

Enforcement Mechanisms Of Additional Punishments: Theory And Practice (On The Example Of The Legislation Of The Republic Of Uzbekistan)

Ametova Nurjamal Kudaybergenovna

Doctoral student of Karakalpak State University named after Berdakh, Uzbekistan

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Abstract: This article provides a legal and scientific analysis of the procedure for executing additional punishments and the problems associated with it. In particular, it examines the enforcement mechanisms of punishments such as deprivation of certain rights, deprivation of military or special ranks, and deprivation of state awards, as well as the practical problems encountered and possible solutions. The study substantiates the need to improve the efficiency of probation bodies and other authorized institutions, to fully digitalize the execution process, and to eliminate existing legal gaps. Based on practical examples, legislative norms, and scholarly views, the article highlights the role and significance of additional punishments within the penal enforcement system.

Keywords: Additional punishment, penal enforcement system, probation, deprivation of certain rights, military rank, special rank, state awards, execution of punishment, legal gap, legal regulation.

Introduction: The penal system is a comprehensive mechanism aimed at restoring social justice in response to crimes, correcting convicts, and preventing new crimes. Additional punishments play an important role in this system, as they serve to strengthen the impact of the main punishment, limit the legal status of the individual, or prevent temporary exclusion from the social sphere in which they may function.

The procedure and conditions for the execution of additional punishments are defined in the Criminal Executive Code of the Republic of Uzbekistan[1], the Law "On Probation,"[2] and the order of the Minister of Internal Affairs of the Republic of Uzbekistan "On Approving the Instruction on the Procedure for Organizing the Execution of Punishments in the Form of Deprivation of Certain Rights, Correctional Labor, and Restriction of Freedom, as well as the Implementation of Control over Conditionally Sentenced Persons."[3] These norms regulate the execution of additional punishments in the following forms.

Execution of punishment in the form of deprivation of certain rights. Articles 21-25 of the Criminal Executive Code define the procedure for the execution of punishment in the form of deprivation of a certain right

and the obligations of the subjects participating in it. The main role in this is assigned to the probation unit of the internal affairs bodies. They perform such functions as execution of punishment, control, sending notifications, and monitoring.

The execution of punishment in the form of deprivation of a certain right is carried out in accordance with a court verdict that has entered into legal force. This type of punishment consists of prohibiting the convict from holding certain positions or engaging in certain types of activities at enterprises, institutions, or organizations for the period specified in the court verdict.

If a punishment in the form of deprivation of a certain right is imposed in addition to the main punishment in the form of imprisonment, its execution is carried out by the body executing the main punishment (Article 21 of the Criminal Executive Code).

Twenty days before the end of the term of the main punishment, as well as in the case of parole or commutation of the sentence, on the day of release, the body executing the main punishment sends a copy of the sentence to the internal affairs body at the convicted person's place of residence. This body ensures the execution of the additional punishment.

The certificate of release of the convicted person must indicate the presence of additional punishment. During the study of law enforcement practice, it was revealed that in some cases, probation bodies are not informed about the existence of an additional punishment - deprivation of a certain right - assigned to convicts who have served their main sentence in penal colonies. This creates various problems in practice.

For example, after the release of convict A, who has served a sentence in a colony for 7 years, he is handed over to the probation authorities, that is, a message is sent. However, at that time, the information about the additional punishment assigned to him was ignored by the staff of the penal colony. As a result, the execution of the additional punishment was incomplete. Over time, when this person A applied for the removal of his criminal record, it turned out that he had an additional punishment, and a legal problem arose. In such a situation, responsibility, naturally, rests with the staff of the penal colony.

Therefore, to eliminate this problem, it is necessary to fully digitize the penal system. That is, all information about the convicted person should be collected in a single electronic database, and probation officers should have the opportunity to see them directly. Organization of control over the execution of a court sentence on deprivation of a certain right is carried out by the central office of the probation service of the Department of Public Security of the Ministry of Internal Affairs of the Republic of Uzbekistan, the probation departments (divisions) of the public security service of the Ministry of Internal Affairs of the Republic of Karakalpakstan, the Main Departments of Internal Affairs of the city of Tashkent and Tashkent region, the departments of internal affairs of the regions, and district (city) probation units.

