criminal law within the framework of punitive functions leads to overcrowding

in prisons and pre-trial detention facilities. The introduction of criminal mediation into the restorative justice system has become an innovation in the legal system. However, the law in Kazakhstan practically does not regulate the out-of-court settlement of criminal cases (Anggraeni, 2020). The concept of restorative justice manifests itself in criminal mediation, designed to settle disputes and thus contribute to the correction of criminals. Despite its purpose in mitigating the consequences of crime, criminal mediation is not yet widespread in legal practice. Some countries limit the development of its application. Norway and Belgium are recognised for their extensive restorative justice systems that function at every level of the criminal justice process. Conversely, nations such as New Zealand, Australia, the United States, and England and Wales employ adversarial legal systems while simultaneously incorporating restorative methods to differing extents. However, the introduction of restorative justice through the use of criminal mediation in the criminal law system is practised in many countries. The issue of the introduction of criminal mediation was studied by E.A.W. Adi (2021) and M.M. Gunawan *et al.* (2024). For example, in Indonesia, criminal mediation is applied to minor offenders, minors involved in court proceedings, and those who have committed an offence for the first time. In Poland, criminal mediation is applied to crimes for which the maximum penalty is five years in prison. Switzerland stands out for the fact that mediation is practised due to the lack of empirical data confirming the effectiveness of imprisonment.

Mediation procedures cannot be an alternative to criminal proceedings. The expediency of its introduction continues to be debated and, in some countries, it is even prohibited. There are conflicting opinions on the use of criminal mediation. The divergent views on criminal mediation arise from the contrasting viewpoints of diverse parties and nations. Proponents, including those in Ukraine and France, highlight its advantages, such as alleviating court burdens, promoting reconciliation, and fulfilling victims' demands via restorative justice methods. Ukraine has initiated experimental initiatives for mediation in juvenile cases, with favourable outcomes, underscoring its potential to humanise criminal policy. France uses mediation for minor offences to circumvent courts and foster peaceful resolutions. Conversely, critics contend that mediation cannot supplant formal criminal processes due to apprehensions over the administration of justice and the possibility of imbalanced power relations between victims and criminals (Nascimben *et al.*, 2023). Certain countries, such as Kazakhstan, are currently deliberating its practicality or restricting its use to particular instances. Kazakhstan's legislative structure in this domain is underdeveloped, since mediation is predominantly employed to reconcile parties without comprehensive integration into the criminal judicial system. In instances of small infractions or if reconciliation is attainable and consensual, the restorative advantages of mediation are persuasive. Nonetheless, in instances of grave offences or situations characterised by power disparities (such as domestic abuse), the apprehensions of critics over justice and equity supersede the benefits of mediation.

Comparing criminal mediation in Spain and Germany, Germany introduced criminal mediation into the legal system structurally after the implementation of various pilot projects, despite the fact that there was no consensus in the country's criminal law on the introduction of this procedure.

Spain and Germany have been chosen for comparison due to their contrasting yet influential approaches to criminal mediation within the European legal framework. Germany structurally integrated criminal mediation into its legal system following a series of pilot projects, despite the lack of initial consensus within its criminal law. The German Code of Criminal Procedure (2024) § 153a allows prosecutors to dismiss criminal cases conditionally, including through offender-victim mediation. Meanwhile, Spain formalised criminal mediation within its judicial framework, particularly through Article 84 of the Spanish Criminal Code (2015) and procedural provisions in the Spanish Judiciary Act (1985), allowing for the suspension of sentences if reconciliation is achieved. In contrast, the Law of the Republic of Kazakhstan No. 401-IV “On Mediation” (2011) provides a comprehensive but more general framework for mediation in civil and criminal matters, emphasising its voluntary nature and its applicability in minor and medium-severity offences. It regulates the application of mediation as a substitute for other conflict settlements in Kazakhstan. It covers conflicts resulting from civil, labour, family, and administrative legal interactions as well as some criminal matters with small or moderate crime seriousness. The legislation specifies the guidelines and practices of mediation, the position of mediators, and proves that mediation is voluntary and private. Mediating matters involving persons judged incompetent, connected to corruption and other offenses against public administration, or impacting third-party interests is excluded, nevertheless. Unlike Germany, where criminal mediation is structurally embedded in the legal system, or Spain, where it is aligned with judicial discretion, Kazakhstan’s law remains broader and does not integrate criminal mediation as systematically into prosecutorial procedures. This comparison highlights varying levels of legal integration and institutionalisation of mediation across jurisdictions. There is a need to reform criminal and procedural norms in relation to the criminal liability of minors, the use of public labour, mediation, suspension of execution of a custodial sentence, and replacement of imprisonment (Hassan, 2024). Criminal mediation should be accessible and have beneficial effects, both for the victim and the offender, through mutual recognition and by the state.

