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Advantages and risks of using alternatives to imprisonment: International legal standards and national law of the Republic of Kazakhstan

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Abstract

This study rests on a critical analysis of the key objectives and significance of alternatives to imprisonment at both the international and national legal levels. The study explores the available evidence on the effectiveness of alternatives to imprisonment. The exploration of this topic is indispensable for the formulation of a comprehensive, ethical, and economically sustainable criminal justice framework that aligns with international norms and takes into account the unique characteristics of the

It is worth noting that some of the basic provisions contained in this article partially coincide with the theses presented in an earlier (Russian-language) publication by the author Baizakova (https://bulletin-jurisprudence-kaznpu.kz/index.php/home/article/view/227). However, the publication in the Kazakh edition presents a general overview and analysis of legal trends related to the implementation of the provisions of international legal acts into national legislation. The current article is a novel, more comprehensive study, which analyzes in more detail the integration of foreign experience with alternatives to imprisonment in Kazakhstan and provides extensive recommendations for adapting successful foreign practices to local socio-legal and cultural contexts.

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Republic of Kazakhstan. Such an endeavor would contribute to the refinement of law enforcement procedures and the overall enhancement of the legal system.

Key words

Alternative measures of criminal practice; conditional sentence; imprisonment; punishment; restriction of freedom

Resumen

Este estudio se basa en un análisis crítico de los objetivos fundamentales y la importancia de las alternativas al encarcelamiento, tanto en el ámbito jurídico internacional como en el nacional. El estudio examina los datos disponibles sobre la eficacia de las alternativas al encarcelamiento. El análisis de este tema es indispensable para la formulación de un marco de justicia penal integral, ético y económicamente sostenible que se ajuste a las normas internacionales y tenga en cuenta las características únicas de la República de Kazajistán. Tal iniciativa contribuiría al perfeccionamiento de los procedimientos de aplicación de la ley y a la mejora general del sistema jurídico.

Palabras clave

Medidas alternativas a la pena; condena condicional; prisión; castigo; restricción de la libertad

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1. Introduction

The world's prison populations are breaking historical records in terms of overcrowding. Statistical data indicates that there are more than 11.5 million individuals currently incarcerated globally (World Prison Brief 2024). The prison and jail populations, which have always been large in all countries of the world, have increased by a critical 24% during the 21st century. At the same time, the number of inmates in penal institutions in 121 states critically exceeds official capacity levels. Another current trend is the proliferation of prison facilities across the globe (Human Trafficking Search 2022). In 2021 alone, numerous states initiated the construction of newly built penitentiaries that are considerably larger than their predecessors and are typically located in remote areas. According to official statistics, investments were made in existing prison projects to create approximately 437,000 additional places (Riegler 2022).

At least one-third of the overall number of detained individuals are not convicted and are currently in pre-trial detention. The analysis indicates that alternatives to imprisonment are not being applied adequately (Human Trafficking Search 2022). Consequently, overcrowded prisons, while placing a significant burden on the public finances, do not effectively rehabilitate or re-educate all individuals who have completed their sentences, and do not adequately contribute to preventing recidivism (Council of Europe 2024). The international community acknowledges the issue of the overuse of criminal penalties involving incarceration and detention in specialized institutions of the criminal justice system.

The fundamental rationale for implementing criminal sanctions and alternative measures stems from the the inappropriateness of imposing criminal penalties on individuals in light of broader societal interests (Veresha 2017). The establishment of a mechanism for implementing alternative measures is grounded in the need for less severe approaches in addressing criminality compared to incarceration. This mechanism serves as a promising element within the framework of individual criminal responsibility.

However, prison congestion is only one of the problems within the penitentiary policy of the states. The importance of exploring and implementing alternatives to imprisonment is driven by several factors, including the humanization of penal policy, reduction of recidivism, economic efficiency, adherence to international standards, reform of the penal and criminal justice systems, public safety, and confidence in the legal framework. Research into these issues is essential for Kazakhstan, as it would foster the advancement of the country's judicial system, as well as contributes to enhancing socio-economic conditions and human rights protection mechanisms. The aim of the study is to identify legal and institutional conditions that ensure the effective use of alternatives to imprisonment in the Republic of Kazakhstan, taking into account international practices and comparative experience. This study aims to answer the question of whether alternatives to imprisonment in the Republic of Kazakhstan contribute to achieving the goals of criminal punishment more effectively than traditional imprisonment, taking into account international experience. The research tasks are to:

- identify international legal principles and models for the application of alternatives to imprisonment;

- analyze legal regulation and the practice of their application in the Republic of Kazakhstan;
- identify structural and institutional problems in the implementation of alternative sanctions;
- conduct a comparative analysis of the Kazakhstani model with relevant foreign jurisdictions;
- assess opportunities for improving national legislation, taking into account international standards and comparative experience.

2. Literature review

States' search for alternatives to imprisonment is driven by a combination of structural, economic, and human rights factors that create a persistent institutional demand for reform of criminal policy. First, chronic overcrowding in penitentiary institutions in many jurisdictions leads to deteriorating conditions, increased violence, and decreased effectiveness of rehabilitation programs, which calls into question the achievement of punishment goals (Alshaibani 2025, Baizakova *et al.* 2025). Second, maintaining prisoners in prison places a high budget burden, while measures that do not involve isolation from society (in particular probation, community service, electronic monitoring) demonstrate greater cost-effectiveness with a comparable level of oversight (Lešková *et al.* 2022). Third, contemporary international law, including regulations developed by the United Nations and the Council of Europe, enshrines the principle of imprisonment as a measure of last resort (*ultima ratio*) and encourages states to develop differentiated sanctions that ensure proportionality and individualization of punishment (OHCHR 1990, Committee of Ministers 2003). An additional motivation is the empirically confirmed limited effectiveness of short-term imprisonment in reducing recidivism (Wermink *et al.* 2023). Isolation of prisoners often leads to the severing of social ties, loss of employment, and increased marginalization, whereas alternative measures allow for a combination of control, social status maintenance, and support for reintegration (Beaudry *et al.* 2021, Stam *et al.* 2024). Finally, in the context of modernizing public administration systems, alternatives to incarceration are viewed as a tool for "rationalizing" criminal policy, ensuring a balance between public safety, the humanization of justice, and the economic sustainability of the penitentiary system.

At the start of the 21st century, there has been a growing trend in legal, political, and sociological literature regarding the increased interest in addressing the issue of prison overcrowding. Prison overpopulation is viewed not just as a matter of physical space, but also as a significant impediment to creating a secure, reliable, healthful, and humane penal environment. This seriously undermines the objectives of imprisonment, including safeguarding society and facilitating the rehabilitation of offenders (UNODC 2024a). Decades of research have demonstrated that prison is not the most effective setting for the rehabilitation of individuals who have transgressed the law (Bartle 2019). It is noteworthy to mention studies that underscore the importance of upholding human dignity and broadening the civil liberties of incarcerated individuals (Aresti and Darke 2015, Darke 2022).

To address the research objectives, an analysis of relevant criminal justice literature is essential. The valuable reference material contains information that reflects the main

findings of a comparative study conducted by the European Commission. The study examined statistical and qualitative data on prison population and the use of alternatives to imprisonment in eight member states of the European Union (EU). Other important documents are a handbook of prison population reduction strategies (UNODC 2007), a handbook on the assessment of criminal justice systems (UNODC 2010), and materials of international conferences and webinars (CISST 2018, Euro Social 2020).

