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Issues Applying Penalties Not Related With Incarceration In Some Foreign Countries

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ABSTRACT

The article analyzes the experience of foreign countries in the use of non-custodial sentences in connection with the liberalization of criminal law. Proposals and recommendations have been put forward to improve the effectiveness of non-custodial sentences.

KEYWORDS

Verbal sanction, reprimand, parole, limitation of civil rights, economic sanctions, including one-time penalties, daily fines, conditional sentence, house arrest, socially useful activities(public work).

INTRODUCTION

Based on the concept of "Improvement of criminal and criminal procedure legislation of the Republic of Uzbekistan" attached to the decree of President of the Republic of Uzbekistan May 14, 2018, the Resolution No. PP-3723 "On measures to radically improve the system of criminal and criminal procedure legislation",

"Creation of effective legal mechanisms for crime prevention and elimination inculcating a high legal culture in citizens, educating them in

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the spirit of compliance with the Constitution and the law, "which in turn is aimed at increasing the effectiveness of non-custodial sentences.

In order to increase the effectiveness of such sanctions, it is possible to study the experience of advanced foreign countries. It is important for some foreign states to ensure that they serve as an alternative to imprisonment by increasing the effectiveness of the application of non-custodial punishments in criminal law.
The Standard Minimum Rules ("Tokyo Rules") on non-custodial measures adopted by the United Nations General Assembly in Tokyo in December 1990 are the main international document on this issue. Rule 8.2 of this international document lists alternative punishments to imprisonment that may be imposed by a court.

Judicial authorities may provide for the following types of punishment in criminal cases:

a) verbal sanctions, in particular reprimands, warnings;
b) parole (the conditional release)
c) restriction of civil rights;
d) economic sanctions, in particular one-time fines, daily fines;
e) confiscation of property or deprivation of property rights in respect of property;
f) a decision to return the property to the victim or to indemnify;
g) imposition of a suspended sentence or deferment of the sentence;
h) parole and judicial review; (i) a decision to perform community service;
i) referral to a correctional facility with the obligation to be there every day;
j) house arrest;
k) any other measure not related to deprivation of liberty;
l) any combination of the measures listed aforementioned

It should be noted that this norm served as the basis for the establishment of a system of non-segregation of prisoners in society for most countries that have ratified the Tokyo Rules, including the United States and Western European countries. In the case of the France, the following types of non-custodial sentences are applied in this country: fine; probation; a simple form of delay in the execution of a sentence; useful public work.

Particularly common types of non-custodial sentences are useful public activities. The purpose of public work is to provide an independent and flexible measure of punishment that is used as a method of compensation for the damage caused and the rehabilitation of the offender (social support, social rehabilitation, upbringing, for example, when social work is done in a hospital).

There are two main types of orders for useful public work provided for in the legislation:
1) useful public work as a basic punishment (for example, in the amount of 200 hours for six months);
2) useful public works applied together with delay of execution of punishment.

In addition to the types of non-custodial sentences listed above, the country has electronic monitoring of offenders. Juveniles who have committed an offense with a total term of imprisonment not exceeding one year, as well as convicts who have one year or less to leave the place of deprivation of liberty, may be subject to such supervision. This measure may be applied for a period of one year or more after parole.

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In Germany, the possibility of a decision to postpone the execution of a sentence for two years in the event that the offender performs useful public work has been available since 1975.

In Portugal, useful public work is enshrined in the Criminal Code as a measure that can be applied instead of imprisonment for up to three months, but this norm is rarely applied in practice.

In Latvia, socially useful work was introduced as a new punishment for crime in April 1999, at the same time as the new criminal law came into force. Despite the fact that a long time has passed since the adoption and entry into force of the new criminal law, no training base has been established for the relevant institutions. In May 2000, periodic courses on various aspects of social work were organized, which were attended by about fifty local government officials, judges and municipal police officers in the areas where social work programs were implemented.

Useful public work is primarily intended for offenders who have committed less serious crimes. However, this sanction also applies to offenders who have committed serious crimes in areas where they have extensive experience in the application of useful public work. The participation of the local community in the program of socially useful work has become more active, and now about a hundred employers are allocating jobs for offenders. In some areas, the demand for labor of offenders exceeds the supply, and judges are being asked to assign more socially useful jobs to offenders. In Sweden, the following types of non-custodial sentences are currently applied: fines, suspended sentences, delays in execution, probation and detention in a juvenile detention center.