The concept of restorative justice brings together the parties: the offender, the victim, and society. Whereas in the traditional justice system, more attention was paid to the offender and their punishment, restorative justice is more focused on victims and on ways to compensate for the harm caused by the offence. Victims of crime suffer the most, but they rarely become part of the criminal justice system. The offender’s participation in the settlement process increases the understanding of the offence and its impact on the victim. Therefore, restorative justice reduces the rate of repeat offences. Research substantiates the claim that the offender’s involvement in the settlement process deepens their comprehension of the offence and its repercussions on the victim, hence leading to diminished rates of recidivism. A thorough examination of restorative justice techniques reveals that offenders participating in restorative justice processes have a reduced likelihood of recidivism. Research from Canada indicates that adolescents participating in restorative justice programs had reduced rates of re-engagement with law enforcement relative to those processed via conventional court systems. A restorative program aimed at medium- to high-risk offenders demonstrated a recidivism rate of only 5.3%

among participants, far lower than the 16.1% rate observed among comparable probationers and convicts (The use of restorative..., 2023). Additionally, a meta-analysis indicated that restorative justice programs typically surpass conventional methods in attaining objectives such as victim-offender satisfaction and diminishing recidivism. Participants frequently express a sense of empowerment and acquire understanding regarding the repercussions of their acts, promoting accountability and empathy for victims. This transformative event is essential for addressing the root causes of criminal behaviour, therefore promoting rehabilitation and reintegration into society.

The participation of society strengthens the offender’s willingness to change. Change occurs either through shame for behaviour or through support and encouragement from community members. The key difference between restorative justice and traditional forms of justice is the reality of restoring the rights of both the victim and the offender through the opportunity to discuss the situation. This gives the offender the opportunity to rehabilitate themselves before the victim and before society through compensation for damages (Robalo & Rahim, 2023). Restorative justice principles such as responsibility, reintegration, recovery, and respect are relevant for the prevention of delinquency in the school and work environment. Involvement increases the level of acceptance and reintegration of the offender back into the organisation or community.

Criminal Code of the Republic of Kazakhstan (2014) delineates criminal acts, stipulates associated punishments, and seeks to protect individual rights, public order, and state security. It includes overarching concepts of criminal culpability and particular stipulations for different offenses, particularly those perpetrated by adolescents. This fundamental legal text underscores the safeguarding of the rights, freedoms, and legitimate interests of people and citizens, along with the maintenance of public order and safety. Analysing the Code, it was established that mediation is regulated by the Criminal Procedure Code of the Republic of Kazakhstan (2014). It is necessary to evaluate all concepts of the mediation procedure and understand how the advantages of each individual country’s system can be used in real life to develop the basic principles of alternative dispute resolution methods fully. In Latvia, the use of mediation in criminal law is regulated by distinct criteria that underscore its function as an alternative conflict resolution mechanism. The Latvian Criminal Law (2000) permits mediation predominantly in minor offences, emphasising restorative justice ideas to promote comprehension between offenders and victims. Nonetheless, the legal environment for mediation is underdeveloped, as it lacks thorough norms in public law beyond Criminal Law (OECD, 2021). Kazakhstan’s legislation adopts a more systematic approach to mediation under its Criminal Procedure Code, which clearly permits reconciliation between victims and offenders and delineates methods for executing mediation in criminal cases. Both countries acknowledge mediation as an effective mechanism for conflict settlement, but Kazakhstan’s legislative structure provides more explicit principles and wider applicability across diverse offences, including major felonies under particular circumstances. This disparity underscores Kazakhstan’s dedication to incorporating mediation into its criminal justice system more thoroughly than Latvia, where mediation is still an evolving field with little legal backing.

