

Problems of efficiency of the system of execution of punishments in the criminal law of Kazakhstan: Between legislation and the experience of repeat offenders

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Abstract. The importance of the research is conditioned by conflicts in the current legislation, which has a considerable adverse impact on law enforcement practice. Accordingly, the aim of the study was to analyse the criminal legislation of Kazakhstan in the context of investigating the system of execution of punishments. For this purpose, such methods as dogmatic, logical analysis, legal hermeneutics, deduction, induction, formal legal, and other methods were used. The study revealed that the number of registered criminal offences in Kazakhstan has decreased by half from 2018 to 2022, but the figures are still quite high. The study analysed the Criminal Code, Criminal Procedure Code, and Penal Code, as well as other regulations of criminal law of Kazakhstan. This provided an opportunity to characterise the current types of penalties in Kazakhstan. It was found that arrest is often used as an alternative punishment, despite being the main punishment. It was noted that there is a conflict between the Penal Code and Criminal Procedure Code, and Law of the Republic of Kazakhstan No. 261-IV "On enforcement proceedings and the status of bailiffs", which leads to incorrect application of the norms by private executors in the context of the execution of punishment in the form of a fine. The practical significance of the findings lies in the provision of recommendations that will eliminate the current conflicts in the criminal law of Kazakhstan, solve the problems of law enforcement practice and increase the level of effectiveness of the execution of punishment, which will contribute to the reduction of crime rates

Keywords: preventive measures; analysis of legislation; fine; arrest; conflicts

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Introduction

Criminal law was created to address the important challenges that society faces. These tasks include protection of human and civil rights and freedoms, protection of private property, maintenance of public order and public safety, protection of the environment, ensuring peace and security of humankind, and prevention of crime. Criminal punishment fulfils its role by ensuring that the public interest is protected from criminal acts and by providing the threat of punishment that prevents the commission of offences. Punishment is one of the main instruments of the criminal law system, which effectively restores the normal state of law and order in society and prevents the commission of offences. The effectiveness of special prevention can be measured by the number of repeat offenders, i.e., persons who re-offend with a previous criminal record. An example of such an indicator is the statistics on repeat offences. For instance, in 2021, the number of criminal offences was 157,884, of which 64,110 were repeat offenders; among them 4,917 had an unexpunged and outstanding convictions and 1,467 were under the supervision of the probation service. In 2022, 140,592 criminal offences were recorded in the Republic of Kazakhstan, of which 21% were committed by a repeat offender (Legal statistics, n.d.). For comparison, let's consider Germany in the same timeframe. In 2021, Germany recorded 5,047,860 criminal offenses, with a repeat offender rate of approximately 40.3%, meaning that nearly 2,036,268 of the offenses were committed by individuals who had previously offended. The number of criminal offenses in 2022 increased slightly to 5,628,584, maintaining a similar repeat offender rate of around 39% (Bundeskriminalamt, n.d.). These statistics indicate that a considerable proportion of convicts re-offend after serving their sentence, and some even while serving their sentence. This raises the question of why the punishment imposed for criminal offences does not always contribute to the purpose of special prevention. There are many reasons for this, but some of them include shortcomings in the law, types of sentences and the sentencing practices of judges. It is quite important to examine the main problematic aspects that prevent the function of punishment and criminal law in general from being fully implemented.

The significance and specific feature of criminal law is that one of its key aspects is punishment, which only a court acting on behalf of the state may impose (Kolb *et al.*, 2023). This applies to persons who have committed a criminal offence (a felony or misdemeanour) and includes a variety of criminal penalties, including imprisonment, in rare cases deprivation of citizenship, and in extremely rare cases – the death penalty. According to Article 1 of the Constitution of the Republic of Kazakhstan (1995), the highest values of human life, rights and freedoms are recognised and acknowledged as the principles of Kazakhstan. S.R. Bekmagambet and B.K. Shnarbaev (2021) believe that the essence of a country's criminal policy is determined by the relevant legislation in force. Accordingly, throughout the development of Kazakhstan, the state has always used criminal legislation to ensure internal and external security.

