



LEGAL FOUNDATIONS FOR EXECUTING IMPRISONMENT SENTENCES

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Abstract: This article examines the legal basis for executing imprisonment sentences. It analyzes the legal norms in implementing imprisonment and the criteria related to their execution. The paper focuses on improving national criminal enforcement legislation, considering the practices in the imprisonment sentence execution system, its role in combating crime, the importance of legal protection mechanisms, and existing legal gaps, while taking into account foreign experience. It also addresses problems in executing imprisonment sentences and ways to enhance the necessary legal mechanisms for their resolution. The article highlights ongoing reforms to ensure the rights, freedoms, and legitimate interests of citizens and individuals serving imprisonment-related sentences, efforts to liberalize criminal penalties, criminal and penal enforcement legislation, its purpose and objectives, the punishment system, the purpose of punishment, the concept of imprisonment, how imprisonment is prescribed in the Criminal Code, procedures for determining imprisonment for adults and minors, penal institutions and their types, tasks of penal institutions, as well as opinions and reflections of several legal scholars on criminal and penal enforcement legislation. The mechanisms of rehabilitation and re-education in penal system activities will also be studied. This scientific article aims to increase the effectiveness of crime prevention, enhance the fight against crime, and improve the moral correction of convicts through an in-depth analysis of imprisonment as a form of punishment, its legal basis, practical application, and impact. The article concludes with proposals aimed at increasing the effectiveness of the imprisonment penitentiary system.

Keywords: crime, criminal-executive, legislation, legal basis, order, decree, criminal code, criminal-executive code, punishment, concept and purpose of punishment, punishment system, deprivation of liberty, human rights, freedoms and legitimate interests, crime, criminality, criminal punishment, purpose of criminal punishment, court, sentence, law, function, commission of a crime, minors, adult men and women, purpose of deprivation of liberty, deprivation and restriction of rights and freedoms, legal scholar, penal institutions.

One of the guiding ideas in the preamble of the Constitution of the Republic of Uzbekistan is the idea that determines the relationship between the national legislation of Uzbekistan and international law. According to it, the people of Uzbekistan adopted their Basic Law "recognizing the supremacy of universally recognized norms of international law." If international treaties establish rules other than those provided for by law, then the rules of international law shall apply. The priority of human rights over state interests is also enshrined in the Constitution.

Thus, the requirements enshrined in the Basic Law of the Republic of Uzbekistan, from the point of view of law enforcement practice, mean that now the legal basis of all decisions of legal significance made by public authorities and their officials is not only the legislation of Uzbekistan, but also the norms of international law relevant to our country. Since these requirements are general, they also apply to the activities of state bodies of the Republic of Uzbekistan directly involved in the execution of national criminal punishments, including imprisonment.

In this regard, the requirements of international legal documents establishing standards for the implementation of law enforcement by states today constitute a complex of international legal foundations for the activities of our country's law enforcement agencies.

In legal literature, international legal acts on the treatment of prisoners[1] are described on the basis of various norms in terms of content and form[2]. For example, they can be universal and regional by scope of action, general and special by direction, mandatory or recommendatory by legal consequences.

Despite the fact that some international legal acts do not have legally binding consequences for subjects of international law, modern democratic states are guided by them and use their provisions in their legislation. The reason for this situation is that the indicated international legal acts, in essence, coordinate the universal principles of the rule of law in the sphere of the penitentiary system. The Republic of Uzbekistan is no exception, since, as noted above, the preamble of the Constitution of our country proclaims the recognition of the supremacy of universally recognized norms of international law. In particular, as noted in part 1 of Article 13, democracy in the Republic of Uzbekistan is based on universal principles, according to which the highest value is the individual, his life and freedom, honor, dignity, and other inalienable rights. From this point of view, the death penalty was abolished in our country from January 1, 2008.

The main significance of international legal documents lies in the fact that "the principles that participating states are obliged to guarantee in relation to their population and correspond to this, not only determine the list and content of fundamental human rights, but also determine the possible scope of limitations of these rights by the state"[3].

In the case under consideration, the latter problem is of particular interest. The fact is that the main form of participation of penal enforcement agencies in ensuring law and order is their operational-search, criminal procedural, and administrative activities. It is with their help that the detection, prevention, and suppression of acts encroaching on the existing order in places of execution of punishment are ensured. In turn, the implementation of these types of activities is partially related to the restriction of the rights of persons participating in the commission of an offense or convicts to one degree or another during the period specified in the court verdict.