Germany is considered one of the developed legal states, including in relation to German Criminal Code (2021). It provides an extensive legal framework for criminal offences and their repercussions, highlighting concepts of legality, proportionality, and the protection of human rights. Essential requirements encompass the requirement that no penalty may be enforced without a corresponding legislation, so protecting against capricious prosecution. The law encompasses several offences, including violent crimes, theft, and economic crimes, with distinct punishments aligned to the gravity of each offence. In Germany, a court imposes a suspended sentence based on the convicted individual's commitment to refrain from future criminal activity, express remorse for past actions, and receive favourable treatment. In these instances, the individual may be sentenced to imprisonment for a duration of up to one year, as outlined in Article 56 of the German Criminal Code. Criminal Procedure Code of the Republic of Kazakhstan (2014) also upholds the notion of legality and delineates various offences and consequences. However, it has faced criticism for its more severe punitive measures and diminished focus on rehabilitative justice. Although both legal systems acknowledge the need for organised legal structures, Germany's code integrates more restorative components and alternative conflict resolution methods, demonstrating a greater dedication to the rehabilitation and reintegration of criminals into society.

A study from Kazakhstan's Prosecutor General's Office indicates a 15.2% reduction in total crime rates, with serious crimes declining by 4.1% and moderate gravity crimes decreasing by 17.9% (Crime Rate in Kazakhstan..., 2023). This tendency illustrates a wider phenomenon noted in several affluent nations, where property offences often constitute a substantial fraction of criminal punishments. The predominant offences in Kazakhstan are theft and robbery, especially among juveniles, who have experienced a rise in delinquency in recent years. This transition underscores the necessity for enhanced strategies to address property crimes while also guaranteeing the efficient management of significant offences, such as violent crimes, within the legal framework. Imprisonment for up to 2 years may be suspended by probation. Such measures should contribute to the rehabilitation of the offender. Instead of imprisonment, they must fulfil the conditions and directions. Germany's alternative criminal punishment system prioritises rehabilitation over vengeance, emphasising penalties, community service, and specialised programs to address underlying issues like addiction and impulsivity (Brodowski, 2020). The day-fine system guarantees that punishments correspond to offenders' income, with fines as the predominant sanction and accounting for the majority of convictions. Community service operates mostly as an alternative to imprisonment for criminals unable to pay fines, in accordance with constitutional restrictions on forced labour. Rehabilitation programs aim to assist offenders in cultivating self-control and addressing behavioural issues to mitigate recidivism. Nonetheless, obstacles persist, including mistakes in income evaluations during sentencing and the restricted application of community service as a principal penalty. Thus, all these measures lead to the social rehabilitation and stabilisation of convicts. The disadvantage of this method is that it often leads to a vicious cycle that ends in prison.

The circumstances in Kazakhstan have been improving owing to a consistent reduction in the jail population.