The Scandinavian approach to using alternatives to imprisonment has had a substantial impact on the global community in terms of research on this issue. In the field of comparative criminal justice studies, the Nordic countries often serve as examples that deviate from general trends (Ugelvik and Dullum 2011).

Finnish criminologists have conducted a range of studies, from criticizing the concept of total control and intimidation within the criminal justice system (Lappi-Seppälä 2008), to developing coordinated crime prevention strategies (Törnudd 1993). They have also described the modern system of alternatives to incarceration (Lappi-Seppälä 2009) and provided a comprehensive analysis of the Scandinavian criminal policy model. This model rests on consensus-based and corporatist political culture, a high level of public confidence and political legitimacy, and robust welfare bounds (Lappi-Seppälä 2011).

A series of research reports, conducted by Penal Reform International (PRI) in collaboration with the University of Coimbra and the Hungarian Helsinki Committee, have shed light on the impact of the pandemic on non-custodial sanctions and measures (Penal Reform International 2024). The COVID-19-driven reduction in prison population rates has been more sustainable in countries that employ alternative detention options or have implemented reform initiatives. In Ireland, measures related to the pandemic have led to a reduction of 15% in the prison population of the country. This is in line with the country's broader trend of reducing short prison sentences and increasing the use of alternative measures such as community service and non-custodial sanctions. Evidence has shown that the availability of these existing alternative detention measures has enabled countries to take more effective measures to reduce prison populations during times of crisis (Penal Reform International 2022a). Among the studies, the report on the project "Promoting non-discriminatory alternatives to imprisonment across Europe" stands out for its thoroughness in the comparative analysis. The report describes the implementation of the project in 21 European Union member states and the impact of the COVID-19 pandemic (Penal Reform International 2022b). The most effective strategy used to reduce recidivism is the Risk-Need-Responsivity (RNR) model (Andrews and Bonta 2010). The case of Australia demonstrates the application of Justice Reinvestment (JR) principles (Willis and Kapira 2018). A comprehensive analysis of global practices includes a dedicated study by Oren Gazal-Ayal and Julian V. Roberts on trends in the utilization of alternatives, titled "Foreword Alternatives to Imprisonment: Recent International Developments" (Gazal-Ayal and Roberts 2019). Another comprehensive overview of non-custodial sanctions implemented in all major regions of the world is provided in the unique publication titled "Alternatives to Imprisonment in Comparative Perspective" by Uglješa Zvekić (1994).

The international practice of utilizing alternatives to imprisonment is of considerable relevance to the scholarly and practical dimensions of criminal law within the Republic of Kazakhstan. An expert analysis of this issue within Kazakhstan spanning from the

1990s to 2011 can be found in the publication titled "Reducing the Prison Population in Kazakhstan" (LPRC 2011, Geta 2014). Contemporary scientific investigations have revealed positive and negative tendencies in the field of legislative regulation and law enforcement, addressing the use of alternatives to imprisonment as a means of criminal legal intervention (Rakhimberdin 2021). The need to revise the concept and content of criminal penalties, as well as to reconsider and improve the implementation of penalties, is justified in light of the new criminal justice policy of the Republic of Kazakhstan (Skakov 2018, Akimzhanov *et al.* 2021). Along with research on the issue at the public policy level, the legal literature includes a large number of studies devoted to the conceptualization of alternative sanctions for individuals (Beknazarov 2012), based on statistical data (Salamatov 2017).

Despite all the acknowledged advantages, alternative sanctions remain the subject of well-founded criticism. Almost four decades have passed since the publication of Stanley Cohen's seminal work Visions of Social Control, which outlined the paradoxes and pitfalls associated with the spread of alternatives to imprisonment (Cohen 1985). One of Cohen's key warnings was the phenomenon of "net-widening," whereby new control measures do not replace but complement prison punishment, effectively strengthening the system of supervision. These ideas, also developed in transcarceration studies, remain relevant in the analysis of contemporary practices, including electronic monitoring and other forms of "virtual incarceration" (Villman 2024). Thus, not all alternatives to imprisonment have a liberating and humanizing potential, which requires their critical assessment in the context of criminal policy. Stanley Cohen pointed out that the introduction of "soft" control measures does not always lead to a reduction in the number of prisoners. In practice, they often begin to be applied to those who would previously not have ended up in the prison system at all (for example, to petty offenders or to individuals who would previously have been limited to a warning or a fine). This does not lead to decarceration (the process of reducing the number of people in correctional facilities), but to an expansion of the criminal control network, covering a larger number of people. A related phenomenon is transcarceration, that is, the transfer of forms of supervision from prison to other social institutions (social services, medical institutions, probation services). As a result, control becomes more diffuse and ubiquitous, but no less intense. A classic example is electronic monitoring, which formally appears to be a humane alternative to imprisonment, but in fact turns the home into a "prison without walls."

Technological alternatives (electronic bracelets, GPS monitoring systems) are often presented as a way to humanize punishment. However, it has been argued that, by increasing disciplinary oversight, these alternatives shift control into the private space and blur the boundaries between freedom and captivity. In this sense, electronic monitoring can reproduce the logic of prison rather than disrupt it. Research shows that electronic monitoring is often used as a means of expanding control rather than as an alternative to incarceration. In particular, a report by the Vera Institute of Justice notes that the use of electronic monitoring increases the number of people under supervision and can amplify many of the costs of mass incarceration, such as stigmatization and restriction of freedom (Dholakia 2024). Based on the views of modern researchers, social consequences can be expressed in:

a) stigmatization, when individuals under alternative measures (for example, under electronic monitoring) continue to bear a social stigma that hinders resocialization;

b) inequality, since such measures can increase social stratification, since risk groups (the poor, migrants, vulnerable) are more often subject to alternative control;

c) a shift in emphasis in favor of economic benefits (electronic monitoring is cheaper, but this shifts the emphasis from humanization to cost optimization) (Richter *et al.* 2021, Al Weswasi and Bäckman 2025, Karpuntsov and Veresha 2023). Nevertheless, such costs in general seem entirely justified, both from the point of view of the humanistic principles of justice, within the framework of the general historical logic of the development of law as a regulator of social relations, as well as from the point of view of the criminal-legal principle of proportionality of punishment to the offense committed.

Despite all the above-mentioned shortcomings, alternative punishments retain special significance both for Kazakhstan and in general. Their introduction is aimed not only at reducing the prison population and solving the problem of overcrowding in penitentiary institutions, but also at optimizing state expenditures on the penitentiary system. An important aspect is that the expansion of the range of alternative sanctions demonstrates Kazakhstan's desire to align with international human rights standards and develop a more humane and differentiated approach to criminal justice. Thus, despite the existing limitations and criticism of individual practices, alternative punishments represent a fairly important tool for modernizing criminal policy and strengthening social sustainability.

3. Methods and materials

In order to assess the evolution of alternatives to imprisonment at the international and national levels, the study employed various methods of analysis, including content analysis, historical and legal methods, and systematic and structural approaches. During the research process, the comparative law method was widely utilized to examine the global experience, national legislation, and practice in the Republic of Kazakhstan regarding the implementation of alternative sanctions.

The paper explores the legal and organizational aspects of developing alternatives to imprisonment, the state of research in this field, and promising measures providing for exemption from criminal punishment. This approach has allowed for a detailed analysis of the complex and evolving system of alternative measures for influencing offenders. The analytical basis involved collecting data from various sources regarding the experience of other countries, classifying the data based on a systematic analysis of the content, identifying key elements, and evaluating the results. The classification of data has employed various criteria, including the types of alternative measures used, the regions and jurisdictions in which they are implemented, the categories of offenses and offenders involved, and others. The identification of key elements has focused on both general and specific aspects of the approach to using alternatives to imprisonment and the effectiveness of these sanctions.

