



## **ISSUES OF IMPROVING THE NORMS RELATED TO ADDITIONAL PUNISHMENTS IN THE NATIONAL LEGISLATION**

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<b>Received:</b> April 6 <sup>th</sup> 2023 <b>Accepted:</b> May 6 <sup>th</sup> 2023 <b>Published:</b> May 8 <sup>th</sup> 2023	This article analyzes the issues of improving the norms related to additional punishments in the national legislation. In this regard, attention is focused on the views of national and foreign scientists on the nature of the additional punishment defined in the current criminal law, the norms established in this regard in the national legislation, and the explanations recorded in the decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan on this issue. The reforms carried out in our Republic in recent years on the improvement of the institution of additional punishments have been analyzed. Based on the research, the system of additional punishments in the Criminal Code was revised. In particular, changing the name of the punishment "deprivation of a military or special title" provided for in the Criminal Code to "deprivation of a state award, military or special title, qualification or rank of the Republic of Uzbekistan", it is proposed to introduce a new type of additional penalty called "expulsion of a foreign citizen or stateless person from the territory of the Republic of Uzbekistan".

**Keywords:** punishment, main punishment, additional punishment, sentencing, court sentence, deprivation of rights and freedoms, deprivation of a certain right, fine, deprivation of a military or special rank, state awards, qualification and career level.

In recent years, special attention has been paid to entrepreneurship in our country, and a number of effective reforms have been implemented in the direction of rapid development of small business and private entrepreneurship. In particular, in accordance with the Decree of the President of the Republic of Uzbekistan dated October 5, 2016 No. PF-4848 "On additional measures to ensure rapid development of business activity, comprehensive protection of private property and qualitative improvement of the business environment" [1], business entities it was determined that it is not allowed to impose a penalty of deprivation of a certain right in connection with engaging in business activities.

In this regard, the Decree of the Republic of Uzbekistan dated December 29, 2016 "On amendments and additions to some legal documents of the Republic of Uzbekistan in connection with the adoption of additional measures to ensure the rapid development of business activities, comprehensive protection of private property and qualitative improvement of the business environment" A special provision was added to Article 45 of the Civil Code on this matter by the Law of the Republic of Uzbekistan No. 418: punishment in the form of deprivation of the right to engage in entrepreneurial

activity shall not be imposed on persons engaged in entrepreneurial activity, except in cases of death or other serious consequences [2]

On the other hand, in paragraph 48 of the Resolution No. 1 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 3, 2006 "On the Practice of Sentencing for Crimes by the Courts", additional punishment in the form of deprivation of the right to engage in certain activities is provided to the courts, if there are appropriate grounds and mitigating punishment and taking into account aggravating circumstances, it is recommended to discuss the question of the expediency of applying this activity to persons for whom this activity is a profession or a source of livelihood (for example, entrepreneurial activity, driving vehicles, etc.) It is explained that deprivation of punishment is not allowed, except in cases where it causes death or other serious consequences (Article 45, part five of the Criminal Code) [3].

However, in this explanation, the norm mentioned in the fifth part of Article 45 of the Civil Code is simply repeated. In this decision of the Plenum of the Supreme Court of the Republic of Uzbekistan, there is almost no explanation about the specific aspects of the



application of this norm. Therefore, based on the changes made to the Criminal Code by the Law of the Republic of Uzbekistan No. ORQ-418 of December 29, 2016, paragraph 48 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 3, 2006 "On the practice of sentencing by courts for crimes" as follows It is suggested to fill in with:

*"In this case, this privilege defined in the fifth part of Article 45 of the Criminal Code is applied to persons who are listed in the state register as subjects of business activity while the criminal case is being considered. In cases where the committed crime caused a person's death or other serious consequences, as well as in the event that the crime committed by a person as a subject of entrepreneurial activity was discovered after his removal from the state register as a subject of entrepreneurial activity, an additional punishment in the form of deprivation of the right to engage in entrepreneurial activity may be imposed on such persons. "*

The regulation of additional punishments in some foreign countries has important features, and in order to further improve the criminal legislation of our country, it is appropriate to study them in detail. For example, it would be appropriate if the expulsion of foreign citizens and stateless persons from the Republic of Uzbekistan was included in the system of additional punishments .

