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Reflections on the specific features of imposing non-custodial punishments under the criminal legislation of the republic of Uzbekistan

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Abstract: This article analyzes the theoretical and practical aspects of imposing non-custodial punishments in the criminal legislation of the Republic of Uzbekistan, focusing on their legal nature, forms, scope of application, and challenges in enforcement. The shift from traditional custodial sanctions toward more humane and rehabilitative alternatives is reviewed in light of legislative reforms, court practices, and international human rights standards. Particular attention is given to fines, correctional labor, community service, deprivation of rights, and restriction of liberty. The study emphasizes the need to further refine the legal framework to ensure clarity, consistency, and effective implementation of such penalties. Drawing upon comparative legal analysis, including the experience of Armenia and Ukraine, the author proposes concrete legislative recommendations aimed at enhancing the legal regulation and execution of non-custodial sentences in Uzbekistan. The article concludes that strengthening the institutional and procedural aspects of these penalties can contribute to the overall liberalization and humanization of the penal system.

Keywords: Non-custodial punishment, criminal justice reform, correctional labor, community service, restriction of liberty, Uzbekistan, penal policy, criminal law, enforcement mechanisms, individualization of punishment.

Introduction: Excessively harsh penalties tend not only to negatively affect the lives and moral standing of those being punished but also to coarsen the ethical and professional mindset of those administering such punishments. In modern criminal justice practice, the inefficiency of severe punitive measures in combating crime has become increasingly evident. For this reason, Uzbekistan's criminal policy has shifted toward greater emphasis on non-custodial punishments as an effective and humane alternative to incarceration.

According to the Plenum of the Supreme Court of the Republic of Uzbekistan, in its Resolution of 21 May 2004 titled "On Certain Issues Related to the Application of the Law on Liberalization of Criminal Penalties in Relation to Economic Crimes", when material damage caused by a crime has been fully compensated, imprisonment may not be imposed as a punishment—even in cases where the offense was not completed, provided that the criminal consequences associated with the damage were prevented in time.

Furthermore, when adjudicating criminal cases in the economic sphere, courts may consider the application of Article 57 of the Criminal Code, which governs the imposition of lighter penalties. In particular, if the offender has reimbursed at least half of the amount of damage caused, such restitution may be recognized as a significant mitigating circumstance, thereby justifying a substantial reduction in the severity of the sentence imposed[1].

Furthermore, Article 571 of the Criminal Code of the Republic of Uzbekistan, introduced on 19 May 2010, provides that if the offender demonstrates genuine remorse, voluntarily compensates the damage caused, and if the circumstances outlined in Part 1 of Article 56 of the Code are present, the sentence imposed may not exceed two-thirds of the maximum punishment provided under the relevant article of the Special Part of the Code.

According to current legislative provisions, imprisonment is prescribed in approximately 78.0% of the criminal offenses defined in the Special Part of the Criminal Code. Among these, 40.7% include imprisonment as an alternative sanction, while 43.4% of offenses provide for a fine as an alternative punishment.

The analysis of the Criminal Code shows that fines are most extensively applied as a sanction for offenses against the foundations of the economy (92.8%) and for environmental crimes (100%). By contrast, fines are rarely applied for crimes against life and health (only 13.3%), and are generally not available for offenses against peace and security, as well as those involving military service violations[2].

Under the Criminal Code of the Republic of Uzbekistan, a fine is regarded as the mildest form of punishment, which is confirmed by Part 3 of Article 44. According to this provision, if a convicted person deliberately evades payment of a fine within the time limits prescribed for its enforcement, or if enforcement is not possible within such time frame due to the absence of seizable property, or if the fine is not paid after the expiration of a court-granted postponement period, or if the installment payment schedule is violated, the court may replace the unpaid portion of the fine with one of the following punishments: compulsory community service, correctional labor, restriction on military or official service, restriction of liberty, or imprisonment.

In such cases: 2.5 hours of compulsory community service is deemed equivalent to one base calculation amount of the unpaid fine, and this may be imposed for a period not exceeding 480 hours; one month of correctional labor, restriction on service, restriction of liberty, or imprisonment is equated to sixteen base calculation amounts of the unpaid fine, and may be imposed for a period not exceeding three years.

