

Alternatives to imprisonment
in the Republic of Kazakhstan

Resolution and Recommendations

Penal Reform International
in co-operation with
International Centre for Prison Studies, UK
Kazakhstan International Bureau for Human Rights and the Rule of Law
Constitutional and Legal Policy Institute, Budapest
Soros Foundation Kazakhstan and the Open Society Institute

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International Conference
Almaty, 27-30 October 1999

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ABOUT THE CONFERENCE

An international conference was held in Almaty, Kazakhstan between 27 and 30 October 1999, on the subject of 'Alternatives to imprisonment in Kazakhstan'. The focus of discussion at the conference was the issue of how to implement in practice and raise the effectiveness of application of criminal sanctions which do not involve imprisonment. More than 100 representatives of the countries of Eastern and Central Europe, Central Asia and Western Europe took part, including leading figures from the relevant ministries and employees of the penal system, specialists in non-custodial sentences, activists from international and national NGOs. More than half the delegates were from Kazakhstan, including the Counsellor to the President of the Republic of Kazakhstan, the Chairperson of the Committee of the Penal System, the Deputy Chairperson of the Collegium of the Supreme Court and representatives from the Ministry of Justice.

Subjects discussed at the conference included alternatives to pre-trial detention, alternatives to custodial sentences, various types of conditional-early release, the role of and questions surrounding the reorganisation of the criminal-executive inspection system, restorative justice and alternatives in relation to minors. The conference participants developed recommendations with the aim of assisting the government and society in general in Kazakhstan in widening the use of alternative, non-custodial measures and in increasing their effectiveness.

The conference was organised by Penal Reform International, in co-operation with Soros Foundation Kazakhstan/the Open Society Institute, the Kazakhstan International Bureau for Human Rights and the Rule of Law and the Constitutional and Legal Policy Institute, Budapest (COLPI).

The conference was partly financed by the Ministry of Foreign Affairs of the Netherlands and Dutch Interchurch Aid, and was an integral part of a three-year (1998 to 2000) project to reform the institutions of the penal system in Pavlodar region. The project is being carried out by Penal Reform International, the International Centre for Prison Studies, UK, and the Regional Department of the Prison Administration in Pavlodar.

The other main funder was the Open Society Institute. The organisers are grateful also to COLPI and the Almaty Helsinki Committee, which financed the attendance of several foreign participants in the conference.

THE CURRENT SITUATION

One of the most acute problems of the penal system in the Republic of Kazakhstan is the overcrowding of colonies and pre-trial detention centres (SIZO). According to recent data Kazakhstan has the third highest figure in the world for the relative number of those held in places of imprisonment - there are over 500 prisoners for every 100,000 people in the population. In spite of efforts made by the government since 1988 to reform the system, and periodic amnesties, the prison population is continuing to grow. P.N. Posmakov, Chairman of the Committee of the Penal System of Kazakhstan, admits that with the rates of growth which have been observed this year (1,000 people a month), "any reforms start to become pointless".

The absence of proper financing (this year the system was allocated only half the sum requested) aggravates the situation even further and hinders the maintenance of normal conditions in places of deprivation of freedom, particularly in pre-trial detention centres (SIZO). Inadequate nourishment, together with the lack of fresh air and medicines, give rise to the spread of diseases, primarily tuberculosis, among prisoners. 13,000 prisoners out of a total of 86,000 suffer from the active form of TB. Although it has been possible to achieve a reduction in the death rate, the number of cases of tuberculosis infection is continuing to rise.

People sometimes spend several years in overcrowded pre-trial detention centres (SIZO) waiting for sentence to be passed. Yet many of them are charged with offences not posing a great danger to society, and alternative measures of restraint could be applied to them.

Overcrowding of colonies hampers the rehabilitation of prisoners and their preparation for life at liberty: it is difficult to organise professional training and provide them with work. As a result there is an increasing likelihood of a return to unlawful behaviour after release and, as a result, a repeat conviction. Practice shows that people who are isolated

from society for long periods lose the link with their families and friends; social connections are severed and families break up.

