



THE ISSUE OF EXECUTION NON-CUSTODIAL PUNISHMENTS FOR MINORS

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Annotation: in this article the author conducted the issues of the related to the effective execution non-custodial punishments. As well as, offers on improvement of the acts regulating this sphere are provided.

Keywords: minor, criminal punishment, fine, compulsory community service, correctional labor, restriction of freedom.

The liberalization of criminal penalties is one of the key conditions for ensuring the rule of law, and the imposition of non-custodial sentences plays an important role in effectively achieving the objectives of punishment. In this regard, according to the decision of the President of the Republic of Uzbekistan No. 4006 dated November 7, 2018, titled "Measures for the Radical Improvement of Criminal-Executive Legislation" which approved the Concept for Improving Criminal-Executive Legislation of the Republic of Uzbekistan for 2019–2021 [1], one of the priority areas for further improvement of the normative and legal framework in the field of criminal sentence enforcement is the thorough review and enhancement of mechanisms for the implementation of non-custodial penalties and the increase of their effectiveness.

Additionally, this decision established that, starting from January 1, 2019, the Ministry of Internal Affairs of the Republic of Uzbekistan, in cooperation with other state bodies, organizations, and public structures, will effectively organize the enforcement of non-custodial sentences through the Department of Prevention of Offenses. This includes



the formation of the Probation Service within the Department for the Execution of Sentences of the Ministry of Internal Affairs, and its regional branches. The main task of these structures is to enforce penalties alternative to imprisonment.

It should be noted that, according to the current criminal legislation, the main objective of non-custodial penalties such as fines, correctional labor, compulsory community service, and restriction of freedom for juveniles is to correct and educate offenders without separating them from society. The goal is to prevent repeat offenses by juvenile offenders while also promoting their moral rehabilitation. The introduction of such a system of penalties in criminal law is consistent with both humanitarian and fairness perspectives.

The effectiveness of the implementation of these sentences in terms of the moral correction and education of juveniles is of crucial importance. In this regard, it is appropriate to cite the opinion of Doctor of Legal Sciences and Professor N.S. Salayev. Only when the convict has been morally corrected and when the commission of further crimes by the individual has been prevented can it be considered that the goals of the punishment have been achieved. This ultimate goal is, in turn, largely dependent on the quality of sentence enforcement, its legality, the fairness of the legal mechanism, and, most importantly, the application of the principles of differentiation and individualization of punishment in legal practice [2].

The penalties imposed on juveniles differ in terms of their enforcement procedures and the conditions under which the sentence is served. The fact that such a procedure is envisaged in criminal-executive law for juveniles is determined by the principles of justice, humanity, and adherence to the principles of differentiation and individualization in the enforcement of sentences.

It should be noted that, for the enforcement of penalties imposed on juveniles, Article 5 of the Criminal-Executive Code of the Republic of Uzbekistan stipulates that the legally



binding court judgment serves as the basis for enforcement. The process of a juvenile entering into criminal-executive legal relations begins when the judgment becomes legally effective and continues until the individual has fully served the imposed sentence or is released from it.

At this point, it is important to highlight the specific characteristics of the enforcement of non-custodial sentences imposed on juveniles. In particular, under Article 19 of the Criminal-Executive Code of the Republic of Uzbekistan, the enforcement of fines for juveniles who have committed a crime before reaching the age of eighteen and are sentenced to a fine has the following distinctive features:

- The term within which the fine may be voluntarily paid is six months from the date the judgment becomes legally effective.
- If the fine is not voluntarily paid, no mandatory enforcement measures will be applied.
- If the convicted juvenile is unable to pay the full amount of the fine within the prescribed period, the court may, upon their request, postpone the enforcement of the judgment in accordance with the procedure set forth in Article 533 of the Criminal Procedural Code, or allow for payment in installments.

It is important to emphasize that, if the fine is specified as an alternative penalty in the relevant article, its imposition can only affect the offender's property interests and achieve the goal of punishment (reformation and preventing the commission of further crimes) if it is applied in such a way that the intended objective is met. Only then can it be enforced against juveniles [3].

Unlike other types of criminal penalties, the enforcement of fines is carried out by the Bureau of Mandatory Execution under the Prosecutor General's Office of the Republic of Uzbekistan. Additionally, Article 321 of the Law of the Republic of Uzbekistan "On Enforcement of Court and Other Authorities' Documents" specifies the consequences of evading the payment of a fine. If any of the following situations occur, the state executor



must apply to the court within ten days with a request to replace the fine with another type of penalty:

- If the sentenced individual evades paying the fine within the prescribed period for mandatory enforcement;
- If there is no property that can be seized from the debtor to enforce the fine within the set period;
- If the fine remains unpaid after the deferment period has expired or if the terms for installment payments have been violated.