Probation bodies:

registers convicts deprived of certain rights;

sends a notification of the execution of the sentence's requirements to the administration of the enterprise, institution, organization where the convicted person works, or to the authorized body that issued the permit for engaging in a certain type of activity;

verifies the convicted person's compliance with the prohibitions indicated in the sentence;

at least once a quarter checks the execution of the requirements of the sentence by the administration of the enterprise, institution, organization where the convicted person works, as well as by the bodies authorized to revoke the permit for engaging in a certain type of activity, and draws up a report on this and, together with other documents, attaches it to the

personal file;

conducts a quarterly verification of the database of persons who have committed administrative offenses of the Main Center for Legal Statistics of the Department of Digital Technologies and Legal Statistics in order to identify offenses committed by convicts;

In the event of conscription or enrollment of a convicted person in military or alternative service, the inspection sends a copy of the sentence to the defense department or the place of service of the convicted person;

upon detection of non-compliance with the requirements of the sentence by the administration of an enterprise, institution, organization, or by bodies authorized to revoke a permit for engaging in a certain type of activity, or by the convicted person, draws up a corresponding protocol and takes appropriate measures in accordance with the legislation.

The entry into legal force of a court verdict is recognized as the main legal fact for initiating the process of registering a convict. In accordance with the current regulatory legal procedure, copies of sentences received from judicial bodies or places of deprivation of liberty are first registered with the internal affairs bodies in the prescribed manner. This registration process is carried out on the basis of the instructions of the head of the internal affairs body, after which copies of the verdict are officially transferred to the probation department.

On the day the copy of the sentence is accepted by the probation departments, it is recorded in the registration log. At the same time, a personal file is opened for the convict. The serial number of this file must fully correspond to the convict's serial number recorded in the registration journal, which ensures the accuracy and consistency of departmental accounting.

Upon completion of the registration process, the probation authorities shall immediately send an official notification to the court that issued the sentence about the registration of the convicted person. If the registered person belongs to the age category of conscription for military service, a notification is sent to the relevant district (or city) defense affairs department. At the same time, in order to timely notify the convict before leaving the place of residence, a security card is filled out and sent to the Migration and Citizenship Registration Department of the district (or city) internal affairs bodies.

This department, in turn, is obligated to immediately notify the probation department of the convict's intention to leave the place of residence and make a corresponding entry in the guard list. In addition, in

cases where the certificate of convicts returning from places of deprivation of liberty establishes an additional measure of punishment in the form of deprivation of a certain right, the probation department must be immediately notified.

After receiving notification of this content from the Migration and Citizenship Registration Department, the probation officer sends an official request to the relevant detention facility to obtain a copy of the sentence. This procedure will serve to ensure the continuous exchange of information on convicts, the full and timely execution of sentences, and the strengthening of interdepartmental cooperation.

In the process of executing a sentence of deprivation of a certain right, the administration of the enterprise, institution, or organization where the convicted person carries out labor activity is obliged, within three working days from the date of receipt of official notification from the probation department, to fulfill the following obligations:

release the convicted person from the position held or from a certain type of labor activity in accordance with the prohibitions established by the court verdict;

to notify the probation authorities in writing of the execution of the sentence's requirements, attaching supporting documents;

Notification of the probation authorities also in cases of transfer of the convicted person to another job or termination of the employment contract.

Also, the authorized body that issued the permit for engaging in a certain type of activity is obliged, within three working days from the date of receipt of the notification from the probation department, to cancel the permit issued for the prohibited type of activity established by the sentence, revoke it, and notify this body in writing.

In practice, in some cases, when a convict is prohibited from engaging in certain labor activities by a court verdict or deprived of the right to manage management and economic affairs, an incorrect approach is observed in some institutions and enterprises. That is, although a court decision prohibits working only in a certain position or type of activity, in practice, instead of lowering the convict by one position or placing him in another job, cases of his dismissal are frequently encountered.

Such an approach can be, first of all, a consequence of the influence of negative stereotypes towards convicts. At the same time, such practice contradicts labor rights and the true meaning of the court decision.

In fact, judicial bodies and bodies responsible for the execution of sentences should give a clear explanation

on this issue: it is sufficient not to terminate the employment contract with the convicted person at all, but only to prohibit him from working in the type of activity or position specified in the court verdict. This, on the one hand, ensures the correct execution of the court decision, and on the other hand, serves to protect the constitutional labor rights of the convict.