G.Zh. Osmanova and A.R. Bizhanova (2022) note that with the help of Criminal Code of the Republic of Kazakhstan (2014) (CC RK) the state was able to maintain balance, ensure public safety and stability in society, using criminal law methods of combating crime, and this was especially relevant in the 1990s. For example, when the number of dangerous

criminal offences for the society increased, the state toughened criminal punishment, introduced new articles in the CC RK. In contrast, as specific criminal acts declined in number, changes in the situation and other reasons, it could mitigate criminal punishment, even excluding certain corpus delicti from the Special Part of the CC RK. In analysing the problems associated with the application and enforcement of criminal penalties, the state should seek to restore social justice, rehabilitate convicted persons and return them to normal society (Khablo & Svoboda, 2024). Examining certain facets of crime prevention theory is essential to comprehend the function of criminal law as an instrument for successfully influencing crime and offenders, as well as the function of public and private prevention. For instance, R.K. Sarpekov and S.M. Rakhmetov (2022) link the prevention of crime with the impact on its causes, offenders, and providing them with preventive and corrective action.

The Message of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan (Official Website of the..., 2020) has given important attention to the evolution of the criminal code in the Republic of Kazakhstan. The President stressed the need to ensure the stability of criminal and criminal procedure legislation, as frequent adjustments and changes can have an adverse impact on law enforcement, creating heterogeneous investigative and judicial practices. According to S. Apenov *et al.* (2024), the inevitability of punishment for socially dangerous acts should be guaranteed in law enforcement. The worrying increase in criminal offences and prison populations is one of the reasons for the focus on crime prevention. With the passage of the Law of the Republic of Kazakhstan No. 271-IV "On the prevention of delinquency" (2010), Kazakhstan became one of the first countries in the post-Soviet era to implement a preventative system in the fight against crime.

Notably, measures of criminal influence regarding individuals who have violated the law do not always accomplish the objective outlined in Article 39 CC RK (2014), paragraph 2, and sometimes even turn out to have negative consequences. Accordingly, the purpose of this study was to examine the main problems that reduce the level of effectiveness of criminal penalties. For this purpose, it was necessary to analyse the current legislation and practice, highlight conflicts, and propose recommendations for their elimination.

Materials and methods

There were several different types of analysis techniques used in the study. The functional analysis was used to cover the concept "system of punishment", to determine the characteristic qualities, principles on which the implementation of the mechanism is based, types, as well as to determine the function and role in ensuring national security. The logical analysis allowed for identifying links between different aspects of the punishment system, types of offences and punishments, and the purposes of punishment. It also allowed for an assessment of whether the punishment system was fair and effective in terms of its objectives, public safety, and respect for human rights. The method of logical analysis allowed for a more detailed examination of such aspect of the research as arrest and fines as independent types of punishment. This provided an opportunity to define their concepts, to accentuate the characteristic aspects and principles of implementation, to cover the essence and role in

the system of punishment in criminal law in general. Thanks to this method, statistical indicators were also investigated, which showed the number of registered criminal offences in Kazakhstan from 2018 to 2022. These indicators were analysed, the dynamics of these acts and the effectiveness of the punishment system in this aspect were assessed.

The formal legal approach was incorporated to examine the legislative doctrine of Kazakhstan in the context of criminal law. Thus, it provided an opportunity to investigate the Criminal Code of the Republic of Kazakhstan (2014), Constitution of the Republic of Kazakhstan (1995), Message of the Head of State Kassym-Jomart Tokayev to the people of Kazakhstan (Official Website of the..., 2020), the Law of the Republic of Kazakhstan No. 271-IV "On the Prevention of Delinquency" (2010), the Law of the Republic of Kazakhstan No. 404-VI ZRK "On the Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty" (2021), Criminal Procedure Code of the Republic of Kazakhstan (2014), the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010), Penal Code of the Republic of Kazakhstan (2014), the Law of the Republic of Kazakhstan No. 418-V "On Informatization" (2015), the Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016).

The legal hermeneutics technique was used to study the texts of laws and other legal records that relate to the system of punishment in Kazakhstan, to investigate the goals and intentions of the legislator in creating these laws, to clarify the meaning and interpretation of the laws on punishment in Kazakhstan. The dogmatic method enabled a detailed study of the texts of the laws related to the punishment system, which included analysing the structure, the terms used and the logical links within the laws, identifying the types of punishment, the criteria for their imposition and trial procedures, and determining how the acts interrelate. These methods were introduced to create a systematic and clear understanding of the laws and their application. The method of deduction was used to characterise the penal system based on its inherent structural elements and its role in national security. The method of induction, based on the attributes and principles identified during the analysis of legislative acts, allowed for assessing the function of the punishment system and its effectiveness in greater detail. The synthesis method was used to combine the findings of the study and develop recommendations.

