



## PROBLEMS OF APPLICATION OF SOME TYPES OF ALTERNATIVE CRIMINAL PENALTIES

Alisherova Nozima Nizamidin qizi  
Prosecutor of the E-learning Department  
of the Law Enforcement Academy

Article history:	Abstract:
<p><b>Received:</b> 28<sup>th</sup> March 2024 <b>Accepted:</b> 6<sup>th</sup> May 2024</p>	<p>In this article, the author, from a scientific and practical perspective, examines some types of alternative punishments, which are one of the most important means of the process of resocialization and correction of criminals in Uzbekistan. In particular, the article notes that these types of punishments show their positive sides today; at the same time, the fact is pointed out that some serious gaps and shortcomings in the legislation in practice have a negative impact on the effectiveness of punishments; corresponding proposals and recommendations are also presented.</p>
<p><b>Keywords:</b> non-custodial punishment, probation, fine, correctional labor, compulsory community service, restriction of liberty.</p>	

### INTRODUCTION

In the current criminal legislation, there is a rather extensive list of penalties for crimes that are not related to exclusion from society. However, this system has some systemic drawbacks. Scholars have argued that there is a distinction between the repressive nature of certain types of punishment and their place in the overall hierarchy of the criminal justice system. They also point out issues such as the lack of consistency or reciprocity in punishments, the expansion of restrictions on citizens' labor rights, and the competition between different types of punishments and preventive measures<sup>1</sup>.

In our opinion, Article 43 of the Criminal Code calls for the creation of a coherent system of alternative penalties. This system should include a range of punitive measures that are not linked to isolation from society, but instead have the potential to be morally rehabilitative and preventative, replacing them in accordance with the level of public danger posed by the act and the individual's personality, and achieving the overall goal of punishment.

### METHODS

In conducting the research, various logical methods were employed, including induction, deduction, and syllogism. Additionally, the study incorporated historicism, comprehensive examination of comparative

sources, analysis of statistical data, interpretation of legislation, and examination of law enforcement practices.

### RESULTS

The Criminal Code of Uzbekistan adopted on May 21, 1959<sup>2</sup> also provided for criminal punishment in the form of **restriction of freedom** in its own way. In particular, Article 24 of the 1926 Criminal Code provided for punishment such as being settled or settled anywhere without prohibition, prohibition of standing in one place, being sent outside the USSR, or from any other place instead of exile as a separate punishment. Penalties were introduced in the amount of 25 thousand pounds in addition to this. Moreover, the criminal punishment system was supplemented by a punishment unrelated to imprisonment known as "imposing the obligation to repair the damage caused"<sup>3</sup>.

The inclusion of punishment in the form of restriction of freedom in criminal legislation has been associated with several external and internal factors. **Firstly**, there is a global trend towards the development of alternative systems of preventive measures. This has led to the harmonization of national criminal laws on the basis of the adequacy and comprehensiveness of alternative forms of criminal punishment as outlined in international legal instruments. **Secondly**, there has been an increase in active support for this approach. **Thirdly**,

<sup>1</sup> Уткин В. А. Основания и пути модернизации системы наказаний // Вестн. Томск. гос. ун-та. 2011. № 349.

<sup>2</sup> Уголовный кодекс Узбекской ССР: С изм. и доп. на 1 окт. 1988 г.: Принят 2 сессией Верх. Совета УзССР пятого созыва, 21 мая 1959 года / Сост. Г. Абдумажидов. – Т.: Узбекистан, 1988. – 207 с.

<sup>3</sup> Хайдаров М. М. Жиноят қонунчилигида озодликни чеклаш жазоси вужудга келишининг ретроспектив тахлили // ЮРИСТ АХБОРОТНОМАСИ | ВЕСТНИК ЮРИСТА | LAWYER HERALD – 2021 - №5 – Б.39-47



the need for legal measures that do not involve isolation from society has emerged in order to reduce the difference in nature and severity of legal restrictions between imprisonment and other forms of punishment within the penal system<sup>4</sup>.