This legislative mechanism aims to ensure that fines, as a form of punishment, are not rendered ineffective due to non-payment and serves as a legal basis for proportionally replacing them with alternative sanctions in appropriate circumstances.

As emphasized by D.J. Suyunova and B.J. Akhrorov, "When imposing punishment, courts must strictly adhere to the principle of individualized sentencing as required by law. This means that the punishment must correspond to the degree and nature of the social danger posed by the offense, the personality of the offender, and the presence of mitigating or aggravating circumstances[3]".

In essence, punishment is imposed in order to morally rehabilitate the offender, to prevent the continuation of criminal activity, and to deter both the offender and others from committing new crimes in the future. As M.Kh. Rustambaev rightly notes, a fine, as a form of state coercion, represents an economic measure imposed on the offender, aimed at restricting the property rights of the individual through financial liability for the committed offense[4].

M. Usmonaliyev defines a fine as "the collection of a monetary sum from the offender, in an amount specified by the Criminal Code, for the benefit of the state budget. Among all criminal punishments, a fine is considered the least severe and is ranked first in the system of sanctions[5]".

According to K.R. Abdurasulova, "a fine primarily entails material loss to the convicted person, as it involves the compulsory collection of a certain sum of money in favor of the state. When such a punishment is applied, the coercive force of the state exerts a direct influence on the root causes that prompted the person's antisocial behavior[6]".

In the opinion of Yu.S. Pulatov, "a fine is the compulsory collection of a monetary amount ranging from five to six hundred times the minimum monthly wage as established by the Criminal Code[7]".

Q.P. Payzullayev similarly characterizes a fine as "a form of state coercion which economically impacts the offender by restricting their property rights through financial liability for the committed offense[8]".

As we can observe, legal scholars in our country define the concept of a fine not only within the framework of its statutory (legal) definition as provided in the Criminal Code, but also in light of its practical application, distinctive characteristics, and its functional role within the overall system of criminal punishments.

In our view, when adjudicating criminal cases and determining an appropriate form of punishment, judges should carefully assess the circumstances of each individual case, giving due consideration to the principle of differentiation and individualization of punishments. Within this context, we believe it would be expedient to provide a fine as an alternative punishment for the following offenses: Article 116, Part 1 (Improper performance of professional duties), Article 117, Part 1 (Leaving a person in danger), Article 121 (Coercion of a woman into sexual intercourse), Article 129, Part 1 (Lewd acts against a person under the age of sixteen), Article 236, Part 1 (Interference with investigation or adjudication), Article 244[1], Part 3 (Preparation or dissemination of materials threatening public security and order), Article 246, Part 1 (Smuggling), Article 247, Part 1 (Illegal possession of firearms, ammunition, main parts of firearms, explosives, or explosive devices).

Naturally, in prescribing a fine for these offenses, it would be appropriate to set the fine at a high monetary amount, thereby ensuring its deterrent effect. In doing so, the fine can function as an effective criminal sanction capable of discouraging future criminal conduct by the offender and achieving the intended goals of punishment.

Deprivation of a specific right consists in prohibiting the convicted person, for a period determined by the court, from holding certain positions in enterprises, institutions, or organizations, or from engaging in specific types of activity (Article 45, Part 1 of the Criminal Code of the Republic of Uzbekistan).

Where the offense committed is directly related to the offender's position or professional activity, this punishment may be imposed: as a principal punishment for a term of one to five years, or as an additional punishment for a term of one to three years.

If deprivation of a specific right is not imposed as the main punishment, the court may apply it as an additional sanction alongside any other type of punishment provided for in the relevant article of the Special Part of the Criminal Code of the Republic of Uzbekistan.

According to the Plenum of the Supreme Court of the Republic of Uzbekistan, in its Resolution dated 3 February 2006 titled "On Judicial Practice in the Imposition of Criminal Punishments", it is stated that: "Deprivation of a specific right, as an additional punishment, shall be imposed within the limits of the sanction provided for in the relevant article of the Special Part of the Criminal Code under which the person has been found guilty. If the relevant article of the Special Part does not provide for such punishment, it may still be applied in accordance with the grounds and within the scope established by Article 45 of the Criminal Code, provided that the court substantiates its decision in the judgment"[9]. We believe this interpretation is well-founded and should be supported, as it promotes flexibility in sentencing while maintaining the requirement of judicial reasoning and legal justification.