Swedish criminal law pays special attention to the classification of convicts according to their social and legal status. In particular, life imprisonment does not apply to persons under 21 years of age, imprisonment does not apply to persons aged 18-21 unless there are special reasons for doing so, and imprisonment does not apply to persons aged 15-17 (they can be sent to correctional centers in case of occurrence if they commit serious crimes).

The purpose of developing and introducing non-custodial sentences in foreign countries is usually to rationalize the policy, given the need to expand the scope of criminal law policy, the need to respect human rights, social justice and the need to return the offender to society after serving his sentence and increase its efficiency. It would also be useful to consider some of the common features and differences in Western European countries and the United States, as well as some types of alternative punishments that are not related to deprivation of liberty.

In legal systems, that the execution of a sentence is carried out in conjunction with behavioral orders, those orders are revoked in serious violation. For example, in Germany, in accordance with the existing condition for revocation, it is possible to change the conditions of probation without being able to prevent the commission of subsequent offenses.

In some countries, part of the sentence of imprisonment may also be conditional. In Belgium, for example, the aim is to make it possible to impose a suspended sentence, even if the offender is being held in pre-trial detention, as well as to impose a short-term imprisonment as a deterrent. If this goal is not completed, a long period of probation is applied.

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In our country, probation is an analogue of the measure in question and is a special form of impunity. If the court, taking into account the nature and degree of social danger of the crime committed at the time of imprisonment, transfer to a disciplinary unit, restriction of service or correctional labor, the identity of the offender and other circumstances in the case, correct the offender by controlling his conduct he may apply a conditional sentence if he firmly believes that it is possible. In this case, the court shall decide not to execute the imposed sentence, unless there are grounds to revoke the conditionality of the sentence during the prescribed probationary period. The probation period is set at one to three years and is calculated from the date of sentencing. Even if the conditional sentence is decided by a higher court, the calculation of the probationary period shall begin from that date. In the case of a suspended sentence, the court shall notify the body controlling the conduct of the conditionally convicted person, if there are grounds to do so, to remedy the damage caused to the convict within a certain period of time, to change the place of work or study, residence, work or study to stay, to register with these bodies from time to time, to be absent from certain places, to be in a place of residence at a certain time, to undergo a course of treatment for alcoholism, drug addiction, poisoning or venereal disease. The conduct of probationers is overseen by the police, and the conduct of servicemen is supervised by the command of the military unit or institution. At the request of the body supervising the conduct of the convicted person, the court may also remove all or part of the obligations imposed on him during the probation period or imposes new obligations on him. If a conditionally convicted person fails to fulfill the obligations imposed on him by the court during the probationary period or is subject to administrative or disciplinary action for violation of public order or labor discipline, the court can make a decision. Probation does not apply to those convicted of a felony, as well as to persons previously convicted of a felony, except for persons under the age of eighteen, persons with disabilities of the first and second groups, women, as well as persons over sixty years of age. If a probationer commits a new crime during the probation period, the court shall impose a penalty on him in accordance with the rules provided by law. Thus, the criminal law of the Republic of Uzbekistan does not impose any restrictions on the application of probation, either by category of crimes or by the scope of persons. In our opinion, the regulation of this measure in the legislation of our country is perfectly organized.

Socially useful work. Socially useful work has begun to be used effectively over the last quarter century. Most of the countries of Western Europe and the countries belonging to the system of common law (precedent law) are now actively applying socially useful work in practice. In other countries, experiments are being conducted to test the feasibility of their introduction. In Finland, for example, socially useful work was introduced on an experimental basis in 1991, and from April 1, 1994, the whole country was covered by this system.

A distinctive feature of socially useful work is that a number of experiments are conducted in most countries before its establishment. Conducting such experiments allows creating an organizational basis for socially useful work. Probably because of this, this alternative penalty will be applied consistently after its official introduction. Without the necessary level of preparation, this institution does not seem to be a less attractive option for the courts compared to other alternative

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punishments, and this can be seen in the case of Hungary:

In 1987, when socially useful work was introduced as a method of correctional and educational work, and the last mentioned institution was abolished, but in 1993, when socially useful work itself was preserved, the courts hardly applied this sanction.