The restriction of freedom means that the court prohibits the convict from leaving their place of residence for any reason, or restricts their ability to leave at certain times of the day. The probation service monitors people sentenced to this type of punishment, following the procedures set out in the penal legislation and any relevant regulations issued by competent authorities.

The following prohibitions are mandatory for a person sentenced to restriction of liberty: 1) not to leave the territory where the convicted person's place of residence is located; 2) not to change his place of residence without the consent of a specialized state body exercising control over the serving of punishment in a high-security colony. a method of restricting the freedom of a convicted person.

Considering the specifics of the restriction applied to a person convicted of a restriction of freedom, the court may impose additional restrictions on the defendant's duties:

- Do not visit certain places;
- Not to participate in public or other events;
- Not engage in certain activities;
- Not have certain items, or not keep them with you;
- Not drive a vehicle;
- Change the place of residence, work or study, travel outside the relevant administrative area without the permission of the probation officer;
- Refuse to communicate with certain people;
- Refusal to use communication means, including the internet;
- Refusing to drink alcohol<sup>5</sup>.

At the same time, the court may impose on the person sentenced to limit freedom the obligations to compensate for the material and moral damage caused by him, to settle for work or study, as well as other obligations that contribute to his recovery.

In our opinion, community service should be ranked second in the hierarchy of punishments. It is an alternative form of punishment that involves the deprivation of a convicted person's personal free time for **public service**. This type of punishment

encourages the development of civic responsibility and contributes to the rehabilitation of offenders. We are pleased to note that courts are increasingly using this form of punishment.

According to the latest data, in 2019, there were 471 registered cases of people sentenced to community service, while in 2023, this number increased to 660. This shows a positive trend towards the use of this type of punishment as a means of rehabilitation and social integration of offenders into society.

If we turn to the experience of other countries, then, for example, in France, this punishment is known as "work in the public interest". In Spain, it's called "work for the benefit of society". In Denmark, the Netherlands, and Norway, it's referred to as "community service".

According to national legislation, compulsory community service can last anywhere from 120 to 480 hours. In Norway, it can range from 30 to 420 hours. In Sweden and Denmark, it's between 40 and 240 hours. In Russia and Azerbaijan, it's 60-240 hours each. In Latvia, it's 40-280 hours per month, and in Poland, it varies from 20-40 hours per month<sup>6</sup>.

Also, if we look at foreign experience, for example, punishment in the form of compulsory community service in Uzbekistan is not applied to persons who have reached retirement age; persons under the age of sixteen; pregnant women; women with children under the age of three; disabled people of the first and second groups; military personnel, except in cases where this applies to foreign citizens and persons who do not permanently reside in the Republic of Uzbekistan. In Belarus, it is not applied to persons under the age of 16, in the United Kingdom it is not applicable to persons under 17, in Georgia and Azerbaijan it is not used for pregnant women, and in Azerbaijan and Georgia it is also not used for persons of retirement age and disabled people of group I and II. In France, it is not imposed on a convict who refuses to work for the benefit of society. In our opinion, a **fine** should be the third option on the list of non-custodial sentences. A fine best implements such principles as the equality of citizens before the law, the inevitability of responsibility, personal guilt, fairness, humanism, and differentiation and individualization of punishment.

One important consideration in the imposition and execution of a fine is the financial situation of the offender and their family, which should be taken into

<sup>4</sup> Ходжалиев, С. А. Теория и практика исполнение наказания в виде ограничения свободы / С. А. Ходжалиев. — Текст: непосредственный // Молодой ученый. — 2015. — № 20 (100). — Б. 392-394. — URL: <https://moluch.ru/archive/100/22612/> (дата обращения: 17.06.2021).

<sup>5</sup> Ж.Маъмуров. Озодликни чеклаш жазоси ҳақида биласизми? // <https://aniq.uz/yangiliklar/ozodlikni->

[cheklash-jazosi-haqida-bilasizmi](#); Головкин Л. В. Альтернатива лишению свободы — очередная химера? // ЭЖ-Юрист. — 2010. — № 3. — Б. 44-46.

