

## **PROBLEMS IN THE ACTIVITIES OF THE PROBATION SERVICE ON PERFORMANCE OF PUNISHMENT IN THE FORM OF PUBLIC WORKS**

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**Abstract:** The article analyzes the problems encountered in the activities of the probation service as a body executing punishment in the form of correctional labor as a punishment that is not related to the separation of the convicted person from society. The legal foundations of corrective labor in the Criminal and Penal Enforcement Codes as a type of punishment not related to the separation of the convicted person from society are analyzed, legal gaps and inconsistencies arising from the application of these norms in practice are revealed, the author's proposals and recommendations for their elimination are developed.

**Keywords:** Correctional labor, convict, crime, punishment, court sentence, wages.

### **INTRODUCTION, LITERATURE REVIEW AND DISCUSSION**

Nowadays our state has a national legal system in accordance with international law, based on the advanced legal experience of foreign countries, the rich spiritual heritage of our ancestors, and traditions, the political and legal experience of our nation [1, b. 11]. Performance of research works and constant studies in this area can be shown as the achievements of our national legislation in this field.

As a result of systematic reforms in the judicial sphere in our country, it has been created modern deviations of criminal and executive legislation that meet international standards.

In particular, in recent years, amendments and additions have been made to a number of articles of the Penal Code (hereinafter referred to as the PC) which includes, in particular, those convicts held in places of deprivation of liberty for crimes of low social risk and less serious have the right to participate in elections of the President of the Republic of Uzbekistan, deputies of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan, People's Deputies of regional, district and city Councils and in referendums [2] (part 3 of Art. 9 of the PC), persons sentenced to imprisonment have the right to one-time short-term meetings with their

relatives or others and for a fifteen-minute telephone conversation at their own expense during their transfer to serve their sentences by the administration of the detention centre [3] (Art. 54, paragraph 2 of the PC) changes in the search regulations of convicts sentenced to imprisonment, their belongings and clothing, as well as items and premises of penitentiary institutions [4], etc.

Thus, the timely identification of problems in this area and the development of thorough proposals and recommendations for their solution are important for improving the criminal-executive legislation. As a result of the research and analysis, it was revealed that there are a number of problems, gaps and inconsistencies in the legislative activity of the probation service.

In particular, the first of these problems is inconsistency in the naming of correctional labour punishment. Although this punishment primarily affects the convicted person's right to work, and it has been inherited from the previous codified norms of the criminal executive legislation, until the present day no ideas have been put forward to improve its name based on its internal content.

The name of the punishment in the form of correctional labour is provided by the Criminal Laws of the USSR and the Union Republics, adopted in 1958, and named as «Correctional labour without imprisonment» [5, p. 3-6].

It should be noted that, in our opinion, it is inappropriate to single out the restrictive punishment of service provided in the penal system of the Criminal Code (hereinafter referred to as the CC) as a separate type of punishment (paragraph 1 of Article 43 of the CC) [6].

Article 18 of the Constitution of the Republic of Uzbekistan states: «In the Republic of Uzbekistan, all citizens have the same rights and freedoms and are equal before the law, regardless of gender, race, nationality, language, religion, social origin, beliefs, personal and social status» [7] this constitutional provision is enshrined in Article 5 of the Criminal Code (the principle of equality of citizens before the law), which states: «Persons who have committed crimes have the same rights and duties, and are equal before the law regardless of gender, race, nationality, language, religion, social origin, beliefs, personal and social status» [6].

According to the requirements of part three of Article 43 of the CC, which states: «Punishment in the form of restriction of service or transfer to a disciplinary unit applies only to military personnel» and in our opinion, the fact that the procedure and conditions for serving this sentence are the same as the procedure and conditions for serving a sentence in the form of correctional labour indicates that, there are inconsistencies and contradictions in this regard.

However, the first part of Article 47 of the CC (Restriction of Service) defines the concept of restriction of service, which includes: «Restriction on service is – deprivation of certain rights and privileges of military servicemen serving under a contract for the period specified in the court's verdict, with a withhold of ten to thirty percent of the allowance at the expense of state revenue».

If it is analysed in detail the content of the penalty as a restriction in service established by this provision of the Criminal Code, then this penalty is:

1) applies only to military personnel doing military service under a contract (and punishment in the form of correctional labour applies only to military personnel);

2) certain rights and benefits of the convicted person is deprived for the period specified in the court verdict, that is, this period is not added to the length of service of the retirement age, the convict's position is not promoted, etc. (punishment in the form of correctional labour applies only to military personnel);

3) a withhold of ten to thirty percent of the monthly salary of military personnel serving under a contract for the expense of state revenue (in the case of correctional labour, from ten to thirty percent of a person's wages are withheld for state revenues).