In the last ten years, the jail population has markedly decreased due to criminal justice reforms designed to diminish dependence on incarceration. According to World Prison Brief (2021), in 2011, the prisoner population was roughly 57,038 individuals. By 2018, this figure had diminished to 30,798 and further reduced to 29,403 in 2020. On December 26, 2024, the prison's population was recorded at 32,171, resulting in an imprisonment rate of 163 per 100,000 residents. The technique to accomplish this involves two principal mechanisms: exemption from criminal accountability and reduction of the penalty. These methods aim to maintain the notion of humanism for offenders while preventing undue tolerance towards criminal behaviour. Kazakhstan conforms with worldwide restorative justice trends by extending options including probation, community service, and early release programs, while ensuring public safety and legal responsibility (Biebayeva *et al.*, 2021). Such measures should serve as a preventive function in relation to persons who have repented of the act committed, reconciled with the victim, and decided to live in accordance with the law. According to international standards, the purpose of criminal punishment is conceptually the correction and re-education of the guilty person (Gade, 2020). Such standards have developed through continuous and multilateral international cooperation in the field of human rights. The essence of restorative justice is the humanisation of offenders through mechanisms such as mediation, parole, community service, and fines (Principles of Restorative Justice, 2021). These include addressing the special needs of offenders with special needs and programmes dealing with substance dependence, mental or psychological conditions, anger and aggression, which can lead to repeat criminal behaviour. International standards also stipulate that rehabilitation work should be conducted throughout the entire process of serving a sentence and should serve as a prevention of repeated crimes.

Kazakhstan should to implement Germany's structured mediation framework – Article 153a of the German Code of Criminal Procedure (2024) – to incorporate offender-victim mediation as a legal alternative conflict resolution tool, therefore alleviating court congestion and enhancing rehabilitation outcomes. Moreover, Spain's approach for probation and suspended sentences – Article 84 of the Spanish Criminal Code (2015) – is required to exemplify a framework for enhancing Kazakhstan's probation system, guaranteeing that minor and moderate offenders undergo systematic rehabilitation rather than imprisonment. Inspired by U.S. Code: Title 18 "Crimes and criminal procedure" (1970) specialised diversion programs, Kazakhstan might establish drug courts and community-based treatment initiatives to address substance-related offences, emphasising rehabilitation over punitive actions. Implementing these improvements will connect Kazakhstan's criminal justice system with worldwide best practices, augmenting restorative justice initiatives while diminishing recidivism and facilitating social reintegration.

## Discussion

The results of the present study indicate that restorative justice is a viable alternative to conventional punitive approaches, consistent with global practices that emphasise rehabilitation, resocialisation, and the reintegration of criminals. An analysis of the judicial systems in Kazakhstan, Germany, Spain, and the United States uncovers substantial disparities in the application of alternative sentencing methods,

including probation, suspended sentences, and mediation. Germany's systematic mediation process and Spain's judicial flexibility in sentence suspension contrast with Kazakhstan's developing, although still inflexible, criminal system. The findings substantiate the assertion that punitive measures alone are inadequate for crime reduction and that the integration of restorative aspects into criminal law bolsters societal stability. The results correspond with the increasing global trend towards non-custodial punishments and rehabilitative programs, as noted by O. Thi Cao and T. Van Vu (2024), who underscore the need for creating restorative justice models as feasible alternatives to punitive systems. W. Lui (2023) examines the conflict between punishment and restoration in Hong Kong, demonstrating that restorative methods more successfully diminish recidivism rates compared to conventional punitive strategies.

This research reveals that Kazakhstan has successfully decreased its jail population by legal changes, including the Law "On Probation" (2016) and the Law "On Mediation" (2011). Nevertheless, the country's probation system is rather undeveloped relative to Germany and Spain, where restorative justice is systematically included in the legal framework. R. El-Kady (2024) examines victim-offender mediation in Egypt, highlighting that its efficacy relies on robust institutional backing and a legislative framework that favours rehabilitation over retribution, a strategy that Kazakhstan has not yet completely adopted.