The analysis and synthesis of successful practices in this study enabled the modeling of legal and institutional frameworks based on the identified benefits of alternatives to imprisonment in the legal and societal context of Kazakhstan. The foreign experience of implementing alternatives to imprisonment was studied using content analysis, case studies, and social modeling methods. Content analysis covers international and national policy documents, analytic materials, legal acts, and media publications in order to identify both the main features of alternatives and public perception levels.

The normative and legal component of the study includes a qualitative analysis of international, regional, and national legal acts (including the Tokyo Rules [OHCHR 1990]), the Nelson Mandela Rules (UNODC 2015), Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states of the Council of Europe Probation Rules), as well as reports by Penal Reform International, UNODC, and the Council of Europe. In addition, there were analysed more than 40 scientific publications and analytical reports published between 2010 and 2025 to reflect both theoretical developments and the latest empirical data. Kazakhstani national legal framework is presented by legislative acts of the state (including Criminal Code of the Republic of Kazakhstan), official statistics, judicial practice, as well as materials from state and non-governmental organizations. Within the frames of the conducted analysis, the collected data were classified according to several criteria:

a) the nature of the document (international treaty, national legislation, policy report, or academic research);

b) jurisdictional scope (global, European, or national/Kazakhstani);

c) the type of alternative measure (conditional discharge, community service, fine, restriction of liberty, electronic monitoring, etc.);

d) the category of offender (adults, juveniles, first-time offenders, repeat offenders);

e) the evaluation results (impact on recidivism, social reintegration, and cost-effectiveness).

To illustrate the differences in implementation models, case studies and best practices from several North- and Northwestern European) countries with proven positive experience in the application of alternative punishments (Norway, the Netherlands, and Finland) were analyzed. A systems approach was used to integrate the results obtained in various jurisdictions, while a comparative legal approach allowed for an assessment of the compliance of Kazakhstan's legal framework with international standards. The analysis of successful practices in specific countries substantiated the effectiveness of strategies adopted in the North- and Northwestern European countries. The use of social modeling determined the impact of alternative punishments not only on offenders but also on the justice system and society as a whole.

The experiences of the above states were chosen for analysis as empirically confirmed examples of sustainable decarceration policies. The chosen jurisdictions demonstrate the systematic implementation of alternatives to incarceration, accompanied by institutional support, transparent statistical evaluation, and the absence of strongly marked negative consequences for public safety. The analysis of foreign models is aimed at identifying institutionally reproducible mechanisms applicable in the legal system of the Republic

of Kazakhstan. The selection of countries was carried out taking into account the comparability of the level of social and economic development, the stage of criminal policy reforms and belonging to the continental-law legal family. Within the framework of theoretical limitations, the experience of reforms in post-Soviet countries was not considered, since the latter, as a rule, were of a wave-like nature, depended on the political situation and were not always accompanied by institutional stability, representing not a systemic model, but rather demonstrating cyclical dynamics. Although reforms in a number of post-Soviet states demonstrate positive trends towards decarceration, they cannot be considered among the recognized as best global practices, since they are characterized by limited institutional sustainability, incomplete transformation to a rehabilitation model, and insufficient empirical evaluation of effectiveness.

4. Results and discussion

4.1. Prerequisites for the development of alternatives to imprisonment in the Republic of Kazakhstan in front of global trends

In modern conditions, Kazakhstan's criminal policy is focused on finding a balance between the need to ensure public safety and the objectives of humanizing punishments. One of the key areas is the development of alternatives to imprisonment and a probation system that can reduce the prison population, cut budget expenditures and increase the effectiveness of resocialization of convicts. The introduction of probation practices reflects a global trend towards abandoning excessive isolation of offenders and forming more flexible mechanisms of criminal-legal influence. The issue of alternatives to imprisonment and the development of probation in Kazakhstan is quite acute today, since the country's prison system remains overloaded and expensive, and international organizations (including the UN and the Council of Europe) have been recommending for many years to expand the use of measures not related to isolation from society (Geiran and Durnescu 2019, UNODC 2024b).

Such measures are commonly reflected in alternative forms of punishment (such as community service), the increased use and amount of fines, probation, suspended sentence, house arrest, electronic monitoring, cash bail and parole. To date, there is a growing recognition of the benefits offered by criminal sanctions that are alternatives to imprisonment (UNODC 2024b). The successful implementation of these alternatives in various jurisdictions supports the aspiration of states to introduce similar measures in order to reduce prison populations. Kazakhstan regards the development of these measures as an essential component in mitigating prison overcrowding, thus actively pursuing reforms in this area.

The Republic of Kazakhstan was one of the first countries in the Central Asian Region to introduce alternatives to incarceration. The latter were implemented in 2010 and 2011 with the support of the Open Society Institute as part of the pilot project known as "Reducing the Prison Population in Kazakhstan". In the early 1990s, Kazakhstan was ranked third in the world in terms of the number of inmates per 100,000 people (approx. 500 prisoners per 100,000 population) (Penal Reform International 2016). According to the latest data from the International Centre for Prison Studies (ICPS), as of June 2023, Kazakhstan ranks 100th in the world in terms of prison population, with 157 inmates per

100,000 citizens. If in 2000, the prison population of Kazakhstan was 78,000 people, then by 2023, it had decreased to 29,400 prisoners. The percentage of sentences involving imprisonment has dropped to 30%, with a significantly higher proportion (70%) of sentences relating to alternative punishments and non-punitive measures (World Prison Brief 2024). This sharp decrease in imprisonment rates in Kazakhstan indicates that the number of individuals subjected to non-prison measures exceeds the number of persons sentenced to imprisonment. The considerable reduction in prison populations in Kazakhstan has been facilitated by humanization and reformation trends in criminal policy. These trends have been based on the adoption of international legal standards into national criminal and penal legislation, as well as the implementation of world standards in law enforcement practices.

Since 2012, the role of alternative measures in the criminal justice system has increased, leading to the development of the national probation service in Kazakhstan. Incidentally, in the Central Asian region, Kazakhstan was the first country to introduce probation at the legislative level. In Kazakhstan, probation encompasses a system of socio-legal activities and individualized control measures designed to correct the behavior of certain categories of people, with the aim of preventing them from committing future criminal offenses (Law 30 December 2016, On Probation). The legislation regarding probation is founded on the Constitution of the Republic of Kazakhstan and includes the Criminal Code, the Code of Criminal Procedures, the Penal Enforcement Code, the Law on Probation, and other relevant regulatory legal acts of the state.

4.2. International legal regulation of alternatives to imprisonment

To understand the context of the issue, it is necessary to turn to the foundations of international legal formalization of alternative measures in the criminal justice system. Materials that address the challenge of reducing prison populations represent a vast body of doctrinal literature, normative legal instruments, and empirical data. States around the world and international organizations, at both the international and national levels, seek to address this issue through various legal measures (Human Trafficking Search 2022).

International legal instruments that govern the implementation of criminal policy in relation to the use of alternatives to incarceration are classified based on various criteria. Within this research, sources of international law were introduced in the scientific discourse in terms of categories of human rights, liberties, legitimate interests, and obligations. International legal instruments under this framework can be examined from two main perspectives.

Firstly, there are three internationally recognized and universally applicable legal instruments: the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Civil and Political Rights (ICCPR) of 1966, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984. These instruments grant equal rights to every individual without discrimination or exclusion, including convicts.

