

ISSN 2518-170X (Online),
ISSN 2224-5278 (Print)

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ҰЛТТЫҚ ҒЫЛЫМ АКАДЕМИЯСЫНЫҢ
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Х А Б А Р Л А Р Ы

ИЗВЕСТИЯ

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК
РЕСПУБЛИКИ КАЗАХСТАН
Satbayev University

NEWS

OF THE ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN
Satbayev University

SERIES
OF GEOLOGY AND TECHNICAL SCIENCES

2 (440)

MARCH – APRIL 2020

THE JOURNAL WAS FOUNDED IN 1940

PUBLISHED 6 TIMES A YEAR

ALMATY, NAS RK

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НАН РК сообщает, что научный журнал «Известия НАН РК. Серия геологии и технических наук» был принят для индексирования в Emerging Sources Citation Index, обновленной версии Web of Science. Содержание в этом индексировании находится в стадии рассмотрения компанией Clarivate Analytics для дальнейшего принятия журнала в the Science Citation Index Expanded, the Social Sciences Citation Index и the Arts & Humanities Citation Index. Web of Science предлагает качество и глубину контента для исследователей, авторов, издателей и учреждений. Включение Известия НАН РК. Серия геологии и технических наук в Emerging Sources Citation Index демонстрирует нашу приверженность к наиболее актуальному и влиятельному контенту по геологии и техническим наукам для нашего сообщества.

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«ҚР ҰҒА Хабарлары. Геология және техникалық ғылымдар сериясы».

ISSN 2518-170X (Online),

ISSN 2224-5278 (Print)

Меншіктенуші: «Қазақстан Республикасының Ұлттық ғылым академиясы» РҚБ (Алматы қ.).

Қазақстан республикасының Мәдениет пен ақпарат министрлігінің Ақпарат және мұрағат комитетінде
30.04.2010 ж. берілген №10892-Ж мерзімдік басылым тіркеуіне қойылу туралы куәлік.

Мерзімділігі: жылына 6 рет.

Тиражы: 300 дана.

Редакцияның мекенжайы: 050010, Алматы қ., Шевченко көш., 28, 219 бөл., 220, тел.: 272-13-19, 272-13-18,
<http://www.geolog-technical.kz/index.php/en/>

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Редакцияның Қазақстан, 050010, Алматы қ., Қабанбай батыр көш., 69а.

мекенжайы: Қ. И. Сәтбаев атындағы геология ғылымдар институты, 334 бөлме. Тел.: 291-59-38.

Типографияның мекенжайы: «NurNaz GRACE», Алматы қ., Рысқұлов көш., 103.

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«Известия НАН РК. Серия геологии и технических наук».

ISSN 2518-170X (Online),

ISSN 2224-5278 (Print)

Собственник: Республиканское общественное объединение «Национальная академия наук Республики Казахстан (г. Алматы).

Свидетельство о постановке на учет периодического печатного издания в Комитете информации и архивов Министерства культуры и информации Республики Казахстан №10892-Ж, выданное 30.04.2010 г.

Периодичность: 6 раз в год.

Тираж: 300 экземпляров.

Адрес редакции: 050010, г. Алматы, ул. Шевченко, 28, ком. 219, 220, тел.: 272-13-19, 272-13-18,
<http://www.geolog-technical.kz/index.php/en/>

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Адрес редакции: Казахстан, 050010, г. Алматы, ул. Кабанбай батыра, 69а.

Институт геологических наук им. К. И. Сатпаева, комната 334. Тел.: 291-59-38.

Адрес типографии: «NurNaz GRACE», г. Алматы, ул. Рыскулова, 103.

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News of the National Academy of Sciences of the Republic of Kazakhstan. Series of geology and technology sciences.

ISSN 2518-170X (Online),

ISSN 2224-5278 (Print)

Owner: RPA "National Academy of Sciences of the Republic of Kazakhstan" (Almaty).

The certificate of registration of a periodic printed publication in the Committee of information and archives of the Ministry of culture and information of the Republic of Kazakhstan N 10892-Ж, issued 30.04.2010.