The findings of this study augment current studies on restorative justice while also revealing discrepancies in Kazakhstan's criminal justice system compared to worldwide best practices. H. Gaffney *et al.* (2024) performed a comprehensive study of restorative justice treatments for adolescent offenders, determining that organised programs substantially decrease recidivism rates in this population. This corresponds with the obtained findings above regarding Germany, where mediation and suspended sentences for small offences have led to reduced recidivism rates. Nevertheless, Kazakhstan's system continues to emphasise punitive tactics, especially for minor offenders, resulting in elevated rates of imprisonment and recidivism. N. Rochaeti *et al.* (2023) emphasise that Indonesia's indigenous restorative justice systems have effectively addressed crime within communities, a strategy that Kazakhstan might apply to its cultural and legal framework.

The current research emphasises the economic hardship of incarceration in Kazakhstan, a topic that has been relatively overlooked in restorative justice literature, in contrast to other studies. The financial burden of incarceration in Kazakhstan is too elevated relative to the economic advantages of alternative sentencing initiatives. A.M. Nascimento *et al.* (2023) investigated the psychological effects of restorative justice on victims, concluding that victim-centred strategies enhance society's reintegration results and alleviate the economic burden of prolonged incarceration. This illustrates that altering Kazakhstan's criminal policy to focus on rehabilitative measures may produce both social and economic advantages.

The present study significantly expands upon prior findings by analysing gender-specific restorative justice policies. The Bangkok Rules (2010) highlight the distinct obstacles encountered by female offenders and advocate for gender-sensitive alternatives to imprisonment. A.L. Roddy and M. Morash (2020) discovered that the communication style of probation officials significantly influences the rehabilitation of female offenders. Their research demonstrated

that supportive and rehabilitative communication enhances job-seeking self-efficacy in women on probation. In Kazakhstan, probation programs are little established, and gender-sensitive rehabilitative measures are predominantly lacking in criminal policy. These findings show that Kazakhstan may gain from the implementation of structured probation and reintegration programs like those utilised in the United States and the European Union.

Moreover, the findings of this study align with studies about the function of restorative justice in education and crime prevention. E. Lodi *et al.* (2022) performed a thorough assessment of restorative methods in educational institutions, demonstrating that early intervention measures markedly diminish delinquency and avert the intensification of criminal behaviour. These results demonstrate that Kazakhstan ought to include prevention-orientated restorative justice programs in its long-term criminal policy framework. This research enhances the existing literature on restorative justice by offering a comparative legal analysis of Kazakhstan's system in regard to worldwide best practices. This study supports prior research highlighting the efficacy of non-custodial sentencing while also revealing deficiencies in Kazakhstan's legislative framework, specifically regarding gender-specific probation programs, economic cost assessments, and preventative restorative justice initiatives. Future changes ought to utilise evidence-based models from countries like Germany and Spain while tailoring these practices to Kazakhstan's socio-legal setting.

The findings of the present study corroborate those of A. Zhang *et al.* (2022) in highlighting the inadequacies of punitive approaches in tackling crime, especially drug-related offences. Both findings emphasise how incarceration perpetuates a vicious cycle of recidivism rather than diminishing criminal behaviour. A. Zhang *et al.* (2022) illustrate that recurrent police interactions with drug-related offences heighten the probability of subsequent arrests, imprisonment, and overdoses, highlighting the ineffectiveness of punitive measures in disrupting the cycle of drug-related crimes. Likewise, the current study reveals that Kazakhstan's dependence on imprisonment for drug offenders intensifies recidivism rates and solidifies criminal identities rather than facilitating recovery. A. Zhang *et al.* (2022) endorse public health measures and harm reduction techniques, but the current research endorses the enhancement of probation, restorative justice, and rehabilitation programs as superior alternatives to jail. Both studies advocate for a transition from punitive justice to evidence-based rehabilitation to diminish recidivism and enhance long-term social reintegration results.