The Committee of the Penal System of Kazakhstan sees the main task of further legal reform as lying precisely in a lowering of the "prison population". Only then will it be possible to ensure normal living conditions for prisoners, and normal conditions of service for staff. And only then will it be possible to meet the requirements of generally accepted international standards.

**RESOLUTION OF THE INTERNATIONAL CONFERENCE ON
ALTERNATIVES TO IMPRISONMENT IN KAZAKHSTAN
(Almaty, 27-30 October 1999)**

The participants of the international conference, 'Alternatives to Imprisonment in Kazakhstan', representing inter-state organisations, state bodies from Armenia, Kazakhstan, Kyrgyzstan, Mongolia, the Russian Federation, Tajikistan and Uzbekistan, international and local non-governmental organisations, and experts from the United Kingdom, Hungary, Norway and Romania,

welcoming the holding of this international conference in Kazakhstan as an expression by Kazakhstan of its positive intentions in respect of reforming its policy in the area of criminal punishment;

supporting the efforts of the government of Kazakhstan to reform its criminal legislation in this sphere, expressed in particular in the introduction in early 1998 of new criminal, criminal procedure and criminal executive codes, which provide for and substantially broaden the list of alternatives to imprisonment;

acknowledging the positive role played by the Ministry of Internal Affairs of Kazakhstan, and in particular the Ministry's Committee of the Penal System, in actively and vigorously working towards penitentiary reform;

hereby consider it necessary to recommend to the government of Kazakhstan that it initiate a number of legislative and practical measures in order to develop and reinforce the reforms being undertaken.

The reforms recommended by the conference participants are based on the principles and provisions formulated in international documents relating to penal policy, and above all in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), and are in line with trends in the development of penal policy and the international experience of various countries in respect of the use of alternatives to imprisonment.

GENERAL RECOMMENDATIONS

- I. To ensure the implementation of the recommendations of international documents with respect to non-custodial sentences.
- II. To speed up the introduction of alternative means of punishment provided for in the new criminal and criminal executive legislation, including the timely allocation of funding for their implementation.
- III. To transfer the prison system from the Ministry of Interior to the Ministry of Justice, including pre-trial detention centres (SIZO), in order to separate criminal investigations from the bodies responsible for crime prevention activities, with the transfer of pre-trial detention centres (SIZO) being considered as a priority.
- IV. To speed up the process of introducing the institution of trial by jury.
- V. In collaboration with the mass media, to raise public awareness of the negative effects of widespread use of imprisonment as a form of punishment and educate public opinion towards a positive attitude to the use of alternative measures.
- VI. To consider the possibility of setting up a research unit for the study of penal issues within the Research Centre of the Interior Ministry Academy of the Republic of Kazakhstan, in order to increase the capacity for gathering, analysing and processing statistics and other information relating to the penal system.
- VII. To acknowledge the expediency of more widespread use of NGO networks and the mass media in order to obtain co-operation with the prison system, including by setting up a centre for public communication attached to the Committee of the Penal System.
- VIII. To acknowledge the benefits of setting up a commission, consisting of representatives of all relevant governmental departments and non-governmental organisations, responsible for ensuring the implementation of the above recommendations.

PRACTICAL RECOMMENDATIONS

I. ALTERNATIVE PREVENTIVE MEASURES

- 1.1. To investigate whether the categorisation of certain crimes as grave and extremely grave under the Criminal Code of the Republic of Kazakhstan is justified.
- 1.2. To make amendments and additions to the Criminal Procedure Code of the Republic of Kazakhstan which would entail:
 - 1.2.1 limiting the use of detention (arrest) as a preventive measure via wider use of alternative measures which international practice has proved have a positive effect. To this end, to consider such measures as fines, bail, house arrest etc. Arrest should, as a rule, be applied only in respect of people who have committed grave and extremely grave crimes; any exceptional circumstances where arrest can be used as a preventive measure for persons who have committed petty crimes and crimes of medium gravity should be directly provided for in law;
 - 1.2.2 the possibility of appealing (challenging) a ruling made by a judge in response to an appeal against a prosecutor's sanction of arrest or against extending the period of detention. Provision should be made for reducing to seven days the time allowed for consideration of such appeals;
 - 1.2.3 forbidding the questioning of suspects or accused persons without the presence of a defence lawyer, or before the suspect or accused has, in the presence of a person who could act as a defence lawyer, refused a defence lawyer;