Results

Evolution of Kazakhstan's criminal policy. Since 2015, Kazakhstan has pursued an active state policy to improve criminal legislation and counter crime. Particularly important for Kazakh society was the passing of the Law of the Republic of Kazakhstan No. 404-VI ZRK "On the Ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty" (2021). Under this protocol, the death sentence is not applied unless there have been exceptionally serious war crimes. Other innovations include the expansion of alternative measures of deprivation of liberty, the introduction of new types of penalties, and stricter sanctions for offences against the person, including sexual offences, especially against young people. However, the crime rate in

Kazakhstan is still quite high (Fig. 1). Proceeding from the data provided, the level of reported offences has decreased significantly. Thus, from 2018 to 2022, the indicator decreased by 2 times. Notably, crime dynamics accelerated during the lockdowns. Crime prevention measures have considerably improved their level of effectiveness, but there is still a spectrum of challenges.

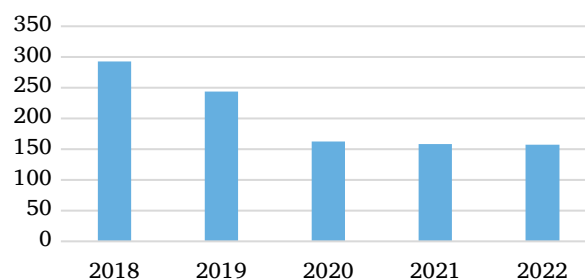


Figure 1. Number of registered criminal offences in 2018-2022, thousand crimes

Source: compiled by the authors based on Forbes.kz (2023) and Legal statistics (n.d.)

The state attention to the issues of criminal punishment has its reasons, because the problem of punishment has always been and stays a key issue in the criminal legal sphere. Current Kazakh legislation makes provision for many types of penalties applicable to various criminal misdemeanours and offences. According to Article 38 of the CC RK (2014), the main penalties for criminal offences are correctional labour, fine, community service, arrest, deportation of foreigners. In the case of offences under paragraph 2 of the same article, the main penalties that may be imposed are fines, correctional labour, community service, restriction of liberty, deprivation of liberty, and the death penalty. Furthermore, the criminal legislation of the Republic of Kazakhstan prescribes additional penalties for criminal offences, such as confiscation of property, deprivation of various titles and awards, restriction of rights and even deprivation of citizenship or expulsion of foreigners.

Specific issues in criminal punishments. Nevertheless, certain aspects of the imposition and execution of certain types of punishment cause difficulties in law enforcement practice. For example, arrest, as a type of punishment, has its own specific features. According to Article 45 of the CC RK (2014), arrest entails isolation the convicted individual from public for a duration of 10 to 50 days. However, arrest does not apply to minors, pregnant women, women with young children, single fathers, women over the age of 58 years and men over the age of 63 years, and persons with disabilities of the first and second groups. Notably, arrest as a form of punishment was first introduced in the system in 1997, but the issues of its execution are still unresolved (Criminal Code of..., 2014). It may be applied only in case of substitution of a fine, community or correctional labour, and in respect of military personnel. Thus, although there is an independent type of punishment in the form of arrest, its imposition is still low, and the practice of its application as a basic punishment is practically absent. According to the current legislation, arrest is executed in places of detention, including special sections of remand centres; military personnel serve their arrest in the disciplinary cell (Criminal Code

of..., 2014). Arrest as a form of punishment is widely used in foreign countries. For example, in countries such as Argentina, Belgium, China, Denmark, Finland, Germany, Greece, Italy, Poland, Spain, Poland, Ukraine, and Spain, arrest is used as a criminal sanction. Detention periods vary from 1 day to 3 years; e.g., in Italy, arrest periods range from 15 days to 3 years, in Denmark – from 7 days to 2 months, and in China – from 1 to 6 months (Turney & Wakefield, 2019).