Periodicity: 6 times a year.

Circulation: 300 copies.

Editorial address: 28, Shevchenko str., of. 219, 220, Almaty, 050010, tel. 272-13-19, 272-13-18,

<http://www.geolog-technical.kz/index.php/en/>

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Editorial address: Institute of Geological Sciences named after K.I. Satpayev

69a, Kabanbai batyr str., of. 334, Almaty, 050010, Kazakhstan, tel.: 291-59-38.

Address of printing house: «NurNaz GRACE», 103, Ryskulov str, Almaty.

NEWS

OF THE NATIONAL ACADEMY OF SCIENCES OF THE REPUBLIC OF KAZAKHSTAN

SERIES OF GEOLOGY AND TECHNICAL SCIENCES

ISSN 2224-5278

Volume 2, Number 440 (2020), 156 – 161

<https://doi.org/10.32014/2020.2518-170X.43>

UDC 343.846

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PROBATIONAL CONTROL FOR PERSONS SUBJECT TO CONDITIONAL-EARLY EXEMPTION

Abstract. Since January 1, 2015, the criminal Executive inspections Of the Committee of the criminal Executive system of the Ministry of internal Affairs of the Republic of Kazakhstan have been transformed into the probation service with the expansion of the function of assistance in obtaining social and legal assistance and the implementation of probation control. In this regard, the issues of formation and development of the Institute of probation in the Republic of Kazakhstan are revealed.

Due to the fact that a significant part of crimes among persons released on parole from places of deprivation of liberty is committed due to social problems, it is necessary to carry out work on their re-socialization for persons subject to release on parole, as established by law in relation to convicts serving a sentence of imprisonment, which remained until one year of their sentence. In addition, it is planned to expand the use of penitentiary control in relation to persons subject to parole.

The article also analyzes the criteria for correcting prisoners convicted from the perspective of factors that affect the degree of reduction of a person's public danger, taking into account the analysis of the practice of conditional release, domestic law, and the opinions of leading lawyers – scientists. Based on the results of this analysis, a scientific and legal description of the term “correction” is proposed, as well as the procedure and conditions for the implementation of probationary control.

The analysis of materials on conditional release from punishment also indicates that by refusing to satisfy petitions and representations, judges basically motivate their decision by a combination of necessary circumstances characterizing the personality of the convicts. In addition, the court is based only on information provided by the administration of institutions on convicts, which, in our opinion, is formal in nature and is not sufficient to resolve the issue of parole. In this regard, it is proposed to provide the conclusion on the correction of the convicted person and the possibility of applying conditional early release to him to the employees exercising probation control in this institution. Then the court, having studied the materials of the probation services and the administration of the institution, will take an appropriate decision.

Key words: probationary control, parole, peer control, correction of a convict, social adaptation of a convict, resocialization of a convict, correction of a convict, probation service.

Introduction. Correction of convicts is one of the purposes of applying criminal punishment, and the possibility of parole from serving a sentence is the most important incentive for convicts in their positive behavior. At the same time, in order to consolidate the results of the correction, assistance should be provided to persons subject to release from prison. In this direction, a significant role is played by probationary monitoring of the behavior of persons subject to parole.

When conducting probation control in Kazakhstan due to the presence of features on the subject and scope of powers of participants in probation control, there are a number of problems of a theoretical, legal and organizational nature that were not the subject of a special and independent scientific study. Accordingly, consideration of these problems, ways to solve them, as well as the features of probationary

control over the behavior of persons subject to parole, their essence, are among the important tasks whose solution is associated with the need to carry out appropriate theoretical developments.

Recent domestic and foreign research conducted, often devoted to certain aspects of probation in the Republic of Kazakhstan, in particular, with respect to persons sentenced to probation or to sentences not related to deprivation of liberty.

Many scientific papers also consider other problematic probation issues related to the application of forms and methods of its implementation. At the same time, until now, such aspects of probation control as its implementation in relation to persons subject to parole, the essence of the concept of “degree of correction”, have not been fully investigated and developed.