This analysis shows that the conditions for restricting service under Article 47 of the CC are practically identical to the conditions of the punishment by correctional labour under Article 46 of the CC, and that these punishments are differentiated only depending on the profession of a person, punishment in the form of correctional labour can be applied to ordinary citizens, and punishment in the form of restriction on service on persons whose profession is military service.

In our opinion, punishment as a restriction of service based on a person's profession contradicts the principle of equality of citizens before the law [6], established by Article 5 of the CC.

In our opinion, it is advisable to change the name of the sentence to correctional labour as a restriction of labour rights, depending on its content.

Another problem in the activities of the probation service for the execution of sentences in the form of corrective labour is a gap in legislation and inconsistencies in the timing of replacing punishment in the form of corrective labour with a softer or heavier punishment in the manner established by the Criminal Code. The legislative CC has clearly defined the penal system, types, and minimum and maximum terms for their application, and it has been established six months as the minimum term and three years as the maximum term for correctional labour.

However, the essence of the problem in this case is reflected in the fact that the courts replace the unserved part of the sentence with a sentence of corrective labour as a lesser punishment for persons sentenced to imprisonment or restraint of freedom in accordance with Article 74 of the CC. Because according to the requirements of part four of Article 74 of the CC: «When replacing the unserved part of the sentence in the form of imprisonment or restriction of liberty with corrective labour, correctional labour is assigned for the term of the unserved part of the sentence in the form of imprisonment or restriction of freedom».

In addition, according to the paragraph «v» of part three of Article 74 of the Criminal Code: «For a very serious crime, as well as for parole or mitigation of the sentence, as well as for a new crime committed intentionally during the unserved part of the sentence, it can be applied only after the actual serving of at least half of the sentence».

The analysis of this article shows that when the penalty in the form of imprisonment or restraint of freedom imposed on a person who has committed a very serious crime is replaced by correctional labour as a lighter form of penalty

after passing at least half of the sentence imposed by the court, it should be replaced by correctional labour for the same period, regardless of the unserved term

of imprisonment or restriction of freedom.

This does not take into account the fact that the maximum term of correctional labour penalty is three years.

Another problem in the activities of the probation service for the execution of sentences in the form of corrective labour is that this penalty can be applied for unemployed persons.

The imposition of a correctional labour sentence on an unemployed person, which provides of the withholding of a fixed portion of salary for the expense of government revenue, causes a number of problems. In particular: 1) finding a job for unemployed person; 2) employment issues; 3) lack of employment-related powers in the staff of probation units.

At the same time, the fact that probation officers are empowered with employment powers is not in the spirit of today's reforms. In other words, the requirement for enterprises, institutions and organizations, especially private enterprises, to hire certain persons does not correspond to the current market economy and democratic reforms and the development in general, as well as to the rules of competition and development.

Moreover, it would be logical to interpret this situation as one of the negative vices inherited from the former Soviet Union, in which at that time there was no private property, and all enterprises, institutions and organizations belonged to the state. The fact that this negative defect inherited from the former Soviet Union still persists and, as a consequence, gaps in this regard lead to various shenanigans.

For example, a person formalizes the employment of a person already familiar to him in a private enterprise, institution or organization and subscribes to it to receive low salary, transfers a small amount of deductions to the state and engages in their own personal business.

Analysis and research show that a number of experts have also criticized assignment of corrective labour sentence for unemployed persons.

In particular, S.M.Zubarev and S.V.Romanova argue that the imposition of correctional labour sentence on those who do not have a job significantly reduces the

effectiveness of this penalty [8].

Another problem in the activities of the probation service for the execution of sentences in the form of corrective labour is that the period for a person to refuse to serve a correctional labour sentence imposed by the court (refusal to serve more than one tenth of the total), as well as after the registration of this case, the court replaces the unserved term of correctional labour with a sentence of restraint of freedom or imprisonment for the same period of time.

However, this situation consists of two problems, which can be divided into:

1) the fact that specific mechanisms of evasion from correctional labour are not reflected in the legislation, is associated only with the terms of evasion, as well as the variety of periods of evasion after passing more than one tenth;

2) the fact that after the convicted person refuses to serve his correctional labour sentence, the unserved term of correctional labour may be replaced by punishment in the form of restriction or deprivation of freedom, which do not correspond to each other in the severity and create a corruption situation due to the human factor.