An important issue hindering the use of this type of punishment in Kazakhstan is the lack of suitable conditions for its execution – the availability of arrest houses. When this type of punishment was introduced, the places where arrests were served were determined as arrest houses, which were later replaced by pre-trial detention facilities. It was only in 2014 that pre-trial detention facilities precincts were introduced into the system to serve arrest sentences (Criminal Code of..., 2014). However, due to the lack of resources for creation of the required conditions for the application of arrest, it should either be excluded as an independent type of punishment, or its name should be changed following the practical possibility of its application and execution. For instance, short-term deprivation of liberty could be considered, as the essence of arrest is a combination of deprivation and restriction of rights accompanied by short-term isolation from society. According to Articles 82-83 of the Penal Code of the Republic of Kazakhstan (2014), persons serving an arrest are held in strict isolation in cells and have certain rights and obligations. There is also ambiguous practice in the enforcement of the penalty in the form of a fine. According to Article 41 of the CC RK (2014), a fine is a pecuniary penalty determined in the amount of monthly calculation indices established by law and in effect at the time the offence was committed, or may be defined as the amount or value of the bribe, transferred property, income, or default on payments. The fine shall be enforced within the term set by the sentence, if the fine is not paid within the term set by the court, compulsory execution shall be applied. Accordingly, there are two stages of penalty enforcement: voluntary and compulsory.

Considering this, an analogy should be established with the procedure for payment of a fine imposed as an administrative penalty to ensure the enforcement of this type of penalty upon voluntary payment. For example, administrative legislation makes provision for deferment and instalments of payment of administrative fines imposed by court decisions or prescriptions of authorities. It was also prescribed that a bailiff may refuse to initiate enforcement if the deadline for voluntary payment has not yet expired. Thus, these aspects require special attention from the representatives of the legislative authorities to develop innovative approaches to the execution of arrest and fine as forms of criminal punishment. A criminal misdemeanour is a culpable act (active or passive) that does not pose a great public danger, causes minor harm or threatens harm to a person, organisation, society, or the state (Maculan & Gil Gil, 2020). Such acts are punishable by fines, correctional labour, community service, and arrest. However, since many persons brought to criminal responsibility do not have a permanent place of employment, the application of this type of punishment is limited. Consequently, the most common type of punishment in the category of criminal misdemeanour cases is a fine. Currently, there are difficulties in the enforcement of fines, which worsens the effectiveness of this form of punishment and contributes to impunity among offenders.

Inmate rights, psychological aid, and probation in Kazakhstan. According to national laws and international human rights standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (United Nations Office on Drugs and Crime, 2015), Kazakhstan's legal system guarantees the preservation of prisoners' rights. These rules protect detainees' fundamental rights, which include the freedom from torture and cruel treatment, access to healthcare, decent living conditions, and protection from other forms of abuse. Kazakhstan has ratified several international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) (1967), further committing the country to uphold the rights of prisoners. But even with these legal safeguards, there are still practical obstacles to overcome in order to guarantee that these rights are completely upheld. Numerous jails in Kazakhstan are still severely overcrowded, which leads to subpar living conditions, unhygienic conditions, and restricted access to leisure activities. More than 37,000 prisoners spread across 78 correctional facilities, exceeding the system's capacity. Additionally, 7,500 individuals are held in 16 pretrial detention centers (SIZO), many of which are also operating beyond their limits (Zhulmukhametova, 2024). The jail system's already limited resources are made worse by overcrowding, which makes it more challenging to offer sufficient food, healthcare, and other necessities (National Bar Associations, 2023). This circumstance raises the possibility of communicable diseases spreading within prisons and contributes to the declining health of prisoners.

Studies have consistently shown a strong link between mental disorders and incarceration, with many prisoners suffering from conditions such as depression, anxiety, and post-traumatic stress disorder (Anderson *et al.*, 2016; Baranyi *et al.*, 2019). Because of this connection, essential psychological care is needed to address the mental health needs of prisoners. Although basic counselling and crisis intervention are the main emphasis of mental health support services, they are insufficiently comprehensive to address the complex mental health requirements of the jail population (Substance Abuse and Mental Health..., 2020). The lack of licensed psychologists and mental health specialists is a significant factor in the limited efficacy of psychological assistance in Kazakhstan's prisons. Numerous jail institutions may only have one or two psychologists on staff, if any, to care for hundreds of prisoners. For instance, some reports suggest that there is only one psychologist available for up to 300 prisoners, which greatly limits the ability to offer individualized care and rehabilitation services (Satybekova & Tileubayeva, 2023). Ideally, the number of psychologists should be significantly increased to ensure more comprehensive mental health support, with an optimal ratio closer to international standards of one psychologist per 50-100 prisoners.