If, during the execution of punishment in the form of deprivation of a certain right, a violation of the prohibition established by the court verdict by the convicted person is revealed, the employees of the authorized service who recorded this fact immediately report it to the probation body. The convict's holding of a prohibited position or engaging in a prohibited type of activity, regardless of the legality of this activity, is not taken into account when calculating the term of punishment.

The decision on such a violation is made by the head of the penal enforcement body on the basis of documents confirming the fact of the violation (explanatory notes, certificates, copies of orders, etc.). In accordance with current legislation, the only negative consequence for violating the established prohibition on this type of punishment is the exclusion of the corresponding period from the term of punishment. In addition, Article 45 of the Criminal Code does not provide for the possibility of replacing this punishment with another, more severe type of punishment, since the norms of the law stipulate that the execution of this punishment does not directly depend on the personal actions of the convict.

Nevertheless, in practice, some circumstances can lead to complex legal conflicts. For example, if a person deprived of the right to engage in medical activity continues this activity, if this work is carried out for the purpose of obtaining profit - it can be assessed as illegal entrepreneurship. However, if this activity is carried out free of charge, the issue of liability is not clearly regulated in the law, which can be recognized as a gap in the existing regulatory framework.

In order to eliminate this gap, it is proposed to expand the system of additional punishments that can be applied to a person who evades or violates the punishment of deprivation of a certain right. The expediency of such an approach lies in the fact that certain categories of convicts (in particular, those deprived of the right to drive a vehicle, hunt, engage in medical activities) continue to engage in prohibited activities, and as a result, new and often more serious offenses are committed.

Another problem encountered in practice relates to persons deprived of the right to drive a vehicle. In particular, it is established that some convicts continue

to drive vehicles, despite being deprived of this right. Such behavior should, in essence, be assessed as evasion of the execution of punishment.

However, according to the current procedure, probation officers are unable to effectively monitor the execution of this punishment. They only know if the convict was driving a vehicle, stopped by the traffic police, and brought to administrative responsibility. However, even if such a situation is known, probation officers cannot take additional measures based on this information, since the current legislation does not provide for such a mechanism. As a result, the process of executing sentences for deprivation of the right to drive remains outside of control.

Therefore, in order to eliminate this problem, it is advisable to impose the execution of punishment in the form of deprivation of the right to drive a vehicle not on probation bodies, but on the bodies of the Road Patrol Service. Because it is these bodies that carry out direct and continuous control over traffic and have the opportunity to quickly determine whether the convict is observing the prescribed punishment. This approach, on the one hand, increases the effectiveness of the execution of punishment, and on the other hand, serves to prevent offenses.

Persons sentenced to deprivation of a certain right are released from serving their sentence and deregistered on the following grounds:

expiration of the term of punishment established by the court verdict;

application of an amnesty act or pardon;

conditional early release from serving a sentence;

cancellation of a court verdict;

on other grounds stipulated by law.

In addition, convicts are removed from the register in the following cases:

departure outside the territory of the place of execution of sentences as a result of a change of residence;

deprivation of liberty for committing a new crime;

death.

The documents that serve as the basis for writing off a convicted person are:

court ruling on the application of the amnesty act;

written instruction of the Ministry of Internal Affairs on the execution of the decree of the President of the Republic of Uzbekistan in relation to pardoned persons;

a copy of the court's ruling or decision on the overturning of the sentence or on parole;

a letter of confirmation of the acceptance of the

personal file by the penal enforcement inspectorate in another territory in connection with the change of residence;

a copy of the court verdict against persons who have committed a new crime and the order on its entry into legal force;

official certificate of the civil registry offices regarding the deceased.

Corresponding entries on the date of the convict's deregistration and the circumstances that served as the basis for the deregistration are made in the register of persons deprived of certain rights and in the convict's personal file. On the same day, the convict's release from punishment is notified in writing to the crime prevention department and a communication letter is sent. A copy of this letter is filed in the convict's personal file.

In addition, the penal inspection sends a notification to the district (city) defense affairs department about the convict's completion of serving the sentence.

Documents of released convicts are stored in the archive for the following periods:

personal files - 3 years from the date of deregistration;
registers of persons deprived of certain rights - 10 years;

correspondence related to the execution of sentences - 3 years.

Punishment in the form of deprivation of military or special rank. The court that issued the sentence on deprivation of a convicted person of a military or special rank sends a copy of the sentence to the body that awarded this rank. A copy of the sentence concerning a reservist is sent to the defense affairs department at their place of residence.