The probationary activity in Kazakhstan is also not uniform, especially when it comes to organization approaches, forms of implementation, and evaluation of the effectiveness of probationary control. There is a need to improve the legal foundations of this area of activity.

The circumstances outlined indicate the need to study a number of theoretical and applied and applied problems of probationary control over the behavior of persons subject to parole.

Thus, the relevance of the topic of this article is determined by the need to study and analyze the legal foundations of probationary control over the behavior of persons subject to parole.

All this predetermined the choice of topic, the nature and direction of our research, in which an attempt was made to set forth our own vision of further law-making activity in the direction under consideration.

In writing this article, extensive analytical material has been used on the regulatory framework for probationary monitoring of the behavior of individuals subject to parole, contained in the writings of modern legal scholars, and analysis of law enforcement practice.

Methodology. The theoretical basis of the study was the scientific works of domestic and foreign legal scholars regarding the problematic aspects of parole of convicts and probationary control in relation to these individuals.

The empirical base of the study is the statistical data of the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan, as well as practical materials on the facts of non-fulfillment by persons released on parole of their duties, as well as information on the improper performance of their official duties by law enforcement officials.

During the study, periodical press materials and Internet sources were used, which discussed issues of probation control and parole. The author conducted a legal analysis of the norms of the criminal and penal legislation of the Republic of Kazakhstan, regulating the procedure for conducting probationary monitoring of persons subject to parole, and also studied the law enforcement practice.

When writing this article, extensive analytical material was used on the legal foundations of probationary control over the behavior of parole in Kazakhstan.

Results. In order to increase the effectiveness of probation control aimed at correcting the convict and preventing them from committing new criminal offenses, it is necessary to improve certain aspects of the probationary institution:

1. The application of probationary control should be extended to individuals subject to parole;
2. The conclusion on the correction of the convict and the possibility of applying conditional early release in relation to him must be provided by the employees exercising probation control in this institution.

Discussion. For the first time the concept of “probation” in Kazakhstani legislation was introduced by the Law of February 15, 2012 “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Issues of Probation Service” [1].

In accordance with this, on the basis of the order of the Prime Minister of the Republic of Kazakhstan dated April 4, 2012 № 65 on measures to implement the above-mentioned Law, a number of regulatory legal acts were prepared and published, including the Decree of the Government of the Republic of Kazakhstan dated October 23, 2014 № 1131 “On approval of the Rules for the provision of social and legal assistance to persons registered with the probation service” [2] and Order of the Minister of Internal Affairs of the Republic of Kazakhstan dated August 15, 2014 № 511 “On approval of the Rules for the organization of activities of the probation service”, designed for direct regulation of probationary activity [3].

An analysis of the content of these documents shows that probation was controlled only by probation, and the legislator regulated only the control and supervisory and punitive functions in the implementation of probation control, including established forms of accounting and reporting, reconciliations and verification of information regarding data on the category of convicts.

Given these circumstances, in the future, with the adoption of the new Criminal Executive Code of the Republic of Kazakhstan in 2014, the powers of the probation services were expanded, as well as the categories of persons with respect to whom probation control is established [4].

According to Art. 3 PEC RK under probation should be understood as a set of measures of a social and legal nature, developed and implemented individually in relation to a person under probationary control, to correct his behavior in order to prevent him from committing new criminal offenses.

It should be noted that from January 1, 2015, the criminal-executive inspections of the Committee on the Criminal Executive System of the Ministry of Internal Affairs of the Republic of Kazakhstan were transformed into a probation service with an expansion of the function to facilitate the receipt of social and legal assistance and probation, and those sentenced to restricted freedom.

One of the important documents aimed at implementing probation control in the Republic of Kazakhstan, where the activities of probation services are specifically indicated, in the form of tools, is an independent Law of the Republic of Kazakhstan "On Probation", adopted on December 30, 2016 [5].

As the authors of the Commentary on the Law of the Republic of Kazakhstan "On Probation" rightly noted, this law is a new direction in the development of the legal system, gives the Kazakhstani probation model a harmonious system and logical connection between the state and the citizen, lays down the basic humanistic ideas of the state [6, p.15].