Also, the existing mental health services typically prioritise short-term therapeutic interventions over long-term crisis management. This indicates that while acute psychological needs, like aggressive or suicidal thoughts or behaviours, may be attended to, long-term rehabilitation is not given enough attention (Mukasheva *et al.*, 2024). This lack of consistency in care is particularly troublesome for repeat offenders (those who have done time in jail or prison and have a history of reoffending) (Beaudry *et al.*, 2021). These people frequently exit jail without a support network or aftercare, which raises the possibility that they will relapse

into criminal activity because of unresolved psychological problems (Downs, 2020). Recidivism is greatly increased when there are no ongoing rehabilitation efforts since the released individual is likely to encounter the same mental health and environmental issues that preceded their original offences (Zgoba *et al.*, 2020).

One significant step forward in Kazakhstan's criminal justice reform has been the enactment of laws pertaining to probation, including the Law of the Republic of Kazakhstan No. 38-IV "On Probation" (2016). This statute permits some offenders to serve their sentences under community supervision rather than in prison, providing a more compassionate and restorative option to incarceration. Since its introduction, the number of people placed on probation has risen gradually, relieving pressure on the jail system by cutting down on congestion and the accompanying expenses of incarceration. In Kazakhstan, the number of people on probation grew from 28,079 in 2021 (Open Data GOV, 2021) to 28,463 in 2023 (SOZmedia.kz, 2024), reflecting a 1.37% increase. In contrast, the UK saw a slight increase in probation numbers from 238,500 in 2021 to 238,765 in 2023 (GOV.UK Justice Data, n.d.), representing a small growth of about 0.11%. While Kazakhstan's probation numbers are rising, the growth rate remains modest and may not be sufficient to meet broader objectives of reducing incarceration and enhancing rehabilitation, especially when compared to larger systems like the UK's. Offenders, especially those found guilty of less serious offences, can stay in their communities under probation as long as they follow supervision and take part in rehabilitation programs. One of the biggest issues facing Kazakhstan's probation services is the scarcity of qualified personnel, such as psychologists and social workers, which makes rehabilitation less successful (Salamatov, 2018). Furthermore, because there are no standardised practices, pretrial reports are administered inconsistently among locations. And since probation officers are not formally recognised by the legal system, their reports have minimal influence on criminal proceedings. These problems seriously impair the probation system's efficacy (Alimpiyev, 2024).

It was indicated that persons serving jail sentences are more likely to commit crimes again than those placed on probation, particularly if they have access to appropriate rehabilitative resources (Fox *et al.*, 2021). But repeat offenders often pose more difficult problems. These people may be more resistant to rehabilitation attempts because they have more severe behavioural problems or established criminal behaviour patterns. The probation system has produced inconsistent outcomes for these offenders. Some people effectively reintegrate back into society, but others can turn back to crime, especially if they don't obtain timely and focused treatment.

Enforcement challenges and recommendations. According to Article 472 of the Criminal Procedure Code of the Republic of Kazakhstan (CPC RK) (2014), all state bodies, local self-government organisations, legal entities, officials, and the general public are bound by court rulings and judgements that have become legally binding. These rulings are also strictly enforced across the Republic of Kazakhstan's territory. Failure to execute a judgement or court order shall entail criminal liability. The imposition of the fine is determined pursuant to Article 41 of the CC RK (2014) and depends on a certain number of monthly calculation indices established at the time of the offence. For criminal offences, the fine can range from 25 to 500 monthly estimates.

According to Article 41 (3) of the CC RK (2014), if a fine imposed for a criminal misdemeanour is evaded, it may be replaced by community service or arrest. However, difficulties arose in connection with the amendment of Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010), which gave private bailiffs the right to recover amounts up to 1,000 monthly estimates. This has led to incorrect application of this article by private executors, even though Article 24 of the Penal Code of the Republic of Kazakhstan (2014) (PC RK) grants the exclusive right to territorial justice authorities to carry out a fine-based form of punishment. Thus, these problems require the attention of legislators to improve the penalties in the form of fines and ensure their more effective enforcement. The CPC RK (2014) and the PC RK (2014) are more legally binding according to the hierarchy of laws than Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010).