- 1.2.4 the differentiation in the duration of preventive measures, to match the gravity of the crime committed; setting overall limits for all preventive measures, at the pre-trial stage and when the case comes to court, based on the gravity of the crime committed;
- 1.2.5 making it compulsory for the prosecutor to cross-examine all suspects (accused) when sanctioning their arrest, without the investigating officer in charge of the case being present;
- 1.2.6 bringing the contents of Section 2, Article 136 (“Grounds for releasing persons detained on suspicion of having committed a crime”) into line with constitutional norms which proclaim the priority of the rights of the individual;
- 1.2.7 taking action to further limit in legislation the institution of supplementary investigation;
- 1.2.8 introducing mandatory medical examination of persons subjected to preventive measures in the form of detention.

1.3. To recommend to the Plenum of the Supreme Court of the Republic of Kazakhstan that the following areas be studied and the current practice summarised:

- examination of cases involving compensation for damage, including moral damage, inflicted on a citizen as a result of unlawful or arbitrary detention;
- the use of detention as a preventive measure, with strict observance of legally established time limits;
- the use of the institution of supplementary investigation (until this institution is abolished).

II. NON-CUSTODIAL SENTENCES

- 2.1. To gradually reduce the maximum sanctions under criminal law involving detention as a form of punishment, except in cases where particularly grave crimes have been committed.
- 2.2. Widely apply in practice the substitution of community service for detention as a criminal punishment, with the proviso that community service can only be applied with the agreement of the person convicted, that it must be carried out without payment and, if conscientiously carried out, should not lead to acquisition of a criminal record.
- 2.3. In addition to community service, to impose corrective labour, providing for the possibility for such work to be performed not just at a person's previous place of work, but in the convicted person's place of residence.
- 2.4. To recognise the need for introducing into practice punishment in the form of restrictions on freedom.
- 2.5. To develop the institution of release from criminal punishment by means of reconciliation with the victim; to broaden the range of crimes for which this measure can be applied and to define in law the procedures by which it should be applied.
- 2.6. To reform the criminal executive inspection system by incorporating it into the penal system, allocating it state funds from the national (Republican) budget and establishing staffing norms. To strengthen the criminal executive inspection system by introducing qualified staff, including psychologists.
- 2.7. To use all possible means to gain public acceptance of the use of alternative forms of punishment.

2.8. To develop and implement training programmes for government bodies and officials, as well as for non-governmental organisations involved in the application of alternative forms of punishment.

2.9. To consider introduction of the position of sentencing judge (judge for the implementation of criminal punishment).

2.10. Wherever possible, to include conflict resolution services in the official justice system.

III. MEASURES FOR EARLY RELEASE

3.1. To substantially reduce the minimum periods of detention which prisoners must serve before they can be considered for any form of early release.

3.2. To increase the practice of early release on health grounds, with the aim of humanising the sentence and making more active use of all available legal opportunities. To increase the range of medical conditions which constitute grounds for early release as well as the range of persons eligible for early release on health grounds.

3.3. To include in the range of circumstances taken into account when considering persons for early release - the age and sex of the prisoners, whether they have children (minors) or dependants, and other family circumstances.

3.4. To consider the possibility of extending the range of conditions under which the administrations of penal institutions may recommend early release.

3.5. To eliminate contradictions between the Criminal and Criminal Executive Codes which limit the application of early release.

3.6. To consider enshrining in law and taking practical measures to ensure review by the courts of all cases of convicted persons who have a formal right to conditional early release, regardless of the decision of the prison administration.