In accordance with paragraph 2) of Art. 1 of the Law of the Republic of Kazakhstan "On Probation", "the purpose of probation is to help ensure public safety by: correcting the behavior of the suspect, the accused; resocialization of the convict; social adaptation and rehabilitation of a person released from the institution of the penal system."

Currently, there are four types of probation: pre-trial probation; sentencing probation; penitentiary probation; post-prison probation, which allows us to talk about the continuity of the process of re-socialization of people who find themselves in the field of criminal proceedings, which mainly affects the dynamics of the prison population and the rate of relapse, that is, the repetition of crimes by persons who have served their sentences [7, p.326].

Thus, it can be stated that the establishment of a probationary institution has taken place in Kazakhstan and the entire probationary cycle has been finally formed. Voluntary participation in the re-education of convicts has turned into a professional service with all duties and rights.

One of the most important types of probationary control capable of providing the necessary assistance to prisoners sentenced to prison is probation.

According to Article 72 of the Criminal Code of the Republic of Kazakhstan, a person serving a sentence of restraint of liberty or imprisonment, after the actual serving of the time prescribed by law, may be released by the court on parole, if the court finds that he does not need to complete the sentence for his correction. In this case, a person serving a restraint of liberty or imprisonment, after the actual departure of the deadlines stipulated by law, shall be released on parole in the event of full compensation for the damage caused by the crime and the absence of malicious violations of the established procedure for serving the sentence [8].

When applying this norm, it is difficult for the court to determine the fact that the convicted person does not need to fully serve the sentence for his correction.

Legislative regulation in paragraph 10 of Art. 3 PEC RK the degree of correction of the convict as the formation of his law-abiding behavior, a positive attitude to the person, society, work, norms, rules and ethics of behavior in society does not contribute, in our opinion, to eliminate the "formal" approach to its definition.

Among scholars, there are various opinions on the content side of the concept of "correction of convicts". So, from the point of view of BB Cossack correction of convicts is a complex national task, in the solution of which all government bodies and public organizations related to its implementation should take part [9, p.254].

A.I. Zubkov talks about the correction that he sees in the formation of the personality of convicts in accordance with the “positive, socially useful rules and traditions of human society and the promotion of their law-abiding behavior through educational work, socially useful work, general education, training and public influence carried out in conditions created by the established procedure for the execution and serving of punishment (regime)” [10, p.25].

Thus, the above definitions clearly indicate the difficulties in assessing the degree of correction. As rightly notes I.V. Shmarov “correction can be understood not only as a goal, but also as a process, as well as the result of the application of punishment and corrective action on convicts” [11, p.37-38].

In our opinion, the institution of penitentiary probation can play a significant role in solving this problem.

According to Article 12, 16 of the Law of the Republic of Kazakhstan “On Probation”, penal probation is the activity of the administration of the correctional institution within the framework of the requirements of the PEC from the moment the convicted person is sentenced to imprisonment in this institution, and one year before his release from prison, it also works together with the probation officer to prepare convicted to release.

At the same time, the probation service for their re-socialization is not carried out in relation to convicts on parole, as established by law, in respect of convicts serving a sentence of imprisonment who are left for one year before serving their sentence.

The main task in the preparation of convicts serving deprivation of liberty for parole is the creation of a system of interconnected elements aimed at resolving issues of successful social adaptation of a convicted person after release. First of all, it is necessary to assist in the restoration of socially useful ties; organize vocational and labor training of convicts, which will serve for the convict as a real source of income after release, etc.

As practice shows, a significant portion of crimes among persons on parole from places of deprivation of liberty are committed due to social problems. Among persons released on parole and having committed crimes again, 78% are unemployed. So, parole A. and N. needed employment, however, the probation service, where they were registered, was limited only to sending an individual program for the help of a psychologist. As a result, these persons committed repeated crimes (theft, robbery).

Thus, penitentiary probation should also apply to persons subject to parole.

An analysis of the materials on conditional release from punishment also indicates that by refusing to satisfy applications and representations, judges basically motivate their decision by a combination of necessary circumstances characterizing the personality of the convicted.