It can be observed that the issue of expulsion of foreign citizens and stateless persons from the territory of the country is defined in the normative legal documents of foreign countries according to their legal content, i.e. from criminal punishment to administrative coercive measures. In particular, in Latvia, Slovakia, Finland, France, Estonia, the People's Republic of China, Kazakhstan, Kyrgyzstan, India and other similar countries, expulsion from the territory of the country is defined as a type of criminal punishment (additional punishment) [4, p . 260-274 . ] . In particular, according to the laws of the Republic of India, expulsion from the country is an additional punishment. In this case, decisions on deportation are made by special courts for foreigners established under district courts [5, p. 190. ] . In France, expulsion from the territory of the country has a dual character, that is, this measure is both an administrative penalty and an additional criminal penalty (Articles 130-31 of the French Civil Code) [6 , p. 23-26. ] .

As Greece, Macedonia, Romania, Serbia, Croatia, expulsion of foreign citizens and stateless persons from the territory of the country is provided as a security measure, and in Spain and Turkey, as a

criminal-legal security measure. In particular, in the Spanish JK it is provided that the penalty of deprivation of liberty can be replaced by the penalty of expulsion from the national territory [4 , p. 260-274. ] .

There is no norm in this regard in the criminal legislation of our country. In Uzbekistan, this issue is regulated by other legislation. In particular, according to Article 35 of the Law of the Republic of Uzbekistan dated June 4, 2021 "On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan" No. After serving or serving the sentence imposed by the court for a crime committed on the territory of the Republic of Uzbekistan, or after being released from criminal responsibility or punishment in the cases provided for by the legislation of the Republic of Uzbekistan, they are expelled from the Republic of Uzbekistan, and their right to enter the Republic of Uzbekistan is restricted thereafter. [7].

Also, in accordance with Clause 22 of the Rules for the Stay of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan, approved by the Cabinet of Ministers' Decision No. 408 of November 21, 1996, a foreign citizen has served or served a sentence imposed by a court for a crime committed on the territory of the Republic of Uzbekistan . after being expelled from the Republic of Uzbekistan or after being released from criminal liability or punishment in the cases stipulated by the law, and after that his right to enter the Republic of Uzbekistan: for committing crimes that do not cause great social danger or are not very serious - for five years; for committing serious crimes - for ten years; for committing extremely serious crimes - life imprisonment [8].

In determining these norms, we consider it necessary to pay attention to two situations:

**First of all**, this Law and the legal document determine the measure and its legal consequences for the crime committed. According to Article 2 of the Criminal Code of Uzbekistan, determining the bases and principles of criminal liability, determining what socially dangerous acts are crimes, determining the punishment and other legal measures that can be applied to persons who commit socially dangerous acts, is the duty and the scope of the subject of regulation of the Criminal Code of Uzbekistan. In addition, according to Article 1 of the Criminal Code, the criminal legislation of the Republic of Uzbekistan is based on the Constitution and generally recognized norms of international law, and consists of this Code, that is, the Criminal Code. In other words, in our country, punishment for crime and other legal measures are determined only by the Criminal Code. In the above-mentioned Law and by-laws, contrary to the current JK,



a new criminal-legal measure, which does not exist in the JK, is defined.