<sup>6</sup> А.Арипов. Мажбурий жамоат ишлари жиноий жазоси (миллий ва хорижий тажриба) // <https://sud.uz/> мажбурий-жамоат-ишлари-жиноий-жазоси/



account according to Article 45 of the Criminal Code. In developed countries, this type of sentence is applied flexibly and fairly. The Scandinavian system, used by most European countries in our opinion, is the most appropriate for imposing fines. Its main advantage is its flexibility with regard to the specific circumstances of the offender and the victim.

When imposing a fine in many countries with highly developed economies, its determination, considering daily rates, can be considered the most favorable form of punishment for criminals of almost any property status<sup>7</sup>.

The essence of this alternative punishment is to limit the property interests of the convicted person only. However, the convicted person may perceive it as too harsh. There are cases when, when the court imposes a punishment in the form of a large fine, individuals ask to replace this punishment with another, including imprisonment.

Currently, a fine does not restore social justice in terms of punishment only, as all funds collected from the fine are directed to the state income and the victim receives no compensation. However, a fine can also be used for compensation. To do so, we can adopt the experience of the Kyrgyz legislator, who has introduced a special type of fine called a "triple-guilt" fine<sup>8</sup>. Under this system, two-thirds of the fine is collected for the victim to cover material and moral damages, and one-third is sent to the state.

In our opinion, the fourth place on the list of punishments should go to correctional labor (Article 46 of the Criminal Code). The goals of criminal punishment through the performance of moral correction work are

achieved through a complex mechanism of influence on the convicted person. This includes: 1) Forced labor that the convict cannot refuse 2) Material fines extended in time (a discount of 5-20% of the convict's income) and a certain part of income transferred to the state 3) Control

Also, the name and essence of this punishment are similar in the criminal legislation of CIS countries, although there are differences in the circle of people who can receive it, restrictions on convicted persons, and other aspects.

Firstly, in the criminal laws of countries such as Russia, Azerbaijan<sup>9</sup>, Armenia<sup>10</sup>, Kazakhstan<sup>11</sup>, Kyrgyzstan<sup>12</sup>, Georgia<sup>13</sup>, a percentage of income from a convicted person is withheld by the state, ranging from 5% to 20%. As a result, correctional labor can be imposed as a punishment. In Ukraine, the percentage ranges from 10% to 20%<sup>14</sup>, while in Belarus it is between 10% and 25%. In Tajikistan, the range is also between 10% and 30%<sup>15</sup>.

Secondly, in Georgia (Article 45 of the Criminal Code) and Armenia (Article 56 of the Criminal Code), the term for serving a sentence of correctional labor is between one month and two years. In the Russian Federation (Article 50, Part 2 of the Criminal Code), Azerbaijan (Article 49, Part 1 of the Criminal Code), Kazakhstan (Part 1 of Article 43 of the Criminal Code), Tajikistan (Part 1 of Article 52 of the Criminal Code), and Belarus (Part 1 of Article 52), the period is between six months and two years. However, it should be noted that a period ranging from three months to three years has been set in Kyrgyzstan (Article 462, Part 2)<sup>16</sup>.

<sup>7</sup> Т. Архипенко. Уголовное наказание в виде штрафа в законодательстве зарубежных стран // <https://wiselawyer.ru/poleznoe/29019-ugolovnoe-nakazanie-videshtrafa-zakonodatelstve-zarubezhnykh-stran>

<sup>8</sup> <https://www.dissercat.com/content/shtraf-i-troinoi-aiyp-kak-imushchestvennye-nakazaniya-v-ugolovnom-zakonodatelstve-kyrgyzskoi>

<sup>9</sup> Уголовный кодекс Азербайджанской Республики от 27.06.1996 г м № 1626-VQD (ред. от 01.04.2019) [Электронный ресурс] Режим доступа: [http://continentonline.com/Document/?doc\\_id=32718499#pos=0;0](http://continentonline.com/Document/?doc_id=32718499#pos=0;0) (дата обращения: 22.06.2024).