The Penal Code of the Republic of Kazakhstan (2014) gives the probation service the right to declare wanted persons under probation supervision if such persons evade serving their sentence. Such powers are not delegated to private bailiffs. The probation service has a well-established system of control over convicts and would not have to fulfil other functions in case of a transfer to the execution of a fine, whereas the transfer of the execution of sentences to private bailiffs undermines the foundations of statehood and principles. Only the state is the coercive organisation and only the state authorities have the right and obligation to carry out the penalties imposed in the name of the state. Furthermore, according to Articles 170 and 178 of the CPC RK (2014), when executing a judgement for recovery of civil claim and procedural costs, the court shall send the judgement for enforcement to the relevant justice authority pursuant to the process outlined in the laws governing civil proceedings. Procedural costs in criminal cases are also recovered only in favour of the state, and writs of execution must also be sent to the territorial justice authorities. Regarding the absence of an application from the claimant, it should be noted that private court bailiffs carry out their activities only on a paid basis after concluding an agreement (contract) with the claimant over how the enforcement document will be executed. In most cases, victims who have already suffered a crime and suffered damages do not have the resources to pay for private bailiffs. This is particularly relevant in situations where it is a question of recovery of procedural costs in favour of the state. In such cases, it is also unclear how private bailiffs should be dealt with.

With the introduction of the Law of the Republic of Kazakhstan No. 418-V "On Informatization" (2015), writs of execution for amounts less than 1,000 monthly estimates are automatically sent to the regional chamber in electronic form. Thus, as of 1 January 2016, sentences in cases of criminal misdemeanours, which prescribe the recovery of damages for victims and procedural costs, shall not be enforced if the amount does not exceed 1,000 monthly payments. The same applies to penalties in the form of fines. Due to the emergence of contradictions between Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010) and Article 24 of the PC RK (2014), it became impossible to enforce penalties as monetary penalties for criminal acts.

This circumstance is conditioned by the fact that such enforcement is carried out only by territorial justice authorities, and the Chamber of Private Bailiffs is not included in this category. The Criminal Procedure Code of the Republic of Kazakhstan (2014) and the Penal Code of the Republic of Kazakhstan (2014) have greater legal force in the hierarchy than the above Law. In this regard, there is a need to bring the provisions of Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" (2010) in line with the provisions of Article 24 of the CPC RK (2014). Further research should be aimed to analyse how to detect and counter frauds using information technology.

Discussion

Today, there is no doubt about the independence of penal law, but even though it is separated from criminal law, there is still a close connection between the two branches. Notably, many problems in the penal enforcement system are primarily related to the content of criminal legislation. According to D. Sznycer and C. Patrick (2020), penal law can be considered as an extension of criminal law at the point where the penal system is putting punishment into practice. The enforcement of sentences, as the final stage of the law enforcement process, requires serious review and improvement.

During the period of Kazakhstan's independent development, there have been positive changes in the economy, in the consciousness of its citizens, and the country's situation in the global context has improved, including the performance of international obligations in penal enforcement (Buribayev *et al.*, 2020). However, there is a crisis in the penal system. There is an insufficient material base, low wages, insufficient status of the profession, difficult and harmful working conditions, use of torture, shortcomings in criminal and penal enforcement legislation, lack of high-paying jobs, imperfect system of professional training, and many others. According to D. Husak (2020), convicts do not improve their situation after serving their sentence, but on the contrary, they become even worse. This happens, unfortunately, with the direct involvement of the staff of the penal and correctional system and under the influence of factors in the creation of which we ourselves are actively involved.

According to M. Langer (2020), frequent changes and adjustments in it adversely affect law enforcement and hinder the development of uniform investigative and judicial practice. It is worth agreeing with this position, as decisions related to the application of legislation are often made without doing adequate research and predictions, concentrating on what makes law enforcement convenient. This raises the need to develop new definitions for administrative and criminal offences so that the logic of determining punishment for violations becomes clearer to society and the legal community (Moroz & Horislavska, 2024). According to the position of T. Skolnik (2020), in the law enforcement process it is necessary to ensure inevitability of punishment for committed socially dangerous acts. It should be added to the above opinion that one of the factors causing increased focus on the issue of crime prevention is the increasing amount of criminal acts and the growing prison population, which raises serious concerns. Considering the examination of criminal law, it was noted that measures of this impact on those who have broken the law, not only do not achieve the intended purpose defined in the Criminal Code of the Republic of

Kazakhstan (2014), but even lead to negative results, as convicted persons, instead of correction, become even worse, despite the requirements of criminal law.