An official of the body that granted the title shall, in accordance with the established procedure, make a record on the deprivation of the title in the relevant documents, take measures to terminate the rights and privileges associated with this title, and notify the court that issued the sentence of the execution of the sentence within one month from the date of receipt of the copy of the sentence (Article 161 of the Criminal Executive Code).

The sentence under consideration is considered fully executed from the moment the record of deprivation of the convicted person of a special, military, or honorary title, class rank, or state award is made in the relevant documents and measures are taken to deprive him of the corresponding rights and benefits.

Researcher V.N. Petrashev notes that the execution of the punishment under consideration does not yield

effective results[4, 120].

This situation is also covered in the Law on State Awards[5]. In accordance with the legislation of the Republic of Uzbekistan, persons awarded state awards may be deprived of these awards in certain cases. The application of this institution is envisaged in two main cases:

Commission of a grave or especially grave crime - a person may be deprived of the state award on the basis of a court submission if they are found guilty of committing this category of crimes by a court verdict.

Commission of an act discrediting honor and dignity - in this case, the submission is made by the body or organization authorized to submit a submission for awarding state awards.

Deprivation of state awards is carried out by the President of the Republic of Uzbekistan in the final order. This legal consequence also entails the cancellation of all benefits related to the reward.

The award badge and certificate to it, belonging to a person deprived of the State Prize, are subject to mandatory transfer to the Commission for State Prizes and Heraldry under the President of the Republic of Uzbekistan.

Also, in the Regulation on the Procedure for Military Service by Citizens of the Republic of Uzbekistan[6], in accordance with the legislation of the Republic of Uzbekistan, the procedure for applying the institution of deprivation of military rank differs depending on the category of the serviceman, the severity of the act committed, and the norms of disciplinary and criminal law.

Military personnel of the officer corps, including persons of the reserve or reserve, may be deprived of military rank by a court verdict only for committing a grave or especially grave crime. This requirement ensures the strict punitive nature of this institution and guarantees its application only to the most serious offenses.

Military personnel of sergeant ranks, in the event of misconduct, in the event of insufficient other disciplinary measures, may be deprived of military rank by a court decision or by the decision of the head of the authorized ministry. This makes the mechanism for applying this measure in the sergeant category more flexible.

Citizens of officer or sergeant ranks deprived of their military rank are transferred to the rank of private and enjoy the rights and privileges of privates serving under contract (reserve or reserve).

If a citizen is deprived of his military rank due to an unlawful conviction, his former military rank is restored

in the prescribed manner after the entry into force of a court decision on his acquittal or the annulment of the sentence. During the restoration process, the head of the department for defense affairs processes the necessary documents and sends them to the ministry that revoked the military rank for issuing an order on personnel. The decision on restoration is formalized by an order of the head of the ministry.

A citizen reinstated in a military rank, in accordance with his rank, fully restores the rights and benefits provided for by all legislative and regulatory legal acts. This situation represents not only the punitive, but also the restorative mechanism of this institution.

The issue of intentional evasion of the execution of the punishment under consideration is not considered in the specialized literature. This is due to the fact that the convicted person does not actually participate in the very procedure for deprivation of a special, military, or class rank, and therefore cannot evade it. However, in the case of deprivation of state awards, it can be different, since, for example, orders and medals, as well as award documents for them, are materialized items that are held directly by the awarded person. Moreover, orders and medals themselves have a certain value, sometimes quite high. Therefore, as noted above, due to the significance of the awards for the convicted person or their value, the convicted person may refuse to present them, as well as award documents. This, undoubtedly, should be considered, according to the court's verdict, as obstruction of the execution of punishment[7, 165]. Therefore, it is advisable to regulate the issue of resolving such a situation at the level of Article 52 of the Criminal Code and legislation.

It is also advisable to enshrine the application of this type of punishment and its execution in a separate resolution of the Plenum of the Supreme Court.

CONCLUSION

In conclusion, if the relevant authorities fail to fulfill their obligations to impose or execute an additional punishment imposed by the court, this situation is assessed as non-fulfillment of the established requirements, and they should be held legally liable. For this purpose, it is necessary to introduce a special norm into the legislation, to establish a mechanism for bringing to criminal responsibility persons (officials) who unreasonably evade the imposition or execution of punishment.

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