The grounds for determining “no correction” and subsequent refusal of parole from serving a sentence by the courts indicate unstable behavior, lack of degree of behavior, a small number of rewards, etc. In addition, the court is based only on information provided by the administration of institutions on convicts, which, in our opinion, is formal in nature and is not sufficient to resolve the issue of parole.

In this regard, we consider it necessary to provide a conclusion on the correction of a convicted person and the possibility of applying conditional early release to him to employees exercising probation control in this institution. Then the court, having studied the materials of the probation services and the administration of the institution, will take an appropriate decision.

Conclusion. The above results obtained during the study in the scope of this article allow us to conclude that imperfect penitentiary control of persons subject to parole, which in our opinion requires further study and reflection.

Consideration of the legal problems of probationary activity allows us to conclude that the implementation of the state anti-crime policy can be most effective only through coordinated measures aimed at the re-socialization of prisoners and their social adaptation of crime and other offenses.

It seems that the obtained author's results, on the one hand, can expand the boundaries of scientific knowledge in this area, will contribute to further increase the effectiveness of probationary control, and, on the other, serve as a starting point for further study of these problems.

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ШАРТТЫ-ЕРТЕ СЫНАҚТАН ӨТЕТІН ЖЕКЕ ТҮЛҒАЛАРҒА АРНАЛҒАН ПРОБАЦИЯ БАҚЫЛАУЫ

Аннотация. 1 қаңтарынан бастап 2015 жылғы қылмыстық-атқару инспекциясы қылмыстық-атқару жүйесі Комитеті Қазақстан Республикасы ішкі істер Министрлігінің қайта құрылды пробация қызметіне кеңейтуге жәрдемдесу жөніндегі функциялар алу әлеуметтік-құқықтық көмек көрсетуді жүзеге асырумен, пробациялық бақылау. Осыған байланысты ашылады қалыптасу және даму мәселелері институтының пробация Қазақстан. Сонымен қатар, ашылады қылмыстық-құқықтық табиғаты пробационного бақылау және ұсынылған өз көзқарасын институтының пенитенциарлық пробация мәні өзінен өзі қажетті көмек көрсету бас бостандығынан айыруға сотталған.

Осыған байланысты, қылмыстардың айтарлықтай бөлігі адамдар арасында шартты түрде мерзімінен бұрын босатылған, бас бостандығынан айыру орындарынан жасалатын әлеуметтік проблемаларды қажет жататын адамдарға қатысты мерзімінен бұрын шартты түрде босатылуға бойынша жұмыс жүргізу, оларды қайта әлеуметтендіру де қатысты сотталған, жазасын өтеп бас бостандығынан айыру түрінде тағайындалған жазалау мерзімін өтегенге дейін қалған бір жыл. Одан әрі жетілдіру мақсатында пробациялық бақылау көзделеді қолдану аясын кеңейту, пенитенциарлық бақылау жататын адамдарға қатысты шартты-мерзімінен бұрын босатуға.

Мақалада сондай-ақ, талдау өлшемдерін сотталғандарды түзеу тұрғысынан факторлар әсер етеді төмендеу дәрежесі қоғамдық қауіп тұлға, талдауды ескере отырып, құқық қолдану іс-тәжірибесін шартты түрде мерзімінен бұрын босату, отандық заңнаманың пікірлерін жетекші заңгер – ғалымдар. Аталған талдау нәтижелері бойынша ұсынылған ғылыми-құқықтық сипаттамасы термин "түзету", сондай-ақ тәртібі мен шарттарын пробациялық бақылауды жүзеге асыру.