J. Lockard (2024) raises the question of the need to examine the subject of the abolition of the death penalty in the United States. The paper discusses the need to humanise condemned prisoners to death. The human right to life does not require sentimental reasoning from society outside prisons but protection from the judicial system and stereotypes that exist in the country's criminal legislation. J. Lockard's work, centred on the death penalty, corresponds with the current research in promoting a more compassionate criminal justice strategy and challenging the inflexibility of punitive tactics. Both studies underscore the deficiencies of the existing justice system, with J. Lockard (2024) examining the ethical and legal issues associated with death punishment, while the present research examines the overreliance on incarceration and its ineffectiveness in diminishing

recidivism. Moreover, both studies emphasise the necessity of transforming criminal policy to prioritise rehabilitation and equity, contesting legal preconceptions that disproportionately impact marginalised groups. This research, in contrast to J. Lockard's (2024) emphasis on public mobilisation against the death penalty, investigates alternative sentencing measures including probation, mediation, and community service, contending that a rehabilitative approach is more efficacious in preventing recidivism and facilitating social reintegration.

Restorative justice and its practice are often seen as an adjunct to the formal criminal justice system, which provides an alternative response to crimes and rarely manifests itself in the formal administration of justice (Moroz & Horislavskaya, 2024). T.L.A.S. Robalo and R.B.B.A. Rahim (2023) reviewed the use of restorative justice in the commission of cybercrimes. There are some difficulties with this type of offence since to apply it in the case of cybercrime, all interested parties must first be identified. Often, it is not easy to find a criminal. Thus, such offenders are rarely brought to justice. Cybercrime poses an additional challenge due to its cross-border nature. It is important to identify the perpetrator to bring them to justice, which is not an easy task. In addition, the offender may be a citizen of a state in which there is no criminal law on this issue or which opposes their extradition for criminal purposes. Cybercrimes occupy a special place in legal proceedings due to their unexplored nature (Metelskiy & Kravchuk, 2023). Both studies assert that criminal accountability and victim involvement are essential in reducing recidivism. Furthermore, both research findings emphasise that conventional punitive tactics do not address the underlying reasons for criminal behaviour, underscoring the need for new strategies. While T.L.A.S. Robalo and R.B.B.A. Rahim (2023) ascertain that victim-offender panels markedly enhance dispute resolution and diminish further cyber offences, the current study illustrates that mediation, probation, and community service decrease reoffending rates inside traditional criminal justice frameworks. Despite variations in the particular circumstances of crime, both investigations ascertain that restorative justice surpasses punitive approaches in fostering long-term rehabilitation and social reintegration.

Based on the situation that has developed in the world community, fundamental human rights are of fundamental importance in law-making. This trend has not left aside criminal proceedings. Based on observations in relation to persons serving a custodial sentence and the situation that develops after their release, negative consequences of long-term stay in prison have been noticed. One of them is the impossibility of returning to society, which leads to relapses of crimes. For this reason, deprivation of liberty does not perform the functions assigned by criminal law, namely the correction and rehabilitation of those who have committed a crime. The search and implementation of new ways to influence such persons is the task of modern law-making.

### Conclusions

This research evaluated the efficacy of restorative justice and alternative punitive measures in Kazakhstan, contrasting them with the legislative frameworks of Germany, Spain,

and the United States. A significant constraint of the research was the absence of publicly accessible statistical data on long-term recidivism patterns in Kazakhstan, which constrained the thoroughness of quantitative analysis. However, the research evaluated the influence of non-custodial sentencing models, such as probation, mediation, and community service, on offender rehabilitation and crime reduction.

The research analysed the interplay between recidivism, inmate demographics, and crime statistics to evaluate the efficacy of correctional reforms in Kazakhstan. Countries with organised restorative justice systems, such as Germany and Spain, have lower recidivism rates and more efficient reintegration processes than Kazakhstan's punitive model. The study examined the use of probation, suspended sentences, and mediation, concluding that these strategies alleviate the financial costs of jail and enhance rehabilitation results. The research indicated that Kazakhstan's criminal justice system continues to favour punitive punishment rather than rehabilitative methods, resulting in elevated rates of recidivism. Moreover, an examination of gender-sensitive penal policies indicated that Kazakhstan lacks adequate reintegration programs for female offenders, a deficiency that contravenes international norms like the Bangkok Rules.