**Secondly, according to Articles 6 and 7 of the Law** "On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan", foreign citizens and stateless persons have the right to permanent and temporary residence in the territory of the Republic of Uzbekistan. At the same time, neither the above-mentioned Law nor the legal document specifies who has the authority to deport a foreign citizen or a stateless person for a crime committed. In particular, according to paragraph 23 of the rules of stay of foreign citizens and stateless persons in the Republic of Uzbekistan approved by the decision of the Cabinet of Ministers No. 408 of November 21, 1996, decisions on shortening the period of stay of a foreign citizen in the Republic of Uzbekistan and expelling him from the Republic of Uzbekistan are made by the competent authorities. is done [8]. But the question of these authorized bodies is left open. It is known that according to Article 20 of the new version of the Constitution of the Republic of Uzbekistan, which was adopted by popular vote in the referendum of the Republic of Uzbekistan held on April 30, 2023, the rights and freedoms of a person enshrined in the Constitution and laws are inviolable and no one has the right to deprive them of them or limit them without a court decision . **not** [9]. It is clear from this that the expulsion of a foreign citizen and a stateless person from the territory of our country can be carried out only on the basis of a court decision.

Based on the experience of foreign countries, it is proposed to supplement the Constitution of Uzbekistan with the following article 52 1 in order to eliminate the conflicts that have arisen in national legislation and to properly regulate the issue of expelling foreign citizens and stateless persons from the territory of Uzbekistan for **crimes committed**:

**Article 52 1 · Expulsion of a foreign citizen or stateless person from the territory of the Republic of Uzbekistan**

*Expulsion of a foreign citizen or a stateless person from the territory of the Republic of Uzbekistan means his compulsory expulsion from the territory of the Republic of Uzbekistan and restriction of his entry into the territory of the Republic of Uzbekistan.*

*Expulsion of a foreign citizen or a stateless person from the territory of the Republic of Uzbekistan is imposed as an additional punishment for the person who committed the crime and is executed after the execution of the main punishment or after the release from criminal responsibility or punishment in the cases provided for by the law.*

*In this case, the right of a foreign citizen or a stateless person to enter the Republic of Uzbekistan:*  
*for committing crimes of low or low social risk - for five years;*

*for committing serious crimes - for ten years;*  
*for committing extremely serious crimes - life imprisonment.*

*The period of restriction of the right to enter the Republic of Uzbekistan of a foreign citizen or a stateless person is counted from the moment he is expelled from the territory of the Republic of Uzbekistan .*

The next important issue is related to the penalty of deprivation of a military or special rank. Although Article 52 of the Civil Code is entitled "Deprivation of a military or special title", this article defines the norms of deprivation of a military title, special title and state awards. At the same time, the draft of the new version of the Criminal Code developed by the competent authorities envisages "deprivation of military, special, honorary or rank titles, diplomatic status, qualification level or state awards" [10] . As we can see, the current and proposed norms are different. It is natural to ask the question: "what" should be deprived in this article?

In fact, different terms related to this issue are used in the legislation: state award, military rank, special rank, career rank, qualification levels, title of honor, order, medal, certificate of honor , etc. If a person is a holder of these titles and ranks, he is deprived of such privileges and additional rights as a result of the crime committed by him.

According to the Law of the Republic of Uzbekistan "On State Awards" dated April 11, 2018 No. ORQ-473, the title "Hero of Uzbekistan", honorary titles, orders, medals of the Republic of Uzbekistan and the Honorary Label of the Republic of Uzbekistan are state awards [11] . Also, this Law specifies the system of state awards.

Also, with the Law of the Republic of Uzbekistan on August 8, 2022 "On State Civil Service" No. ORQ-788, qualification levels of state civil service positions were introduced. According to Article 24 of the Law, state civil servants are given the following qualification levels of state civil service positions based on the groups and categories of state civil service positions: senior consultant, 1st level consultant, 2nd level consultant, 3rd level consultant, 1st level servant, 2nd-level servant, 3rd-level servant, 4th-level servant, 5th-level servant, 6th-level servant [12].

In addition, military ranks for military personnel and special ranks for other categories of personnel were introduced. For example, by the decision of the President of the Republic of Uzbekistan dated January



19, 2017 "On measures to fundamentally improve the activity of the legal service" No. PQ-2733, the practice of giving the employees of the legal services of state bodies and organizations the career levels set for the employees of the justice bodies was introduced [13]. Also, special titles and career levels were introduced for courts, justice, prosecutor's office, internal affairs, customs and tax authorities [14].