Жүргізілген талдау туралы материалдарды шартты түрде мерзімінен бұрын жазадан босату, сондай-ақ дәлелдейді отқазывая өтінішхаттарды қанағаттандырудан мен ұсынымдардың, судьялар негізінен ынталандырады өз шешімін жиынтығымен қажетті мән-жайлар жеке басын сипаттайтын сотталған. Үшін негіз ретінде анықтау емес "түзету", кейіннен бас тарту шартты түрде-мерзімінен бұрын жазаны өтеуден босату соттардың көрсетіледі тұрақсыз мінез-құлық болмауы, мінез-құлық дәрежесі, саны аз көтермелеу және т.б. бұдан Басқа, сот негізделеді ғана мәліметтер ұсынылған мекеменің әкімшілігі сотталғандардың, бұл біздің ойымызша, сипатқа ие және болып табылады жеткілікті мәселені шешу үшін шартты түрде мерзімінен бұрын босату. Осыған байланысты туралы қорытындыны түзету сотталған және қолдану мүмкіндіктерін, оған қатысты шартты түрде мерзімінен бұрын босатуға ұсыну қызметкерлеріне, пробациялық бақылауды жүзеге асыратын осы мекемеде. Содан кейін сот материалдарын зерделеп, пробация қызметтері мен мекеменің әкімшілігі, тиісті шешім қабылдайды.

Түйін сөздер: пробациялық бақылау шартты түрде-мерзімінен бұрын босату, пенитенциарный бақылау, сотталған адамның түзелуіне, әлеуметтік бейімдеу сотталған адамның ресолициация сотталушының, сотталған адамның түзелуіне, пробация қызметі.

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ПРОБАЦИОННЫЙ КОНТРОЛЬ В ОТНОШЕНИИ ЛИЦ, ПОДЛЕЖАЩИХ УСЛОВНО-ДОСРОЧНОМУ ОСВОБОЖДЕНИЮ

Аннотация. С 1 января 2015 года уголовно-исполнительные инспекции Комитета уголовно-исполнительной системы Министерства внутренних дел Республики Казахстан были преобразованы в службу пробации с расширением функции по содействию в получении социально-правовой помощи и осуществ-

лением пробационного контроля. В этой связи раскрываются вопросы становления и развития института пробации в Республике Казахстан.

В связи с тем, что значительная часть преступлений среди лиц, условно-досрочно освобожденных из мест лишения свободы, совершается из-за социальных проблем, необходимо в отношении лиц, подлежащих к условно-досрочному освобождению проводить работу по их ресоциализации, как это установлено законодательством в отношении осужденных, отбывающих наказание в виде лишения свободы, которым до отбытия срока наказания остался один год. Кроме того, предполагается расширения применения пенитенциарного контроля в отношении лиц, подлежащих, условно-досрочному освобождению.

В статье также проведен анализ критериев исправления осужденных с позиции факторов, которые влияют на степень снижения общественной опасности лица, с учетом анализа практики правоприменения условно-досрочного освобождения, отечественного законодательства, мнений ведущих юристов – ученых. По результатам данного анализа предложены научно-правовое описание термина «исправление», а также порядка и условий осуществления пробационного контроля.

Проведенный анализ материалов об условно-досрочном освобождении от наказания также свидетельствует о том, что отказывая в удовлетворении ходатайств и представлений, судьи, в основном, мотивируют свое решение совокупностью необходимых обстоятельств, характеризующих личность осужденных. Кроме того, суд основывается только на сведениях, представленных администрацией учреждений на осужденных, что, на наш взгляд, носит формальный характер и является недостаточным для решения вопроса об условно-досрочном освобождении. В этой связи предлагается заключение об исправлении осужденного и возможности применения в отношении него условно-досрочного освобождения предоставить сотрудникам, осуществляющим пробационный контроль в данном учреждении. Тогда суд, изучив материалы служб пробации и администрации учреждения, примет соответствующее решение.

Ключевые слова: пробационный контроль, условно-досрочное освобождение, пенитенциарный контроль, исправление осужденного, социальная адаптация осужденного, ресоциализация осужденного, исправление осужденного, служба пробации.

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ISSN 2518-170X (Online), ISSN 2224-5278 (Print)

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Редакторы *Д. С. Аленов, М. С. Ахметова, Т. А. Апендиев*
Верстка *Д. А. Абрахимовой*

Подписано в печать 13.04.2020.
Формат 70x881/8. Бумага офсетная. Печать – ризограф.
13 п.л. Тираж 300. Заказ 2.