Secondly, there are international legal instruments, commonly referred to as special, which aim to regulate public relations in a specific area and focus on the field of criminal law. In accordance with paragraph 8.2 of the United Nations' Standard Minimum Rules

for the Treatment of Prisoners from 1990 (the Tokyo Rules), sentencing authorities may impose the following sanctions in certain cases: a) verbal sanctions, such as admonition, reprimand, and warning; b) conditional discharge; c) status penalties; d) economic sanctions and monetary penalties, such as fines and day-fines; e) confiscation or an expropriation order; f) restitution to the victim or a compensation order; g) suspended or deferred sentence; h) probation and judicial supervision; i) a community service order; j) referral to a correctional institution with mandatory daily attendance; k) house arrest; l) any other mode of non-institutional treatment; m) some combination of the measures listed above (OHCHR 1990). The Tokyo Rules were approved by all 166 member states of the United Nations (UN) at the time of their adoption as an international legal instrument.

Verbal sanctions without further punishment are implemented only for minor offences. Probation, in accordance with the Tokyo Rules, follows an integrated and multi-faceted approach and aims to rehabilitate offenders, reduce recidivism, and minimize the negative consequences of imprisonment. As an alternative to incarceration, probation offers a large number of significant benefits that positively impact the offender and, consequently, enhance the effectiveness of the criminal justice system. The mechanism of conditional sentencing involves the possibility of releasing the offender from custody, subject to the imposition of mandatory obligations. These obligations are established based on the analysis of the offender's personal characteristics, as well as their family and social background. This process is guided by a personalized plan that outlines specific conditions and requirements.

Additionally, the Tokyo Rules provide standard guidelines for addressing cases of probation violation by convicted individuals, with the aim of ensuring a fair and efficient response to such incidents. The standards and procedures outlined in the Tokyo Rules create a balanced and just system that not only addresses violations of probationary conditions but also contributes to the rehabilitation and social reintegration of convicted individuals. The probation service's response to probation violations is guided by the following principles: (1) proportionality (sanctions for violations should be commensurate with the nature and seriousness of the offense); (2) individualization (individualized consideration should be given to the unique circumstances and needs of each offender); and (3) a progressive approach (the consistent application of mild to more severe sanctions according to the circumstances). The Standard Minimum Rules do not focus on punishment, but on the correction of an offender's behavior. Thus, non-custodial measures have a broad range of benefits, including access to appropriate rehabilitation programs for offenders (medical care, addiction recovery, psychological assistance), mediation support, educational programs, and employment. The provision of these conditions is coupled with measures such as the use of electronic monitoring devices, house arrest, community service orders, financial sanctions, and restitution or compensation to the victims. The Tokyo Rules establish the principle of humanely and respectfully treating the offender as a precondition for their successful rehabilitation into society. However, there are also other substantial international instruments in the context of special measures. These include the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964, the Europe's Rules on Community (Alternative) Sanctions and Measures of 1992, the European

Probation Rules of 2010, and the European Rules on Community Sanctions and Measures of 2017.

The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders was adopted in 1964. This instrument aims to develop and modernize the supervision system, as well as re-socialize and restore social ties for convicts. A key feature of the Convention is the emphasis on states' efforts to strengthen and promote constructive cooperation in the area of supervision as an effective means of combating crime at the international level (Council of Europe 1964). The aforementioned Convention of 1964 is an international agreement that obligates the participating countries to establish a system for the supervision of individuals sentenced to probation or conditional release. In turn, Europe's Rules on Community (Alternative) Sanctions and Measures, adopted in 1992, are recommendations intended to promote the development and implementation of alternative sentences within countries. These recommendations also provide guidance for national policies and practices in this area. Europe's Rules occupy a significant position within the framework of international legal instruments of a specialized nature as a regulatory mechanism for the promotion of efficient and humane treatment of offenders. This mechanism focuses on the reintegration and social inclusion of convicted individuals, as well as their legal safeguards. On the other hand, the Rules aim to reduce prison overcrowding and recidivism rates. Consequently, these regulations encompass specific standards and guidelines for the implementation of effective alternatives to conventional imprisonment (Akkulev 1992).

The European Probation Rules (adopted in 2010 by the Council of Europe) are designed to supplement and develop the international legal framework for alternatives to imprisonment. The Rules improve the effectiveness of probation by regulating relations related to the provision of probation services. The Rules constitute a substantial supplement to the Acts of 1964 and 1992, aiming to uphold the observance of human rights and moral standards within the framework of probation proceedings. The Rules of 2010 introduce further grounds for non-discrimination, encompassing aspects such as physical disabilities, sexual orientation, and ethnicity.

As a legal basis for the wider context of alternative sanctions and measures, these rules serve as a valuable aid for the Council of Europe. The principles outlined in the document enable the development and implementation of efficient and humane probation systems that foster rehabilitation and prevent recidivism. Articles 15 and 17 of the European Probation Rules constitute a critical component, stipulating that the agencies responsible for overseeing alternative forms of punishment and intervention must undergo regular governmental audits and/or public scrutiny (Council of Europe 2010).

The European Rules on Community Sanctions and Measures of 2017 further define the content of previously established European standards for alternative forms of punishment. This international document demonstrates new aspects of probation. Thus, probation services have expanded their influence to include work with convicted foreign residents and a country's nationals convicted abroad. A novel aspect of international legal regulation is the increased involvement of civil society organizations in the implementation of alternative programs. Unlike Europe's Rules on Community

(Alternative) Sanctions and Measures of 1992, the Act of 2017 considerably expands the scope of discretion in the non-custodial regime and its provisions. The document focuses on providing convicted individuals with the opportunity to choose their behavior; it also introduces additional grounds to prevent discrimination of convicted persons on various grounds (Council of Europe 2017).

In 2021, the United Nations released a report which can be seen as an update and extension of the Standard Minimum Rules for the Treatment of Prisoners, also known as Nelson Mandela Rules. A key aspect of the report's novelty is its justification for reducing pre-trial detentions through measures such as bail, house arrest, and other alternatives to incarceration prior to trial. The document also includes provisions on the necessity to establish and develop programs aimed at the rehabilitation and social reintegration of offenders. Educational programs, vocational training, psychological support, and employment assistance provide convicted individuals with the opportunity to make amends to society without incarceration. The UN emphasizes that community service and participation in correctional programs restore social justice and reduce the burden on the penal system (UNHCR 2022).

The transformation of the notion of alternative measures to imprisonment is justified by several factors. Firstly, incarceration should be viewed as a measure of last resort, to be implemented only when the gravity of the offence renders the imposition of alternative sanctions inappropriate. This idea is in line with contemporary international efforts to reduce prison overcrowding and promote more effective sentencing practices. A serious consideration is given to the role of the prison administration. Indeed, the prison administration holds the capacity to enrich the discussion on the development of new legislation regarding alternative methods of punishment. The prison administration is able to provide real data on the effectiveness of the current punishment system, composition of prison populations, the possibility of using alternatives for offenders, and the experience of monitoring criminals (Coyle 2002).

4.3. The use of alternatives to imprisonment: The experience of modern states (world practices)

The use of alternatives to incarceration has become a trend among modern states, which seek to make the process of punishing and rehabilitating offenders more humane and effective. The global practice of implementing alternative criminal sanctions in lieu of incarceration demonstrates their advantages (Human Trafficking Search 2022). Alternative measures to imprisonment, such as probation, community service, electronic monitoring, rehabilitation programs, and provisional release, are increasingly used approaches.