There is a debate among scholars as to whether criminal law norms have a restorative function. Some scholars believe that the restorative function is unique to civil law. For instance, A. Kornya *et al.* (2019) argue that criminal punishment has only a compensatory function because the punishment deals with the compensation of bodily and/or moral injury sustained by the victim by the criminal offence. On the other hand, A. Ristroph (2020) takes the position that criminal punishment also has restorative or compensatory functions, as in its imposition, social justice and the rights of the victim violated by the criminal offence are restored. For example, the state compensates the aggrieved party's moral damages by excluding the offender from society, and through the application of fines, labour penalties and confiscation of the criminal offender's property, the state contributes to the compensation of material damage caused to the victim (Nukezhanova *et al.*, 2024).

According to D.L. Rhode (2019), the arguments presented do not provide a full understanding of how recovery occurs during punishment, as there is currently no rigorous scientific study of this issue, and the necessary set of indicators to assess the effectiveness of criminal penalties has not been developed. According to A. Aliverti *et al.* (2021), the restorative function of punishment exists because it includes the restoration of legitimate rights, duties, and interests of people and legal organisations, society, the state, and the world community, which were violated by the offence. It is important to support the stance that in the imposition of punishment it is acceptable for social justice to be restored, although this procedure is only partially guaranteed. For example, A. Corda and S.E. Lageson (2020) note that in traditional law there was no such punishment as deprivation of liberty. It ought to be included in the writers' perspective that the main purpose of the penalties was to restore justice. In this context, it is important to mention the study by A.K. Das *et al.* (2019), who write that different types of punishments such as death penalty, corporal and dishonouring punishment, ransom, fine, extradition of the perpetrator to the injured party and banishment from the community instead of prison were differentiated earlier. The minimum task to be achieved in the purpose of punishment is to deter the convicted person from carrying out new offences due to fear of punishment. The maximum challenge is adaptation and re-socialisation. Since punishment includes the elements of punishment, the execution of punishment can be considered as a formally regulated procedure for the application of punishment pursuant to the penal enforcement legislation. According to D. Epps (2021), the regime of detention of convicts contributes to the punitive functions of punishment by creating favourable conditions for the achievement of its objectives.

Notably, modern criminal law doctrine does not pay enough attention to punishment itself. This is conditioned by the fact that this problem is sufficiently studied and does not require revision. This is confirmed by the fact that when the Criminal Code of the Republic of Kazakhstan (2014) was adopted, the provisions related to the General Part of the Code stayed virtually unchanged, although they could have been revised and adjusted. Correction means the application to the convicted person of a set of procedures, because of which the person should improve (Spytska, 2023).

For example, Article 4 of the Penal Code of the Republic of Kazakhstan (2014) duplicates the objectives of criminal enforcement specified in Article 39 of the CC RK, as well as forms and methods of influence on convicted persons. In this context, the execution of punishment is inextricably linked to the accomplishment of criminal punishment's objectives and the correction of the convicted person. For example, according to G.D. Caruso (2020), the correction of the convicted person is not an independent goal but serves as a means to achieve the goal of preventing the commission of new offences. It is important to agree with this viewpoint and add that to increase the role of criminal legal influence on those who have committed crimes, it is important to be mindful of the personality of the offender, since it is the study of the personality of the offender that has a significant impact in the imposition of a correct and fair punishment, as well as in the offender's subsequent correction.

Based on the above, the following actions are suggested to better enhance the criminal code:

- the concept and objectives of penalty formulated in Article 39 of the Criminal Code of the Republic of Kazakhstan (2014) do not correspond to the modern reality and require revision and adjustment;
- it is also necessary to change the title of Article 11 of the Criminal Code of the Republic of Kazakhstan (2014) from "Categories of Crimes" to "Categories of Criminal Offences" to better fit the two-tier structure of criminal offences (crimes and criminal misdemeanours);
- a new category of criminal offences – criminal misdemeanours – should be added, as they have been excluded from the general concept of classification;
- the phrase "as well as those convicted of criminal misdemeanours" should be removed from paragraph 2 of Article 79 of the Criminal Code of the Republic of Kazakhstan (2014) to make a conviction for a criminal misdemeanour similar to a conviction for a crime. Considering these aspects, the suggested method to revising some features of combating criminal acts through the means of criminal code will help to address a lot of the problems faced by law enforcement agencies and civil society in the fight against crime.