It should be noted that socially useful work is particularly suitable for conducting experiments. They can be applied and controlled even without a legal framework, as there are legal institutions in most countries that are able to provide experiments in the field of socially useful work. For example, they can be considered as a separate obligation in parole, probation or probation (delay in execution of a sentence).

The reason for the relatively widespread use of socially useful work is probably due to the fact that they are more severe, occupy an intermediate place in the system of penalties and are therefore considered a reliable sanction. Thus, socially useful work is mainly assigned as a substitute for imprisonment. Some laws, such as French law and the law of the Australian state of New South Wales, explicitly state that socially useful work should be applied instead of punishment in the form of imprisonment. However, in accordance with the guidelines on the situation in which social work was released, conditions were created for living in a home-based living environment.
At the same time, an analysis of Australian and Dutch practice shows that socially useful work is often used in place of non-custodial measures, particularly fines or bail.

In conclusion, based on the experience of foreign countries, many aspects of the application of socially useful work can be beneficial for our country.

In particular, they may be appointed as an independent punishment or complement the institution of probation. Socially useful work can also be considered as a form of punishment.

The proposals and recommendations on the issue of imposing non-custodial sentences consist of two parts:

Recommendations For The Development Of The Theory Of Criminal Law:

"Non-custodial punishments include coercive treatment of the perpetrator, which does not involve segregation, but is intended to replace it with another punishment that is appropriate to the nature of the act and the degree of social danger, it is necessary to understand the measures of state coercion aimed at the implementation of general and special measures to prevent the commission of new crimes.

The Criminal Code of the Republic of Uzbekistan includes the introduction of restriction of liberty, depenalization of imprisonment and its replacement by compulsory community service, as well as other liberalization processes.

Factors influencing the effectiveness of non-custodial sentences: first, in the imposition of punishment under the current criminal law, as well as in improving the criminal law to increase the effectiveness of punishment, but not the severity of punishment, but the existing legal system, the direction of reform attention should be paid to the extent to which he understands the inevitability of punishment; secondly, criminal law and punishment must be

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in according to the way of life of society, the financial and economic situation of the state, the social system that embodies the social relations of society and the ethnic and legal values formed on this basis; third, the imposition of punishment is an important and integral part of criminal justice. Adding to the concept that justice is systemic, we believe that it is necessary to differentiate the enforcement mechanism that ensures the implementation of court decisions and, consequently, the efficiency of the entire judicial system.

So, the effectiveness of punishment is a necessary element of the effectiveness of judicial activity, moreover, it is its practical expression, because the process of investigation and determination of punishment is included in the system of algorithms of judicial proceedings. Thus, the effectiveness of punishment in the country can be achieved not only by the system of punishment established by criminal law, its nature, but also by the fair organization of the entire judicial system; fourth, further development of the norms and practice of applying probation to a person through probation is also considered as a factor influencing the effectiveness of the application of alternative punishments to imprisonment.
Many aspects of the application of socially useful work applied in foreign countries can be beneficial for our country.

In particular, they may be appointed as an independent punishment or complement the institution of probation. Socially useful work can also be considered as a form of punishment.

Suggestions For Improving The Criminal Law:

1. Given the need to differentiate and individualize punishments based on the circumstances of the case, the expediency of providing a fine as an alternative to the following articles of the Criminal Code is justified: Article 110, Article 116. A 1-2., A 117, 1-q., A 121., A 129., 1-q., A 176.
2. We propose to supplement Article 46 of the Criminal Code of the Republic of Uzbekistan with the fourth part as follows:
"During the period of correctional work, if the circumstances provided for in part three of this article occurs; correctional work may be replaced by a more lenient punishment."
3. Based on the positive experience of foreign countries in our country, it is possible to discuss the introduction of "daily fines". In turn, it is also required to develop a list of offenses for which a daily fine can be imposed. In our opinion, the wider application of this penalty in relation to traffic and traffic safety crimes will be more effective.

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