<sup>10</sup> Уголовный кодекс Республики Армения от 01.07.1998 г. №ЗР-72 [Электронный ресурс] Режим доступа: [http://base.spinform.ru/show\\_doc.fwx?rgn=7472](http://base.spinform.ru/show_doc.fwx?rgn=7472)(дата обращения: 22.06.2024)

<sup>11</sup> Уголовный кодекс Республики Казахстан от 16.07.1997 г № 226-V ЗРК(ред. от 01.04.2020) [Электронный ресурс] Режим доступа: <https://zakon.uchet.kz/rus/docs/K1400000226>

<sup>12</sup> Уголовный кодекс Кыргызской республики 22.12.2016г. №19 (ред. от 03.04.2020) [Электронный

ресурс]. Режим доступа: <http://cbd.minjust.gov.kg/act/view/ru-ru/111527> (дата обращения: 22.06.2024).

<sup>13</sup> Уголовный кодекс Грузии 01.10.2019 г. N5041 [Электронный ресурс]. Режим доступа: [https://www.legislationline.org/download/id/8541/file/Georgia\\_CC\\_2009\\_amOct2019\\_ru.pdf](https://www.legislationline.org/download/id/8541/file/Georgia_CC_2009_amOct2019_ru.pdf)(дата обращения: 22.06.2024).

<sup>14</sup> Уголовный кодекс Республики Беларусь от 9 июля 1999 года № 275-3 (ред. от 11.11.2019г.) [Электронный ресурс]. Режим доступа: [https://online.zakon.kz/document/?doc\\_id=30414984](https://online.zakon.kz/document/?doc_id=30414984) (дата обращения: 22.06.2024)

<sup>15</sup> Уголовный кодекс Республики Таджикистан 21 мая 1998 года, № 575 (ред. от 02.01.2020) [электронный ресурс]

<sup>16</sup> И.Рузиев. Хорижий мамлакатлар жиноят қонунчилигида ахлоқ тузатиш ишлари жазосининг тартибга солиниши // Жамият ва инновациялар – Общество и инновации – Society and innovations Special Issue – 3 (2021) / - Б.139-144.



Thirdly, Ukraine's Penal Enforcement Code (Article 43, part 3) determines the start of serving a sentence for correctional labor to begin from the moment an organization receiving the copy of the sentence. In contrast, the Russian Federation's Penal Code (article 39, part 2) establishes that the start of such a sentence is from the day the verdict is issued.

An analogue of correctional work in the field of military service is the so-called limitation in service. In the "ladder" of penalties, restriction in service should be placed in fifth place after moral correction work.

**Deprivation of the right** to hold certain positions or engage in certain activities (Article 45 of the Criminal Code) is an alternative form of punishment, which involves the restriction of the individual's right to choose their own occupation. It is listed as the second type of punishment after fines in Article 43 of the Code. At the same time, it is often perceived as a more severe form of punishment than restrictions on freedom, forced labour, corrective labour, or fines. When a person is sentenced to this type of punishment, their social status is changed for the worse. They lose access to their usual source of income and benefits associated with their previous job, as well as any special work experience they may have accumulated.

This type of punishment is very effective in terms of personal Prevention, which is achieved by excluding the convicted person from the sphere of his previous activities, which he used in his social activities. At the same time, responsibility for checking the execution of punitive requirements lies with the probationary service, which controls the employment of the convicted person. The purpose of correcting the convict during the execution of this sentence is also carried out through the efforts of the probationary service personnel, who are responsible for conducting educational work with the category of convicts under consideration.