The following characteristics may be identified in relation to deprivation of a specific right:

It may only be imposed for offenses committed in connection with the offender's position or engagement in a specific type of professional activity;

It applies exclusively to offenses involving a special subject (qualified offender);

The substantive content of this punishment consists in the deprivation of the convict's subjective rights, as well as the temporary restriction of their legal capacity, for a term established by the court.

Compulsory community service entails the mandatory engagement of the convict in socially beneficial work without remuneration. If the convicted person is employed or studying, the sentence must be served outside of working or study hours.

This type of punishment shall not be applied to the following categories of individuals:

persons of retirement age;

individuals under the age of sixteen;

pregnant women;

women with children under the age of three;

persons with first- or second-degree disabilities;

military servicemen;

foreign nationals and individuals who do not reside permanently in the Republic of Uzbekistan[10].

If a convict evades the execution of a sentence of compulsory community service, the court shall replace the unserved portion of the sentence with restriction of liberty or imprisonment, calculating the substitution based on the formula that four hours of community service equals one day of restriction of liberty or imprisonment. The time during which the sentence was evaded shall not be included in the duration of the served sentence.

Correctional labor, on the other hand, consists in compelling the convict to perform labor, with 10 to 30 percent of their wages deducted in favor of the state budget, as established in Part 1 of Article 46 of the Criminal Code of the Republic of Uzbekistan. This punishment is served either at the offender's existing place of employment or, if that is not possible, at another workplace assigned by the authorities supervising the execution of the sentence. Correctional labor may be imposed for a period ranging from six months to three years.

This punishment may not be imposed on persons of retirement age, those deemed unfit for labor, pregnant women, women on maternity leave caring for a young child, and military servicemen.

If the convicted person deliberately evades more than one-tenth of the total term of the correctional labor sentence, the court may replace the remaining portion with imprisonment for an equivalent duration.Шу ўринда битта муаммоли ҳолатга эътибор қаратиш лозим.

In the current context of ongoing privatization reforms in Uzbekistan, an important question arises: Can enforcement authorities assign individuals sentenced to correctional labor to work in private enterprises? Although privatization has been widely implemented across the country, there is no clear legal guidance on whether convicts subject to correctional labor may be assigned to, or allowed to work in, privately owned businesses. Given this legal gap, it would be expedient for relevant authorities to provide explicit clarification in official guidelines or instructions on this matter.

According to the Criminal Codes of Armenia and Ukraine, if circumstances arise during the execution of a sentence that make it impossible for the individual to continue serving correctional labor—for instance, if new grounds for exemption or incompatibility appear—the convict may be released from the sentence or the correctional labor may be substituted with a less severe punishment. However, the Criminal Code of the Republic of Uzbekistan contains no such provision, and for this reason, we believe it is necessary to develop appropriate recommendations and initiate legal and procedural discussions on this issue.

Taking the above into account, we propose supplementing Article 46 of the Criminal Code with a new Part Four, to read as follows:

"If, during the execution of correctional labor, any of the circumstances specified in Part Three of this Article arise, the correctional labor may be replaced with a less severe punishment."

Restriction on service (Article 47 of the Criminal Code) is a special type of punishment that applies exclusively to military personnel serving under contract.

This punishment consists in depriving the servicemember of certain rights and privileges for the duration specified in the court judgment, along with a deduction of 10 to 30 percent of their monetary allowance in favor of the state budget.

Restriction of liberty entails prohibiting the convict from leaving their place of residence entirely, or restricting their movement during specific hours of the day.

This punishment may be imposed for a term ranging from one month to five years and is served under the supervision of designated authorities as determined by the court. The conditions under which restriction of liberty is to be served are set by the court with consideration of the nature of the offense and the need to prevent evasion of the enforcement of the sentence[11].