The Norwegian prison system is based on the "normality principle" – that is, the primary focus is on restricting freedom as such, without additional restrictions on rights, and placing prisoners in the least restrictive regime that meets their risk and needs. The principle above is closely linked to the idea of reintegration, in which prisoners maintain social ties and gain access to services similar to those available to citizens outside of prison (Justice Trends 2016, Johnsen and Fridhov 2018). This principle is not directly enshrined in legislation, but is widely implemented in practice through the policy and organization of penitentiary institutions, where the emphasis is on humanizing the

conditions of detention and supporting the rights of prisoners (Van De Rijt *et al.* 2022). The basis of Norwegian legal regulation regarding the execution of sentences is the Act Relating to the Execution of Sentences, etc. (Ministry of Justice and Public Security 2001). The adoption of this law was accompanied by the introduction of the then-new concept of "open prisons", defining them as a legal mode of execution within the prison system (Ministry of Justice and Public Security 2001). The open prisons model rests on the principles of humanism, rehabilitation, and socialization of offenders, thus reducing recidivism. This model focuses on the idea of creating conditions that are similar to life in society, in order to prepare offenders for a successful reintegration into society after they have served their sentence. The concept of open prisons implies that inmates are provided with a higher degree of autonomy and accountability for their actions. Despite the presence of established rules and daily routines, prisoners are allowed to freely navigate the facility and, if so desired, participate in various programs and activities.

In terms of social integration and rehabilitation, opportunities for education, skill development, and employment are essential not only within but also outside of correctional facilities. It is also crucial to enable convicts to maintain close connections with their family and friends outside of prison. Open prisons may represent an intermediate stage in the spectrum of penal institutions, from closed facilities to transitional housing, where supervision is not entirely eliminated, but there is increased freedom and responsibility. This model holds direct relevance for modern societies, both from academic and practical perspectives. Norway has demonstrated a trend toward reducing prison populations, with one of the lowest recidivism rates globally. If, prior to the prison reform in the country (started at the early 1990s), the recidivism rate was at 70%, in three decades, this figure has dropped to 20% (First Step Alliance 2024). The key advantage of this rehabilitation approach is its positive impact on economic development in Norway. To illustrate, it is worth noting that inmates who have acquired professional skills during their sentence and were unemployed prior to their conviction are now using their opportunities for employment (Giertsen *et al.* 2019).

In the Netherlands, the progressive approach to criminal justice has both scientific and practical value. The criminal law and penal enforcement system in the country have established the legislative basis for a model of correctional and punishment facilities known as day reporting centers. The Criminal Code of the Netherlands (*Wetboek van Strafrecht*) regulates the imposition and implementation of punishments, including both conditional and alternative measures. The Law on the Execution of Punishment (*Penitentiaire beginselenwet*, PBW) governs the procedures and conditions for the implementation of sentences, including imprisonment and alternative measures, as well as day reporting centers. It also defines the rights and obligations of convicted individuals, as well as regulations regarding detention and supervision. The Probation and Rehabilitation Act (*Reclasseringswet*) regulates probation services, which are essential in the operations of day reporting centers. The Law on Compulsory Psychiatric Care (*Wet verplichte geestelijke gezondheidszorg*, WVGGZ) determines the conditions for the provision of mental health care and treatment for convicted individuals with mental disorders. In the context of day reporting centers, this law also governs the provision of psychological support and therapy for convicts. The Law on Education and Vocational Training (*Wet educatie en beroepsonderwijs*, WEB) provides a legal basis for educational and vocational programs, regulating matters related to training, certification, and

cooperation with education institutions. The Law on Employment and Social Security (*Participatiewet*) encompasses issues related to employment and social security, establishes rules for employment, and offers support for convicts in their search for employment.

According to the model of day reporting centers, convicted individuals spend their days in specialized centers, where they participate in educational, labor, psychological, and medical programs, as well as receive therapy. They return home in the evening, achieving the goal of rehabilitating and reintegrating into society. This approach minimizes the distance between prisoners and the community and their families. In day reporting centers, convicts are supervised by probation officers who monitor their behavior and progress. The system has proven to be more cost-effective than traditional prisons due to its reduced expenditure on maintaining prisoners. The experience of the Netherlands, which introduced a day detention system in 2002, demonstrates its effectiveness. Over the past three decades, dozens of prisons have been closed in this country, against the backdrop of overcrowded prisons in other countries around the world (Parkhomenko 2017, Tyufyakov 2017).

Finland is a country that has abandoned punitive and criminal policies, opting instead for more humane and effective approaches. In Finnish correctional facilities, with the exception of facilities housing particularly dangerous and violent offenders, inmates are not subjected to complete isolation or strict confinement. Measures to introduce alternative forms of punishment have led to marked reductions in the prison population and crime rates, as well as significant budget savings (Korsakov 2018). Finland's experience in reducing prison sentences and introducing alternative sentencing demonstrates successful long-term criminal policy reform aimed at reducing the overuse of imprisonment. In the 1970s, Finland had one of the highest incarceration rates in Western Europe, but thanks to political will and reforms, by the 1990s this figure had fallen to one of the lowest, while crime rates remained stable (Lappi-Seppälä 2017). The main alternatives to imprisonment have become fines, suspended sentences, and community service, which are widely used and have proven effective in reducing recidivism, including among drug offenders (Sipos 2020, Miller *et al.* 2022). The Finnish criminal-law doctrine emphasizes crime prevention and rehabilitation through less repressive measures, reflecting the ideology of "humane neoclassicism" with an emphasis on legal guarantees and minimizing the use of coercive measures (Ekunwe *et al.* 2010). Public opinion in Finland repeatedly supported the use of alternative punishments, especially for non-dangerous and juvenile offenders, recognizing the importance of social reintegration of convicts (Ekunwe *et al.* 2010; Lešková *et al.* 2022). In general, Finnish society presumably tends to prefer measures that combine control with the possibility of rehabilitation and minimizing the negative consequences of isolation (Lešková *et al.* 2022). This is consistent with a broader trend in criminal policy in Finland aimed at a balance between the safety of society and the humanization of the punished. At the same time, it is important to note that support for alternative sanctions is associated with the awareness of their role in reducing recidivism and strengthening social stability. From a historical perspective, the transition to a more lenient criminal policy was associated with the development of the welfare state and a change of generations in the judicial system, which contributed to the formation of a consensus on the need for reform (Häkkinen 2020).

Analyzing the history of penal reforms in Finland, one can note the importance not only of institutional changes but also of the political, legal, and general culture that ensured the effective implementation of the chosen measures. Researchers emphasize the importance of political will and consensus in implementing reforms aimed at reducing incarceration, as well as the active participation and cooperation of various elites in their implementation – not only legislators, but also the judiciary and the expert community (Lahti 2021, 2023). The behavior of the media, which refrained from publishing materials that would have created strong public demand for harsh punitive measures, also played a significant role (Lahti 2021, 2023). Clearly, in a country with a small population and a strong culture of "community", such elite cooperation is largely natural, whereas in larger countries, achieving it is significantly more difficult.

In summary, it can be noted that in all three countries, the decline in incarceration rates is linked not only to criminal policy per se, but also to underlying socio-cultural and economic factors. All three countries share a significant proximity to the "welfare state" model, strong employment support programs, and a minimization of extreme forms of economic marginalization. The countries reviewed share a high level of institutional trust, namely, that citizens generally perceive the justice system as a fair and legitimate institution. Furthermore, the countries share a focus on reducing recidivism in their penitentiary systems, not just punishment, as well as well-developed post-penitentiary integration (Table 1).