Conclusions

This study was conducted to analyse the punishment system in Kazakhstan and identify the main problems that reduce the effectiveness of their implementation. First of all, it was found that the rate of reported criminal offences has halved between 2018 and 2022. This indicates that the current criminal law system is operating in a very good quality, but that there are significant issues with the execution of law

enforcement practice. Persistent problems of inmate rights violations remain. Overcrowding, a lack of healthcare, and mistreatment keep undermining reforms meant to improve prison conditions. Despite Kazakhstan's international commitments, these issues are made worse by poor oversight by independent agencies and a lack of openness in complaint procedures. There is also a lack of psychological support offered in prisons due to the low number of mental health specialists and inadequate long-term treatment. Although probation legislation has reduced overcrowding and recidivism, challenges persist, especially in rural areas where probation officers face heavy caseloads and uneven access to rehabilitation services. Despite advancements, more work is required to guarantee a more equitable and restorative criminal justice system in Kazakhstan by strengthening the probation system, enhancing mental health services, and protecting inmate rights.

Such type of punishment as arrest shall be applied in case of replacement of a fine, community or corrective labour, and in respect of military personnel. Even though this type of punishment is independent, its imposition is still low and there is virtually no practice of its application as the main punishment. The main reason for this is the lack of arrest houses. The solution to this problem is to allow for the introduction of short-term deprivation of liberty. Another problem in the penal system is the ambiguous practice of enforcing punishment in the form of a fine. It was suggested that an analogy be established with the procedure for paying a fine as an administrative penalty to implement this type of punishment on a voluntary basis. It was noted that there was a conflict between Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement Proceedings and the Status of Bailiffs" and Article 24 of the Penal Code of the Republic of Kazakhstan, which made it impossible to implement fine as a form of punishment. This is because this implementation is carried out exclusively by the territorial justice authorities, but the private bailiffs' chamber does not fall under this category. Accordingly, it was proposed to amend the norm set out in Article 138 of the Law of the Republic of Kazakhstan No. 261-IV "On Enforcement proceedings and the Status of Bailiffs" following the provisions of Article 24 of the Penal Code of the Republic of Kazakhstan. Further research should focus on the impact of different types of criminal punishment on recidivism rates.

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Conflict of interest

None.

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Проблеми ефективності системи виконання покарань у кримінальному праві Казахстану: між законодавством і досвідом рецидивістів

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Анотація. Актуальність дослідження зумовлена наявністю колізій у чинному законодавстві, що має значний негативний вплив на правозастосовну практику. Відповідно, метою дослідження був аналіз кримінально-виконавчого законодавства Казахстану в контексті дослідження системи виконання покарань. Для цього були використані такі методи, як догматичний, логічний аналіз, правова герменевтика, дедукція, індукція, формально-юридичний та інші методи. Дослідження показало, що кількість зареєстрованих кримінальних правопорушень у Казахстані з 2018 по 2022 рік зменшилася вдвічі, але цифри все ще залишаються досить високими. У дослідженні було проаналізовано Кримінальний, Кримінально-процесуальний та Кримінально-виконавчий кодекси, а також інші нормативно-правові акти кримінального права Казахстану. Це дало можливість охарактеризувати сучасні види покарань у Казахстані. Було виявлено, що арешт часто використовується як альтернативне покарання, незважаючи на те, що він є основним покаранням. Зазначено, що існує колізія між Кримінальним та Кримінально-процесуальним кодексами, а також Законом Республіки Казахстан № 261-IV «Про виконавче провадження та статус судових виконавців», що призводить до неправильного застосування норм приватними виконавцями в контексті виконання покарання у вигляді штрафу. Практичне значення одержаних результатів полягає в наданні рекомендацій, які дозволять усунути наявні колізії в кримінальному законодавстві Казахстану, вирішити проблеми правозастосовної практики та підвищити рівень ефективності виконання покарання, що сприятиме зниженню рівня злочинності

Ключові слова: превентивні заходи; аналіз законодавства; штраф; арешт; конфлікти