If a convict deliberately evades serving a sentence of restriction of liberty, or fails to comply with obligations imposed by the court, the court may replace the unserved portion of the sentence with another type of punishment. The period during which the offender evaded enforcement shall not be counted toward the served term.

A key feature of restriction of liberty is its function as an intermediary link in the system of criminal sanctions—connecting non-custodial punishments with custodial sentences. Previously, this role was effectively fulfilled by conditional sentencing in the form of parole from places of imprisonment, accompanied by compulsory labor, which served as a practical criminal-legal measure.

Restriction of liberty avoids many of the negative effects associated with full isolation from society, such as those observed in penal colonies, prisons, or detention centers. At the same time, it possesses strong punitive potential and allows for the consistent exertion of rehabilitative and disciplinary influence over an extended period of time[12].

Restriction of liberty may not be imposed on military servicemen, foreign nationals, or individuals without permanent residence in the Republic of Uzbekistan.

Furthermore, restriction of liberty and compulsory labor, as forms of non-custodial punishment, may not fully comply with the European Convention on Human Rights and Fundamental Freedoms. In particular, Article 4 of the Convention stipulates that forced or compulsory labor may be imposed only on persons lawfully detained or conditionally released from imprisonment. Thus, the imposition of such penalties outside the framework of detention or parole may raise concerns regarding their compatibility with international human rights standards[13].

In this regard, we would like to present several observations concerning the execution of the restriction of liberty sentence in Uzbekistan and the challenges currently arising in its implementation:

First, although it is established that the execution of restriction of liberty is carried out by the Inspectorate for the Execution of Punishments under the internal affairs bodies, the Inspectorate's specific duties in enforcing this sentence remain undefined. This stands in contrast to other types of punishments—such as fines, deprivation of a specific right, correctional labor, and compulsory community service – where the Criminal-Executive Code (CEC) clearly outlines the Inspectorate's responsibilities in separate chapters, often as standalone articles. Accordingly, to enhance the effectiveness of enforcing restriction of liberty, it would be advisable to introduce a dedicated provision into the CEC explicitly defining the Inspectorate's duties in this area.

Second, Part 3 of Article 443 of the CEC requires clarification. The law fails to specify under what circumstances a convict may leave their place of residence, change residence, exit the administrative territory, or change place of work or study. This ambiguity results in legal uncertainty. In the criminal-executive legislation of many other countries, such conditions are defined under the concept of "exceptional personal circumstances," with a clear list of qualifying situations.

Third, the rules governing the substitution of the restriction of liberty with another form of punishment are also presented unclearly in both the Criminal Code and the Criminal-Executive Code. For example, Part 2 of Article 444 of the CEC provides that if the convicted person deliberately evades serving the sentence or fails to comply with obligations imposed by the court, a submission (petition) shall be made to replace the unserved portion of the sentence with another form of punishment. However, neither the procedure nor the applicable alternative punishments are clearly defined, leaving room for discretionary interpretation.

Restriction of liberty consists in prohibiting the convicted person from leaving their place of residence entirely, or restricting their ability to leave their residence during specific hours of the day, as determined by the court. For the purposes of this sanction, the term place of residence shall be understood to include private houses at the convict's permanent address, apartments in multi-storey buildings, rooms within buildings intended for habitation, and other residential premises.

It should be clarified that the operative part of the court judgment must clearly specify the form of restriction of liberty being imposed—namely, whether it consists of a complete prohibition on leaving the place of residence, or a restriction on movement during specific times of the day, as well as the substantive conditions of the punishment.

Restriction of liberty may be imposed for a term of one month to five years, and for minors, from six months to two years. The sentence is to be served under the supervision of the Inspectorate for the Execution of Punishments at the convict's place of residence, or another body designated by the court. The specific conditions under which the punishment is to be served shall be determined by the court, taking into account the nature of the committed offense and the necessity of preventing evasion of the sentence[14]".

CONCLUSION

In conclusion, we believe that the incorporation of the above-mentioned proposals and recommendations into the national legislation concerning the system of non-custodial punishments and their application would serve to advance ongoing reforms to a new stage and significantly enhance the effectiveness of criminal justice policy in this area.

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