TABLE 1

Criterion	**Norway**	**The Netherlands**	**Finland**
Level of incarceration (dynamics)	Consistently low; sustainable model	Decline with prison closures (2nd half of 2000)	Long-term decline since the 1960s
Dominant mechanism of contraction	Minimizing the imposition of imprisonment	Reducing both entry and duration	Systematic reduction of terms; conditional measures
Conditional sentence status	Widely used, institutionally supported	Common	One of the key tools
Probation	Highly developed, individualized	Professionalized and integrated	Strong, associated with social support
Public works	Used as a standard alternative	Widely used	Actively used

Table 1. Comparative analysis of the use of alternatives to imprisonment in Norway, the Netherlands and Finland.
(Source: Based on authors' analysis.)

4.4. Development of alternative measures to imprisonment as a means of reducing the prison population in the Republic of Kazakhstan: Reforms, achievements, mistakes

The Republic of Kazakhstan's penitentiary policy has undergone significant transformation over the past two decades, reflecting both internal institutional changes and the external influence of international criminal justice and human rights standards. These changes were driven by a combination of political, socioeconomic, and

governance factors that necessitated reform of the penal system and its enforcement. The almost triple reduction in the incarceration rate in the Republic of Kazakhstan from 2002 to 2023-2024 was primarily due to successive stages of reforming criminal legislation and law enforcement policy (LPRC 2011, Fair and Walmsley 2024). The first stage can be roughly associated with the limitation of the punitive model and the humanization of sanctions (2003–2010). In the early 2000s, Kazakhstan's criminal justice policy was characterized by a high frequency of actual prison sentences. A turning point came with the 1997 amendments to the Criminal Code, aimed at expanding the use of suspended sentences, lowering the maximum sentences for certain offenses, developing fines as an independent measure, and decriminalizing some economic and minor crimes. During this period, amnesties were actively implemented (in 2006 and 2011), which contributed to a temporary reduction in the prison population but did not serve as a structural mechanism for decarceration.

The second stage involved a systematic revision of criminal legislation (2014–2015). A key regulatory milestone was the adoption of the new Criminal Code of the Republic of Kazakhstan (which entered into force on January 1, 2015). The new code revised the system of crime categories, expanded the range of non-custodial penalties, changed the sanction limits. Besides it institutionalized probation as an independent mechanism for monitoring and resocialization and clarified the grounds for the application of suspended sentences and exemption from criminal liability. Concurrently, the Criminal Executive Code of the Republic of Kazakhstan was adopted, strengthening the rehabilitative focus of the execution of sentences. This stage can be seen as the transition from fragmented humanization to systemic decarceration. In 2015, a new Criminal Procedure Code was adopted, granting prosecutors broader powers and simplifying the use of bail and house arrest as alternatives to detention. Moreover, in 2015, prosecutors released 74 wrongfully arrested people from their cells, and in 2016, this figure increased to 462. This trend indicates that, under that time prosecutor general's orders, prosecutors have begun to more closely scrutinize the work of investigators (Slade *et al.* 2023). A particularly significant milestone was the institutionalization of probation was. The adoption of the 2016 Law of the Republic of Kazakhstan "On Probation," which established an independent probation system, allowed for the expansion of measures without isolation from society, ensured supervision of conditionally sentenced offenders, helped reduce the risk of recidivism, and provided an alternative to short-term imprisonment. The expansion of probation tools became one of the key mechanisms for reducing the number of offenders entering the prison system (Aimukhambetova 2025).

The third stage of reforming criminal legislation and law enforcement policy in the Republic of Kazakhstan is further humanization and decriminalization (2018–2023). In 2018, changes were made aimed at the further decriminalization of certain offenses, the transfer of part of the squads to administrative jurisdiction, the softening of sanctions for crimes of minor and medium severity, and the limitation of imprisonment for persons who have committed a crime for the first time. Additional amendments 2020–2023 continued the course on humanization, strengthened the emphasis on the proportionality of punishment and the application of alternative measures (Baizakova *et al.* 2025, Urbissinova *et al.* 2025). The analysis of the regulatory dynamics allows us to conclude that the decrease in the level of incarceration occurred mainly due to the

reduction of the actual deprivation of liberty (front-door reduction), the expansion of alternative sanctions, and changes in the structure of court decisions. Mechanisms of early release (parole, commutation of sentence, amnesty) played a corrective role, but were not the main driver of a steady decrease in the indicator. Thus, the Kazakhstani model of decarceration during the period under review was primarily normative and institutional in nature (Slade *et al.* 2023). The decline in incarceration rates was due largely to a revision of the institutional logic behind the use of incarceration (towards the general trend of democratic countries towards mitigating criminal penalties), an expansion of the range of alternatives to incarceration, the creation of a probation infrastructure, and the decriminalization of certain offenses. Changes in judicial practice occurred largely as a result of legislative reforms, suggesting that normative factors played a more important role than cultural changes in attitudes toward punishment. Against this background, it should be noted that the penal system in Kazakhstan (Penal Code, 2014) has been significantly humanized compared to the USSR: the basic types (fine, imprisonment) have been retained, but alternatives without isolation from society have been introduced and the death penalty has been excluded. The basis remains confiscation of property, imprisonment and correctional labor, while community service and restriction of freedom have been introduced (Musali 2024). Some studies also note that the normative impetus for reform arose indirectly from the Russian Federation's accession to the Council of Europe. Russia's deeper integration into the European human rights architecture inadvertently strengthened prison downsizing processes in Kazakhstan by spreading norms through interpersonal networks of Russian-speaking prison officials in both countries (Slade *et al.* 2023).

The modern criminal justice system in Kazakhstan aims to modernize its penal legislation, with a focus on the use of alternatives to imprisonment as a means of punishment. This shift reflects a humanization trend in the country's criminal policy, which aligns with international standards. Punishment is applied with the goal of restoring social justice, rehabilitating the offender, and preventing future criminal behavior, both by the convicted individual and by others. The purpose of punishment is not to inflict physical suffering or degrade human dignity, as stated in paragraph 2 of Article 39 of the Criminal Code of the Republic of Kazakhstan. The following main sanctions may be imposed on a person found guilty of committing a misdemeanor[1]: 1) a fine; 2) community service; 3) corrective labors; 4) arrest; 5) deportation of a foreign national or stateless person from the Republic of Kazakhstan. The following basic penalties may be imposed on a person found guilty of committing a crime: 1) a fine; 2) corrective labors; 2-1) community service; 3) restriction of liberty; 4) imprisonment. In addition to the main punishment, the following additional penalties may be imposed on a person found guilty of a criminal infraction: 1) confiscation of property; 2) deprivation of special, military or honorary ranks, grade ranks, diplomatic ranks, qualified classes, and state awards; 3) deprivation of the right to hold a specific position or engage in

[1] The "misdemeanour" term describes the term "уголовный проступок" the most closely and have no direct analogue. In the legislation of the Republic of Kazakhstan (Article 10 of the Criminal Code of the Republic of Kazakhstan), criminal offenses are divided into crimes and misdemeanors based on the degree of public danger and the severity of the punishment. Crimes are dangerous acts (intentional or reckless), while misdemeanors are less dangerous acts that entail more lenient punishments that do not involve imprisonment.

certain activity; 3-1) deprivation of citizenship of the Republic of Kazakhstan; 4) deportation of a foreigner or stateless person from the Republic of Kazakhstan (Article 40 of the Criminal Code of the Republic of Kazakhstan). All alternative measures to imprisonment specified in Article 40 of the Criminal Code are characterized by their restrictive and compulsory nature. Comprehensive statistics on alternative punishments in Kazakhstan, including the percentage with imprisonment, are not presented in the available sources. According to the Committee of the Criminal-Executive System and Probation Service:

- 2016: 5,821 people (10.61% of all those who served alternative punishments and suspended sentences) ;
- 2017: 6,442 people (10.90%) ;
- 2018: 7,402 people (11.57%) (Salamatov 2019).