The fact that the exact mechanisms of evasion from corrective labour are not reflected in the legislation, is associated only with the timing of the evasion, as well as with the variety of periods of evasion from passing more than one tenth, causes various problems in practice. Indeed, despite the fact that the probation department found out in time that the convicted person had refused correctional labour, the officer was forced to wait until the convict's refusal to serve his sentence was more than a tenth of the time.

It is also unclear whether the court will replace the convict's refusal to serve his sentence with a sentence of one step heavier or two steps heavier imprisonment sentence than correctional labour sentence and this leads to the fact that convicts either submit various petitions to the judicial authorities (cases of corruption) or repeatedly apply to higher courts with applications and complaints in order to serve a lighter sentence.

It should be noted that the Article 32 of the Penal Code (the consequences of

refusing to undergo correctional labour) does not fully reflect these mechanisms and it is only defined that if the convict refuses to undergo correctional labour, the probation service will submit a petition to the court to replace the unserved term with the imprisonment in accordance with Articles 46 and 83 of the Criminal Code.

In our opinion, based on the above, the text of this article should be stated in the following edition:

«Article 32. Consequences of refusing to serve a sentence in the form of restriction of labour rights

The convicted person is considered to have refused to serve the sentence in the form of restriction of labour rights in the following cases:

1) termination of the employment contract on the initiative of the convicted person during the period of serving the sentence;

2) an offense committed by a convicted person while serving a sentence entails dismissal;

3) the imposition of a disciplinary sanction in the form of a double warning by the probation service for failure to fulfil the duties imposed on the convicted person».

If it is established that the convicted person has refused to serve the sentence in the form of restriction of labour rights, the probation service shall, within one working day, submit to the court a petition to replace the unserved term of the sentence of restriction of labour rights with a sentence of restriction of freedom.

The court commutes the punishment by calculating one day of the unserved term of restriction of labour rights equal to one day of the sentence to restriction of freedom. The time for disobedience is not added to the term of the previous sentence.

Circumstances mitigating punishment, the category of persons not sentenced to restraint of freedom, and the norms on the term of punishment established by the Criminal Code of the Republic of Uzbekistan, will not be applied to the convicted person when replacing the unserved term of restriction of labour rights with deprivation of liberty.

Another problem in the activities of the probation service for the execution of sentences in the form of corrective labour is that the presence of sections with terms

that are not included in the term of imprisonment.

The fifth part of Article 30 of the Penal Code defines the following cases, according to which: «The following shall not be added to the term of imprisonment:

sick leave for which temporary disability benefits are not paid in accordance with the legislation;

the time of serving an administrative sentence in the form of imprisonment, the time of being in custody in connection with the commission of another crime».

However, this list excludes unpaid time as a result of the dismissal of a convict sentenced to correctional labour, and unpaid time on unpaid leave (at his own expense) or in other cases.

Indeed, the legislature correctly indicated in the fourth part of Article 30 of the Penal Code: «The period during which the convicted person did not work, but his salary was maintained in accordance with the law, as well as the time when the convicted person was declared unemployed, is added to the period of correctional labour». [9].

However, it is inexpedient to add unpaid time to the sentence of a convict sentenced to correctional labour. In our opinion, it is advisable to eliminate this gap and make appropriate amendments to the fifth part of Article 30 of the Penal Code.

Based on the abovementioned, it is considered that it expedient to state part five of Article 30 of the Penal Code in the following edition:

«The following are not added to the term of serving a sentence of restriction of labour rights:

1) the period of illness for which the temporary disability pension is not paid in accordance with the legislation;

2) the time of serving the sentence in the form of administrative detention, the time of detention in connection with the commission of another crime;

3) the time of non-payment of wages (dismissal, unpaid leave or in other cases)».

Another problem in the activities of the probation service for the execution of sentences in the form of corrective labour is that the lack of comprehensive research



to improve the execution of sentences in the form of correctional labour. In addition, there are practically no published (methodological, practical) manuals on the execution of correctional labour by researchers.

However, although, recently a number of laws and the normative legal acts have been adopted in this area (amendments and additions to the Criminal Code and the Penal Code), but no literature has been published that provides a broader interpretation of their content.

This can lead to problems with enriching the knowledge, skills and competences of probation officers, as well as young professionals in this area.

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