It should be noted that while the current Criminal-Executive legislation provides for the installment payment of fines, the specific procedure for how the installments should be paid, the exact amount to be paid in each installment, and the deadlines for the payments are not clearly defined. As a result, there are various interpretations and applications of these norms in practice.

In foreign countries, particularly in Russia, Article 88 of the Criminal Code specifies that fines may be enforced by the parents or legal representatives of juvenile offenders with their consent. However, this system has recently been a subject of significant debate, as it is not deemed effective in achieving the intended objectives of the punishment.

In the criminal-executive legislations of France and Germany, the installment amounts for fines are set on a daily, weekly, or monthly basis, taking into account the independent income sources of the juvenile involved in a specific activity. The fine can be enforced not only in monetary form but also through the transfer of other property or items of a material nature [5].

One of the penalties imposed on minors is compulsory community service. The execution of this penalty is carried out by the probation department of the district (city) internal affairs department at the minor's place of residence. The primary task of these structures is to enforce non-imprisonment penalties.



The procedure for enforcing compulsory community service is specified in the Criminal-Executive Code of the Republic of Uzbekistan, as well as in the “Regulations on the Organization of the Execution of Penalties in the Form of Compulsory Community Service” approved by the Cabinet of Ministers’ Decision No. 346 of May 8, 2018. A person sentenced to compulsory community service is required to start the sentence no later than ten days after receiving a notification of the court’s legally effective ruling, which is sent to the probation department of the district (city) internal affairs department. The sentence must be completed on a voluntary basis.

One distinctive feature of imposing and enforcing this penalty on minors is that, according to paragraph 3 of the “Regulations on the Organization of the Execution of Penalties in the Form of Compulsory Community Service” this penalty is not applied to individuals under the age of sixteen. Thus, it can only be applied to minors between the ages of 16 and 18. Additionally, in the execution of this penalty, minors are prohibited from being engaged in seasonal agricultural work in the agro-industrial complex, including:

- Harvesting fruits and vegetables;
- Cotton picking;
- Weeding crops [6].

It is important to note that when involving a convict in compulsory community service, various factors need to be considered, including the convict’s professional skills (if available), the type of crime committed, whether the convict has a job and/or is enrolled in school, the work and/or study schedule, age, and health condition, provided that they are compatible with the types of compulsory community service listed. When a juvenile convict is involved in compulsory community service, the types and nature of the work must meet the following requirements:

- The work must be suitable for the minor’s physical capabilities.



- The work should create opportunities to develop useful life skills and knowledge, fostering appropriate work ethic.

Compulsory community service as a penalty is imposed on labor-capable minors for a period ranging from sixty hours to two hundred and forty hours. The time for performing compulsory community service by minors must be structured as follows: on days off and during days when the convict is not involved in work or study, the work must not exceed three hours; on weekdays or days when educational activities are carried out, it must be no more than two hours per day, but the total duration should not exceed three days per week.

According to legal sources, the penalization of compulsory community service has a long history. This type of penalty has been called “community service” in many foreign countries. It was first introduced in the 1971 Swiss Penal Code and was initially applied only to juvenile offenders aged between 7 and 18 years old. Later, in Switzerland, community service began to be used as a primary penalty for minors and as an additional penalty for adults in certain cantons of the country [7].

Today, the enforcement of compulsory community service is within the jurisdiction of probation services in countries such as Switzerland, England and Wales, Denmark, Germany, France, Israel, Italy, Luxembourg, the Netherlands, Northern Ireland, Finland, Portugal, Scotland, the Czech Republic, Canada, and the United States.

Unlike compulsory community service, which is performed as a form of punishment for labor-capable minors, the correctional work penalty performed for monetary compensation is governed by the decision of the Plenary of the Supreme Court of the Republic of Uzbekistan dated February 3, 2006, under the second paragraph of Article 19 of the “Practice of Sentencing by Courts for Criminal Offenses” (Resolution No. 1). According to this decision, this penalty is not applied to individuals under the age of 16 [8].

Regarding the peculiarities of the enforcement of the correctional work penalty for minors, the procedure for imposing and executing this penalty is determined by the



Criminal Code, the Criminal-Executive Code of the Republic of Uzbekistan, and the Order of the Minister of Internal Affairs of the Republic of Uzbekistan No. 157 dated July 27, 2017, approved by the “Regulations on Organizing the Execution of Penalties in the Form of Certain Deprivations of Rights, Correctional Works, and Restrictions on Freedom, as well as Supervising Conditional Sentences”.