## DISCUSSION

According to the analysis, the following issues arise in the implementation of punishment in the form of restriction of liberty by the probation service:

- 1) The workload of probation officers has a negative impact on the quality of their work.
- 2) The creation of an electronic monitoring system, including the purchase and installation of necessary equipment and training of personnel, requires high costs and constant maintenance and repair expenses. Article 48<sup>1</sup> of the Criminal Code states that the content of this penalty does not include isolation from society,

work, or property restrictions. Instead, the essence of the punishment is only a partial restriction on the convicted person's freedom to move, through the establishment of a control regime by a probation officer. Therefore, from the perspective of repressive punishment, restricting freedom takes an inappropriate place in the overall hierarchy of penalties.

The deprivation and restrictions that characterize the punitive content of this type of sentence are similar to those imposed on people under conditional sentences (Article 72 of the Criminal Code). However, the use of high-tech monitoring methods for people sentenced to restricting liberty makes this punishment more effective in terms of specific deterrence.

Obviously, that is why the courts in recent years have been much more active in the application of the prison restriction penalty compared to conditional sentencing. In particular, in 2023 he was sentenced to limit his freedom **14,525** people were registered in the probationary service, and in 2019, **7,084** were registered respectively<sup>17</sup>.

As for the socialization potential of restrictions on freedom, it is primarily implemented by the probation service. The service helps convicts find employment, conduct educational work with them, apply the measures of encouragement and punishment prescribed by law, and so on. In particular, in collaboration with the Employment Assistance Centers, 1,008 events were organized under the "Merit in Work" program, of which 7,839 people found employment and 9,090 were granted work permits.

In addition, 3,794 people who did not have a specific profession were provided with vocational training and 1,459 people were sent for vocational training<sup>18</sup>.

It should be noted that in the criminal laws of developed countries, penalties such as restrictions on freedom are combined with various corrective and rehabilitation measures. For example, in the United States, persons sentenced to house arrest are required to attend classes in unknown alcohol or drug-dependent groups, visit day care centers, where they are recruited to work and trained under special programs, etc<sup>19</sup>.

According to the analysis, current criminal legislation provides for two types of corrective labor with different levels of punishment. Courts are increasingly imposing corrective labor sentences. In particular, while 7,981 people were registered with the probation service in 2019 for corrective labor, that number increased to 15,874 in 2023<sup>20</sup>.

<sup>17</sup> <https://stat.sud.uz/file/2024/31.01.pdf>

<sup>18</sup> <https://iiv.uz/oz/news/probatsiya-xizmati-dastlabki-bir-yillik-faoliyat-natijalari--va-kelgusidagi-rejalar>

<sup>19</sup> Зайченко В. А. Альтернативные лишению свободы наказания как средство оптимизации системы уголовных наказаний в США: дис. ... канд. юрид. наук. Самара, 2005.

<sup>20</sup> <https://iiv.uz/oz/news/probatsiya-xizmati-dastlabki-bir-yillik-faoliyat-natijalari--va-kelgusidagi-rejalar>



The problem of the probation service in the execution of punishment in correctional institutions, as well as loopholes and inconsistencies in legislation, is manifested in the timing of the substitution of punishment in these institutions with milder or harsher forms of punishment, in accordance with the procedures provided for by the Criminal Code. The legislator has clearly defined the system of penal enforcement, the types of penalties, and their minimum and maximum terms of imposition in the Criminal Code. Additionally, it has established six months as the minimum term for punishment throughout the entire history of criminal proceedings, and three years as the maximum term.

However, the essence of the issue in this matter is demonstrated by the courts. In accordance with Article 74 of the Criminal Code, when it comes to individuals who have been deprived of their liberty or have had their freedom restricted, the court can replace the unserved portion of the sentence with a lighter form of punishment, such as correctional labor. This is because, according to the fourth part of Article 74, when replacing a portion of a sentence involving imprisonment or restricted freedom with correctional labor, the length of the correctional labor term should be equal to the unserved portion of the original sentence.

In addition, the third part of Article 74 of the Criminal Code, according to paragraph "b": "for a particularly serious crime, as well as for parole or replacement of punishment with a more lenient one, as well as for a new crime committed intentionally during the unpunished part of the sentence".