This research elucidates how restorative justice might enhance rehabilitation and crime prevention in Kazakhstan. The paper examines several sentencing models across legal systems, revealing the institutional and legislative deficiencies that impede the comprehensive incorporation of non-custodial punishments within Kazakhstan's legal framework. The findings support the assertion that punitive measures alone are inadequate for crime reduction, whereas restorative justice offers a more effective, cost-efficient, and socially advantageous alternative. The research highlights that judicial discretion in sentencing is essential for the application of restorative justice, shown by Spain's adaptable approach to alternative sanctions. These findings enhance the overarching dialogue on criminal justice reform, policy formulation, and the significance of rehabilitation in mitigating recidivism.

Future studies should concentrate on longitudinal studies of recidivism rates among criminals exposed to alternative sentencing in Kazakhstan, including a comprehensive review of probation efficacy. Moreover, subsequent enquiries should examine the more efficient integration of restorative justice within Kazakhstan's legal and penitentiary frameworks, especially for adolescent and female offenders. In connection with the introduction of humanisation methods in criminal proceedings, to find a unified approach to punishing persons who have committed criminal offences, it is necessary to continue examining and identifying new ways, considering the individual capabilities and needs of each individual.

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### Conflict of interest

None.

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## Актуальні проблеми гуманізації виконання покарання у вигляді позбавлення волі за законодавством Казахстану: міжнародний порівняльний аналіз

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**Анотація.** Актуальність дослідження зумовлена постійними ініціативами держави щодо реформування казахстанської системи кримінального правосуддя, зниження рівня рецидивної злочинності та узгодження кримінальної політики з міжнародними стандартами відновного правосуддя, особливо в частині зменшення залежності від позбавлення волі та підвищення ефективності стратегій пробації та альтернативних покарань. Метою дослідження було визначення нових форм впливу на злочинців у контексті відновного правосуддя. У дослідженні використано порівняльно-правовий аналіз, доктринальне правове дослідження та функціонально-правовий аналіз для оцінки ефективності відновного правосуддя та альтернативних покарань у Казахстані, Німеччині, Іспанії та Сполучених Штатах Америки. Проведено аналіз основоположних міжнародних документів, які регулюють правовий статус осіб, засуджених за вчинення кримінального правопорушення із застосуванням пом'якшувальних покарань, та їх вплив на формування національного кримінального законодавства. Дослідження показало, що процедури відновного правосуддя, включаючи пробацію, умовне засудження та медіацію, призводять до зниження рівня рецидивної злочинності та підвищення ефективності реабілітації порівняно з суто каральними методами в Казахстані. Порівняльний аналіз показав, що Німеччина та Іспанія систематично включають відновне правосуддя до своєї правової бази, що сприяє більш ефективній реінтеграції правопорушників, тоді як Казахстан продовжує надавати перевагу позбавленню волі, що призводить до підвищення рівня рецидивної злочинності та фінансового тягаря для пенітенціарної системи. Результати дослідження довели, що альтернативні покарання зменшують переповненість в'язниць і знижують державні витрати, підтверджуючи твердження про те, що законодавча система Казахстану потребує подальших змін для приведення її у відповідність до найкращих світових практик. Практичне значення цього дослідження полягає у визначенні нових інструментів впливу на осіб, які несуть кримінальну відповідальність, з точки зору відновного права, гуманізації кримінального права, реабілітаційної практики та міжнародного досвіду впливу на правопорушників

**Ключові слова:** відновне правосуддя; кримінальне правопорушення; медіація; механізми позасудового врегулювання; медіація