However, this allows us to see the trend of this period, indicating that the share of community service orders increased slowly, but remained within 10-12% of all alternative measures. At the same time, it should be noted that, based on open data for 2025, the share of refusals by investigative courts to authorize detention increased from 23% to 37%. The number of acquitted persons (excluding private prosecution cases) increased from 59 to 88 (Kazpravda 2025).

Although there are no specific data on the number of alternative punishments applied in Kazakhstan for 2018–2025 (in percentage terms), available information for previous years and as of today indicates a trend towards an increase in their use. This is confirmed by secondary sources. The latter indicate a decrease in the number of convicts in places of imprisonment and an increase in the number of civil cases resolved using alternative methods (Rakhimberdin 2021).

Kazakhstan's criminal law literature supports various assessments of alternatives to incarceration as outlined in the state's Criminal Code. The Criminal Code prioritizes a financial penalty, a common alternative to criminal prosecution for minor offenses. This form of punishment is prevalent in the legal systems of the Western European countries. Article 41 of the Criminal Code defines a fine as a monetary sanction imposed within the limits prescribed by the Code. The amount of the fine corresponds to a certain number of monthly calculation indices, which are established by the legislation of the Republic of Kazakhstan that is in force at the time when the criminal offense was committed. Alternatively, the fine may be multiple of the amount or value of the bribe, money transferred, property transferred, stolen property, income received, or payments not received by the budget. The justification for the imposition of a fine is based on the following factors:

1. Compensation for the harm caused to the victim by the crime.
2. Saving the resources and efforts of prosecution authorities by facilitating the investigation of the crime.
3. Fulfilling the state's claim against the individual who has violated the criminal prohibition through payment to the state treasury (Shestakova and Solovev 2020).

However, there is an alternative viewpoint that casts doubt on the appropriateness of fines as the most lenient form of criminal legal sanction in the current penal system. In

essence, fines represent a relatively punitive type of punishment with a property-based nature (Utkin 2018). In Kazakhstan, as is the case in many other post-Soviet countries, fines have not been widely utilized in judicial proceedings. This is due to various factors, including the level of socio-economic well-being within the population, the limited financial means of most convicted individuals, and the concern among courts that the fines might not be paid (Rakhimberdin and Geta 2020). The same considerations apply to the fact that the use of bail as a means of reducing the number of individuals in pre-trial custody is not widely utilized in Kazakhstan's legal system.

The current Criminal Code of the Republic of Kazakhstan defines corrective labors as a monetary penalty imposed within the limits prescribed by the Code, in the amount corresponding to a certain number of monthly calculation indices, as established by Kazakhstan's legislation in force at the moment of commission of a criminal offense. Corrective labor is executed through monthly deductions and transfers to the Victims Compensation Fund of between ten and fifty percent of the convict's salary (monetary maintenance), minus funds subject to periodic payments (collecting) for alimony, compensation for of the harm caused by the injury or other damage to health, as well as in the event of the death of the breadwinner.

Corrective labor as an alternative to imprisonment is not utilized in foreign countries. This form of punishment is a legacy of the Soviet era and is still present in the penal codes of some contemporary post-Soviet nations, such as Kazakhstan, Russia, Ukraine, and Belarus. In Kazakhstan, the legislative interpretation of corrective labors has adopted certain characteristics that distinguish it from other forms of punishment. To some extent, corrective labor can be seen as fines that are paid over time in installments. Furthermore, the current criminal law does not specify a maximum period for the repayment of monetary penalties, whereas the previous version of the law limited it to two years. For criminal offenses, the amount of correctional labor ranges from twenty to two hundred monthly calculation indices, while for crimes, it ranges from two hundred to ten thousand indices. This means that a person with a low income will be required to pay these amounts over a period of decades, without the ability to change their place of employment at their discretion, given the conditions of their probation. In essence, the convicted individual finds themselves in a significantly worse position compared to those who are sentenced to alternative prison measures. It seems at least somewhat illogical for the legislative body to equate corrective labors with monetary penalties. The excessive rigidity of corrective labor not only impacts the sphere of property rights but also infringes the social and employment rights of convicted individuals.

A separate type of criminal punishment is the deportation (expulsion) of a foreigner or stateless person from the Republic of Kazakhstan, which, according to Article 40 of the Criminal Code of the Republic of Kazakhstan, can be applied as both a primary and a secondary punishment. However, its application requires the presence of a specific subject - a foreigner or stateless person. The punishment of deportation applies exclusively to these two categories and cannot be applied to citizens of the Republic of Kazakhstan. In criminal practice, deportation is used in a limited number of cases – primarily when foreigners are found guilty of crimes that pose a threat to public order, security, or immigration regulations. However, such cases are not widespread compared to other types of punishment, such as imprisonment, fines, arrest, and other. In judicial

practice, classical types of punishment for criminal offenses prevail (Kabzhanov *et al.* 2023).

Studies have shown that punishment in the form of corrective labor in Kazakhstan is ineffective and is rarely applied by the courts. The articles of the Special Part of the Criminal Code of the Republic of Kazakhstan establish sanctions every second time (correctional labor as the main or additional type of punishment is contained in 454 out of 924 articles that stipulate the responsibility for the offences). However, in 2018, out of a total of 31,309 convicted individuals,[2] only 30 were sentenced to corrective labors (1%), and in 2021, out of 28,746 convicted individuals, only 6 were sentenced to this type of punishment (0.2%) (Rakhmetov 2022, Baizakova *et al.* 2025). The introduction of this measure by Kazakhstan's legislature into the system of alternative sanctions does not conflict with international standards (OHCHR 1990). Nevertheless, given the aforementioned issues, it appears necessary to reconsider the appropriateness of employing corrective labors.

The approach to punishment in the form of community service is completely different. The key benefits of community service include the educational and preventive direction, as well as its potential for effective reintegration of convicted individuals. Under the criminal law of Kazakhstan, convicted individuals are required to engage in socially beneficial work during their free time, in addition to their main employment or studies. The number of hours ranges from 20 to 200 for minor offenses, and 200 to 1,200 for crimes of lower and medium severity, depending on the court's discretion. In international practice, this type of punishment is typically implemented through unskilled manual labor. However, it would be prudent to consider the view expressed in legal literature that this sentence may involve any type of work, and particularly in the field of the offender's primary occupation, in accordance with their specialization. Since this sanction involves the unpaid labor of the sentenced individual, it seems appropriate for the court to base its decision on assigning the sentenced person to perform work in the primary occupation of a doctor, architect, designer, or programmer, and other qualified professionals, in order to provide services to vulnerable members of society (Rakhimberdin 2021). Therefore, the convicted person will be provided with an opportunity to experience the usefulness and social importance of their work for specific individuals. This may consequently contribute to a more pronounced shift in value orientations, ultimately leading to a resocialization effect. It is difficult to underestimate the fact that engaging in community service has a noticeable deterrent impact, which reduces the likelihood of recidivism.

A specific form of criminal law enforcement within the context of applying alternative imprisonment options is restriction of liberty, as regulated by Article 44 of the Criminal Code of the Republic of Kazakhstan. This involves imposing a period of between six months and seven years, during which the offender is required to participate in mandatory community service for one hundred hours annually during the entire term of their sentence. Forced labor is organized by local executive bodies in public places and is served no more than 4 hours per day. The convicted persons who have a permanent place of employment or are studying, vulnerable groups of citizens, and

[2] From the total number of sentences (Bureau of National Statistics 2023).

individuals whose sentence has been replaced with restriction of liberty for less than 6 months are exempt from participating in forced labor.