From the analysis of this article, it can be seen that the punishment in the form of deprivation of liberty or restriction of liberty applied to a person who has committed a particularly serious crime is replaced by correctional labor as a milder punishment after the actual expiration of at least half of the sentence imposed by the court, regardless of whether it has been served. With regard to the term of imprisonment, or in this case, it has yet to be taken into account that correctional labor of three years has been established as the maximum term of punishment.

It can be shown that this punishment can also be assigned to persons who do not have a place of work as the next problem in the performance activities of the punishment of the probationary service in the history of

correctional work. The appointment of punishment in the history of correctional work, which provides for the retention of a fixed part of the salary to a person who does not have a place of work at the expense of state income, causes a number of problems.

Analyses and studies have shown that a number of experts in the history of correctional work have also expressed their critical attitudes regarding the possibility of punishment being assigned to persons who do not have a place to work.

In particular, S.M.Zubarev and S.V.Romanova argue that the imposition of correctional punishment on people who do not have a job significantly reduces the effectiveness of this punishment<sup>21</sup>. The next problem in the execution of correctional punishment by the probation service is the evasion of a person from the term of correctional labor appointed by the court (he deviated by more than one tenth of the total number), and also after registration of this. In this situation, the court will close the expired term of correctional labor, which is seen in the substitution of punishment in the form of restriction of liberty or imprisonment.

According to researcher I.Ruziev, there is a problem in the process of executing correctional punishments imposed on persons. That is, with a court-appointed period of evasion from correctional labor (the fact of the convicted person's evasion from serving more than one tenth of his total number), as well as when the court replaces the expired term of correctional labor for the same period. the term of restriction of liberty or imprisonment after registration of this situation seems<sup>22</sup>.

In our opinion, when solving this problem, attention should be paid to:

**Firstly**, when determining the age, personality of the convicted person, characteristics from the place of work, the reasons for non-fulfillment of punishment and a special approach to others when determining another punishment for the unserved part of the punishment in the form of moral correctional labor, enshrined in the law;

**Secondly**, the use of punishment in the form of imprisonment only in emergency cases when appointing other punishment for the unserved part of the punishment;

**Thirdly**, in order to achieve fairness and effectiveness in the application of punishment, it is impossible to define penalties in the form of restriction of liberty and

<sup>21</sup> Романова С.В. Актуальные проблемы назначения уголовного наказания в виде исправительных работ // Концепт. – 2014. – № 06 (июнь). – ART 14149. – 0,5 п. л. – URL: <http://e-koncept.ru/2014/14149.htm>. – Гос. рег. Эл. № ФС 77-49965. – ISSN 2304- 120X. (Romanova S.V. Aktualnye problemy naznacheniya ugovolnogo nakazaniya v vide ispravitelnyx rabot).

<sup>22</sup> И.Рузиев. Хорижий мамлакатлар жиноят қонунчилигида ахлоқ тузатиш ишлари жазосининг тартибга солиниши // Жамият ва инновациялар – Общество и инновации – Society and innovations Special Issue – 3 (2021) / - Б.139-144.



deprivation of liberty as equal (which requires an amendment to article 61 of the Criminal Code;

**Fourthly**, in order to eliminate corruption aspects, it is necessary to strengthen the institution of public control and implement the principles of transparency and openness in the penitentiary system.

#### CONCLUSIONS

Taking into account the above, we propose **providing for the possibility of appointing only those with a permanent place of employment for moral correction under Part 1 of Article 50 of the Criminal Code**. To ensure the optimal implementation of this penalty, the Penal Code should include a provision in the management systems of organizations prohibiting the termination of employment of individuals sentenced to correctional work.

In conclusion, it is important to note that today, it is essential to systematize and properly organize existing alternative punishments, considering their specific impact, and avoid introducing new types of punishment into criminal law that are unrelated to separation from society.

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