3.7. State executive bodies, together with NGOs, academics and prison staff to develop and implement a programme of rehabilitation and social adaptation for prisoners undergoing release, paying particular attention to adoption of appropriate legislation and to introducing the institution of social worker.

3.8. To carry out regular monitoring to ensure that all procedures relating to early conditional release are being duly followed.

3.9. To consider making legislative provision for the establishment and operation of control commissions at penal establishments, whose scope would include preparing a social assessment for the court's consideration in the case of any individual eligible for conditional early discharge.

IV. ALTERNATIVES RELATING TO MINORS AND RESTORATIVE JUSTICE

4.1. To set up specialised courts and a system of legal assistance for the resolution of cases involving juvenile offenders.

4.2. To put into practice the principles of restorative justice as alternatives to traditional custodial punishment; to remove criminal responsibility in cases where the parties are reconciled, as a means of relieving the courts of cases where crimes of minor and medium gravity have been committed by minors.

4.3. To set up rehabilitation centres which will work on a programme of restorative justice.

4.3.1. To apply custodial measures to minors and young people only when restorative justice programmes have proved ineffective and it is impossible to return the child to a normal social milieu;

4.3.2. To re-train existing employees of state institutions such as the Commission on Issues Concerning Minors, institutions of trusteeship and guardianship, reception and allocation centres for minors, for work within the restorative justice programme. Psychologists and psychiatrists must also be involved in the programme;

4.3.3. To set up special treatment and rehabilitation centres for young offenders suffering from medical conditions.

4.4. To strengthen the co-operation between state structures, non-governmental organisations and other civil society institutions in the following areas:

4.4.1. development of a national state programme for juvenile justice, taking into account local characteristics and traditions;

4.4.2. adopting a Law on Children's Rights;

4.4.3. bringing current law in the sphere of protection of children and young people into conformity with international standards;

4.4.4. educating and training specialists in juvenile justice;

4.4.5. seeking out and obtaining funding for the implementation of a programme of restorative justice;

4.4.6. making wide use of the mass media in educating public opinion on issues relating to juvenile justice, enlisting the co-operation of national and international governmental and non-governmental organisations and charitable foundations;

4.4.7. analysing and evaluating the programmes adopted, and informing the public of their effectiveness, as well as of any problems which arise.

On the project in Pavlodar region

The programme carried out by PRI and ICPS in the Pavlodar prison colonies has been developed as a model for carrying out penal reform in Kazakhstan as a whole, as well as in other countries of Central Asia. It is aimed at bringing conditions in prison establishments in the Pavlodar region into line, to the maximum degree possible, with the requirements of international standards - through a change in attitude on the part of the prison administration, and by introducing strategic planning during the reform process.

The programme is being implemented with the assistance of the Ministry of Internal Affairs of Kazakhstan and in close co-operation with the regional prison administrators of Pavlodar, who, utilising their knowledge and experience, are making a huge effort to resolve many complex problems. However, as widely recognised, humanisation of prison conditions must be carried out simultaneously with a decrease in the total prison population in the country for it to become an irreversible and durable process.

The project in the Pavlodar region is financed by the Dutch Ministry of Foreign Affairs, Dutch Interchurch Aid, the Interchurch Organisation for Development Co-operation and Caritas-Netherlands.

About Penal Reform International

Penal Reform International is an international, non-governmental organisation with six offices in different countries world-wide. It has consultative status at the United Nations and the Council of Europe, and also observer status at the African Commission on Human and People's Rights. Penal Reform International seeks to implement reforms in the field of criminal justice, recognising the diversity of different cultures, and it promotes:

- the development and implementation of international human rights instruments with regard to law enforcement, prison conditions and standards;
- the elimination of unfair and unethical discrimination in all penal measures;
- the abolition of the death penalty;
- the reduction of the use of imprisonment throughout the world;
- the use of constructive non-custodial sanctions which encourage social reintegration while taking account of the interests of victims.

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