In the context of exploring this alternative to social isolation, it is essential to focus on the perspective of the legislature, which appears to be questionable from a legal technical, validity, and accuracy standpoint. This concern refers to aspects such as forced labor, probation supervision, and the duration of restriction terms. We believe that the usage of the term "forced labor" in Kazakhstan's legislation, as reflected in Article 44 of the Criminal Code of the Republic of Kazakhstan, is at a minimum incorrect. The work performed by convicts under a court decision does not constitute forced labor, as defined by international standards. The Convention of the International Labour Organization (ILO) No. 29 establishes exceptions that do not apply to forced labor.

In the criminal legislation of Kazakhstan, probation supervision is an integral part of the punishment and is imposed by a state body authorized by the court. This includes the performance of duties by the convicted person that are enshrined in international standards. However, in world practice, probation is not considered a punishment but rather a form of social and legal control.

In the event of a willful failure to comply with the restriction on freedom, the unserved period of the restriction is replaced by imprisonment, at the rate of one day of imprisonment per day of restriction. When imposing a less severe sentence than is provided for the relevant criminal infraction, when imposing a sentence for an uncompleted crime, and when replacing a sentence, the period of restriction may be less than the minimum limit established under Article 44 of the Criminal Code of the Republic of Kazakhstan. The maximum term of restriction on liberty established by Kazakhstan's legislation (up to seven years) is excessively lengthy in comparison to other countries. By imposing such a lengthy period of post-conviction supervision, the intended effect is diminished, as the punishment becomes routine and habitual. This increases the risk of unwanted conflict between the convict and probation officer.

An analysis of the criminal law provisions reveals the need to clarify the wording in the legislation regarding the regulation of alternatives to imprisonment. The term "conditional sentence" has different interpretations and applications in different legal systems. The term does not accurately reflect the essence or content of this legal concept, as it is based on a factual conviction and the non-imposition of punishment or suspended sentence. There is a distinction between a suspension of sentence, suspension of sentence with probation (postponed or deferred sentence of imprisonment). The definition of this type of sanctions varies depending on the approach of each country's legislature, which may refer to terms such as probation, criminal supervision, inspection system, protective supervision, criminal conviction, and so forth. Initially, the terms used to define simple suspension and "complicated" suspension (suspension of sentence with probation) (Plesnicar and Tripkovic 2024) were used interchangeably in legislation in most countries. However, over time, these terms have been established as distinct sanctions and are no longer synonymous.

Against this background Kazakhstan's prospects for implementing alternatives to incarceration are determined by a combination of already implemented regulatory reforms and the need to move from formal humanization to an institutionally sustainable model of decarceration. The reduction in incarceration rates over the past

two decades has created the foundation for further transformation of criminal policy, but the next stage requires qualitative, not just quantitative, changes. In the previous stage, the reduction in the prison population occurred primarily through legislative changes (expanding suspended sentences, decriminalization, and developing probation). Going forward, key tasks will include strengthening the staffing and funding of probation services, implementing standardized recidivism risk assessments, developing interagency cooperation (social services, employment, education), and transitioning to individualized resocialization plans. Regarding the applicability of the three Nordic countries to the experience of Kazakhstan, it should be noted that the criminological structure of crime is constantly changing. Currently, Nordic countries are characterized by a relatively low proportion of serious violent crimes, which Kazakhstan should take into account when implementing their experience. Kazakhstan's crime structure is different, so a cautious scaling of reforms is required. The most realistic strategy for Kazakhstan involves a phased approach, maintaining strict sanctions for serious crimes while expanding alternatives to incarceration for those convicted of economic crimes, non-violent offenses, and first-time offenders. Strengthening resocialization programs and developing probation remain important. The experiences of Finland, Norway, and the Netherlands can be partially adapted, but the current regulatory provisions cannot be transplanted into Kazakhstan's criminal regulation. A hybrid model that combines humanization of punishment with the preservation of the preventive function of criminal law is the most promising.

5. Conclusion

As demonstrated by international experience, modern legislators, guided by the principles of justice, efficiency of criminal sanctions, and humanism, seek to restrict the scope of penal coercion. They advocate for the possibility of exempting offenders from criminal punishment through alternative measures of intervention in cases where these objectives can be achieved without resorting to punitive measures. Examples of effective alternatives to imprisonment in Norway, Finland and the Netherlands provide compelling arguments in favor of the introduction and development of alternative penalties. These examples demonstrate a reduction in pressure on prisons, improved conditions of detention, and compliance with international standards of humanism. The integration of foreign experiences with alternatives to incarceration in Kazakhstan is possible through the adaptation of successful practices to local socio-legal and cultural contexts. One of the primary strategic objectives of reforming the criminal justice system in modern Kazakhstan is to prioritize the development of institutions that implement sentences without social isolation. This need for humanizing the punitive policies of the state arises from the fact that imprisonment places a heavy burden on the public budget, disrupts the social connections of offenders, and contributes to the criminalization of society. Recommendations outlined in the work are part of a broader picture of reforming policy and legislation in the area of alternatives to imprisonment. In the latter case, this involves the need for more detailed implementation of the Tokyo Rules in national legislation and the direct use of UN recommendations as a guide in developing policy. At the legislative level, this involves expanding the list of alternative punishments, differentiating measures for different categories of crimes and enshrining the principle of proportionality in terms of provisions concerning the use of alternative

measures. The institutional level requires expanding the probation service and restorative justice tools (in particular mediation mechanisms), as well as strengthening independent monitoring mechanisms (including assessment of the effectiveness of alternative measures).

A serious challenge for Kazakhstan is the lack of public confidence in the legal system, which is rooted in a dearth of adequate information and awareness. There is a need for more comprehensive measures to educate the general public. It is necessary to conduct information campaigns through the use of educational institutions, media, and social media platforms. These campaigns should focus on raising public understanding of the aims and benefits of alternative sentences. Such efforts would reduce the stigma associated with convicted individuals and support their successful reintegration into society.

Another pressing issue is the lack of adequate material support for alternative implementation strategies. This situation hinders the resolution of numerous issues associated with the reform of the system that administers non-custodial sentences and directly relies on resources, particularly financial support. Arguments in favor of increased funding include economic benefits derived from reducing the costs of incarceration, optimizing current expenditures, establishing sustainable financial mechanisms, and enhancing the social reintegration of offenders.

In order to introduce alternative forms of punishment into society, it is essential not only to create appropriate socio-economic conditions, but also to shape public opinion regarding the desirability and necessity of adopting this strategy by law enforcement agencies. The reform of the penal system necessitates the development of an appropriate legal framework for law enforcement officials. Alternative sentencing programs require the involvement of qualified professionals, such as probation officers, social workers, and psychologists. These programs are based on the principles of restorative justice and therefore engage the community of the offender, the victim, and representatives of NGOs, religious associations, and other civil society groups. They can collaborate to explore strategies for addressing a criminal conflict, preventing future incidents, restoring normal relationships, and sharing responsibility. The effective application of alternative criminal sanctions depends on cooperation with various social service providers, such as job placement, healthcare, education, and social welfare agencies. This model of adapting international best practices in the use of non-custodial measures has the potential to demonstrate the viability of Kazakhstan's path towards compliance with international standards and the creation of an efficient, humane, and equitable legal system tailored to the needs and circumstances of the society.

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