According to Doctor of Juridical Sciences S.S. Niyozova, in the execution of correctional work penalties, the age and social status of convicts play an important role, which ensures that convicts are classified into certain categories (differentiation), and their individual work is facilitated [9].

It should be noted that in the process of serving a correctional work penalty, convicts, apart from the restrictions provided by the laws of the Republic of Uzbekistan and the court judgment, enjoy all rights and fulfill obligations prescribed for citizens of Uzbekistan. This rule applies to foreign citizens and stateless persons serving such a penalty in the territory of Uzbekistan.

The term of the penalty begins from the day the administration of the enterprise, institution, or organization receives a notice from the probation department of the district (city) internal affairs body at the convict's place of residence. In the case of correctional work being performed elsewhere, the term starts from the day the convict begins work at the designated enterprise, institution, or organization. The court decision on correctional work must be executed within ten days of its receipt by the relevant authority.

The organization of the enforcement of judgments concerning convicts, involving convicts in serving their sentences, correctly withholding deductions from their wages, ensuring timely transfer to the state, and the timely release of convicts from serving their sentences are monitored through the personal accounts of individuals sentenced to correctional work.



The withholding of deductions from the monthly wages of convicts sentenced to correctional work for the state revenue is carried out from the day the convict begins serving their sentence. The employees of the probation departments of the district (city) internal affairs bodies compare the deductions made from the monthly wages of the convicts with the funds deposited into the Unified Treasury Account using the "UzASBO" software system, and if it is found that the deductions from the convict's wages were not transferred on time, immediate recovery measures must be taken.

As an alternative to imprisonment, one of the penalties imposed on minors is the restriction of freedom penalty, which was introduced into the Criminal Code of the Republic of Uzbekistan under Law No. 389 of August 10, 2015. This penalty is imposed on minor convicts as a primary penalty for a period of six months to two years. The enforcement of this penalty is carried out by the probation departments of the district (city) internal affairs bodies at the convict's place of residence, or by another body designated by the court, which is responsible for monitoring compliance with the specific restrictions (limitations) imposed by the court.

Looking at the experience of foreign countries, we can observe that in many European countries, as well as in Mexico and the United States, the restriction of freedom penalty and probation services are responsible for monitoring convicted minors. These probation services include specialized officers for conducting supervision and psychologists who provide guidance on the enforcement of the penalty [10].

In Lithuania and Poland, the restriction of freedom penalty involves imposing specific duties and prohibitions on the convict. If the convict is unable to fulfill these obligations for any serious reason, the court may replace the restriction of freedom penalty with a cash payment to the Crime Victims Fund [11].

In countries such as Germany, Canada, and Latvia, in cases of emergencies, the convict may leave their place of residence without notifying the executing authorities.



However, once the danger is resolved, it becomes the convict's responsibility to inform the enforcement authorities about this.

The enforcement of the restriction of freedom penalty is also entrusted to probation services in the UK, with the coordination of electronic monitoring of those sentenced to this penalty being the responsibility of the Chief Inspectorate. In Singapore, the enforcement of this penalty is managed by the Ministry of Youth Policy and Sports, which oversees the probation service [12].

Analyzing the issues of enforcing penalties not related to deprivation of liberty and considering the experience of advanced foreign countries, the following conclusions can be made:

First, based on the analysis of the practices of advanced foreign countries, it would be advisable to define the procedure for paying fines in installments in the Criminal-Executive legislation, specifying the exact amount, deadlines, forms, and methods for payment during installments. Additionally, when enforcing fines against minors, it should be taken into account whether they have an independent source of income.

Second, to eliminate legal gaps arising in the implementation of the correctional work sentence under Article 29 of the Criminal-Executive Code of the Republic of Uzbekistan, it is appropriate to clarify the scope of the convict's obligations. In particular, the obligation to not unilaterally terminate their employment contract during the term of the sentence should be defined. Furthermore, it would be advisable to include provisions in the existing Criminal-Executive Code regarding the procedure and conditions for changing the labor duties of the convict serving the correctional work penalty.

***Third*, it would be advisable to introduce a provision in the Criminal-Executive Code of the Republic of Uzbekistan that allows a convict serving a restriction of freedom penalty to leave their residence in cases of exceptional**



circumstances (such as natural, technological, or environmental disasters, or situations where the convict's health is in serious danger).

The inclusion of such a provision in the criminal-executive legislation will help prevent the misinterpretation of legal norms by enforcement authorities when determining whether the convict is evading the execution of the penalty. This would ensure that the circumstances under which a convict may leave their place of residence are clearly defined, thus avoiding the possibility of inconsistent legal interpretation.

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