Based on the above, it is proposed to change the name of the punishment **"deprivation of a military or special title" provided by the Civil Code to "deprivation of a state award, military or special title, qualification or rank of the Republic of Uzbekistan"**. In this:

**The state award of the Republic of Uzbekistan means** the title "Hero of Uzbekistan", honorary titles of the Republic of Uzbekistan, orders, medals and the Honorary Label of the Republic of Uzbekistan;

**military rank means** the ranks awarded to military personnel of all ranks;

**special title means** special titles given to employees of internal affairs, customs, tax bodies and other bodies;

**qualification level means** qualification levels introduced for civil service positions;

**career level means** the career levels introduced for legal services of court, justice, prosecutor's office and state bodies and organizations.

In accordance with the above analysis, it is proposed to state **the second part of Article 43 of the Criminal Code in the following version:**

*" In addition to the main punishments, the following types of additional punishments may be applied to convicts:*

*a) Deprivation of a state award, military or special title, qualification or rank of the Republic of Uzbekistan;*

*b) expulsion of a foreign citizen or stateless person from the territory of the Republic of Uzbekistan.*

*"*

It is also proposed to state Article 52 of the Civil Code in the following version:

**52 . Deprivation of a state award, military or special title, qualification or rank of the Republic of Uzbekistan**

*A person who has a military or special title, qualification or rank may be deprived of this title by a court sentence when he is convicted of a serious or extremely serious crime.*

*A person who has received a state award of the Republic of Uzbekistan or a high military or special title or a high-ranking consultant qualification level may be*

*deprived of this title or award in accordance with the submission of the court on the basis of the sentence when he is convicted of a serious or extremely serious crime.*

Based on this change, it is recommended to state paragraph 41 of the decision No. 1 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 3, 2006 "On the practice of imposing punishment for crimes by courts" in the following version:

*"41. In accordance with Article 43 of the Criminal Code, additional punishments such as deprivation of certain rights and deprivation of a state award, military or special title, qualification or rank of the Republic of Uzbekistan may be applied to convicts.*

*An additional punishment in the form of deprivation of a certain right is imposed within the sanction of the article of the Special Part of the Criminal Code for which a person is found guilty. If the punishment in the form of deprivation of a certain right is not provided for in the sanction of the article of the Special part of the Criminal Code, it can be applied on the basis and within the framework defined in Article 45 of the Criminal Code, and the adopted decision is justified in the sentence.*

*Additional punishment in the form of deprivation of a state award, military or special rank, qualification or rank of the Republic of Uzbekistan can be applied only in the cases specified in Article 52 of the Civil Code. In this case, the attention of the courts should be focused on the fact that the committed crime is a serious or extremely serious crime, that this crime was committed in connection with his duty and position."*

The next important issue is the issue of compensation for the damage caused as a result of the crime. It is known that this issue is important in ensuring social justice. Restoring social justice means restoring the interests of the individual, society and the state that have been violated by crime. From the point of view of restoration of social justice, additional punishment in the form of a fine is undoubtedly compensatory. True, although with crimes, as a rule, the rights and interests of people, non-governmental organizations, enterprises, etc. are harmed, in this case compensation is carried out in favor of the state. Therefore, in the literature [15 , p. 21 ] and the criminal law of a number of other countries (for example, Article 31 of the Criminal Code of the People's Republic of China), the issue of including the institution of restitution, i.e. compulsory compensation to the victim according to the court verdict, to the Criminal Code, is reasonably raised. We believe that this issue should be



reconsidered at the next stages of the reform of the criminal punishment system.

As a conclusion, it is necessary to emphasize that the above-mentioned analysis and suggestions will serve to further improve the national criminal punishment system, to eliminate existing conflicts in the legislation, to form a more effective system of additional punishments, thereby reliably protecting the rights, freedoms and legal interests of people and citizens.

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