The general approach to solving this problem, which should be taken into account today by the world community, including employees of penal institutions and bodies of our country, is defined in Part 2 of Article 29 of the Universal Declaration of Human Rights. According to this document, "everyone, in the exercise of their rights and freedoms, must comply with the restrictions established by law only in order to ensure the sufficiency and respect for the rights and freedoms of other persons in a democratic society, to satisfy the just requirements of morality, public order, and the general well-being"[4].

These general requirements are also repeated in other international legal documents with certain clarifications (Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, Articles 4, 7, 22 of the International Covenant on Civil and Political Rights of 1966, etc.). The aforementioned Convention against Torture (1984) establishes a general prohibition on their use (including by law enforcement agencies).

International legal acts on the treatment of prisoners usually consist of 3 main parts: general principles (general rules); rules relating to certain categories of prisoners (convicts held in custody, convicts in civil cases, mentally ill and mentally incompetent persons); and requirements for personnel (employees).

The generally recognized rules in the Minimum Standard Rules for the Treatment of Prisoners contained several groups of requirements in the relevant area.

The first group includes a department for the reception and classification of convicts, material and domestic support, regime, labor organization, vocational training and educational work, as well as establishing personnel requirements.

The requirements for this group, along with establishing the rules for the admission of convicts, the procedure for registration, and the nature of information about the arriving convicts, determine the categorization, separate detention of minors and adults, men and women, convicts and those under investigation, convicts convicted for the first time, and recidivists.

Requirements related to the second group include minimum requirements for material and living conditions for convicts, in particular, requirements for living quarters, accommodation of each convict in a separate room (chamber) at night, normal natural lighting and fresh air in all living quarters, and sufficient sanitary and hygienic conditions (toilet and shower) for each convict to satisfy their natural needs while maintaining cleanliness and dignity.

Today, a number of reforms have been implemented in the system of executing sentences of imprisonment. In particular, over the past five years, 3 laws, 6 Presidential decrees, 9 Government resolutions and orders, 15 departmental and interdepartmental regulatory legal acts have been adopted aimed at further improving the activities of the penal system, expanding the rights and legitimate interests of persons serving sentences, and improving living conditions.

Based on the UN General Assembly resolution of December 17, 2015, the "Rules of Minimum Standards for the Treatment of Persons Serving Sentences"[5] (Nelson Mandela Rules) were implemented into our national legislation.

A feature of the mechanism for implementing the norms of criminal-executive law is the presence of specific subjects (institutions and bodies executing sentences in the form of imprisonment, as well as persons sentenced to imprisonment), the inequality of these subjects. This circumstance implies the existence of specific methods of criminal-executive law[6].

One of the priorities of building a legal democratic state is to have effective mechanisms for ensuring human rights and freedoms. Human rights should be recognized as the highest value not only in words, but also in deeds. Today, the largest and most important of the reforms being implemented in our country to ensure human rights are judicial and legal reforms. In this process, changes being made to criminal legislation in the criminal-legal sphere and the liberalization of criminal penalties, the application of amnesty and reconciliation institutions, and the further expansion of the probation service are of great importance.

In our republic, comprehensive measures are being implemented to improve the penal system, in particular, to ensure the protection of the rights, freedoms, and legitimate interests of convicts, and this is significant because it is aimed at non-violation, observance, and ensuring the rights of persons serving sentences, isolated from society, and serving alternative sentences to imprisonment. A number of works are also being carried out to introduce and further improve transparent and more effective legal mechanisms to ensure the observance of the rights of convicts, respect for their honor and dignity.

In particular, comprehensive measures have been implemented aimed at strict observance of the rights of convicts, respect for their honor and dignity, eradication of corruption and abuse of office in the sphere of penal enforcement, and strengthening the material and technical base of penal institutions.

It should be noted that at the initiative of the President of the country Sh.M.Mirziyoyev, large-scale reforms are being carried out in the Republic aimed at ensuring the rule of law, strengthening legality, raising them to a modern level and improving the penal system, ensuring openness and transparency of activities, and protecting the rights, freedoms, and

legitimate interests of convicts. In particular, in the "Development Strategy of New Uzbekistan for 2022-2026"[7]:

- ensuring the labor, social security and other internationally recognized rights of convicts and persons who have served their sentences, introducing effective mechanisms to promote their social adaptation and reintegration into society, establishing joint activities of state and public institutions in this area;

- unconditional ensuring of legality in the application of measures related to the legal influence on citizens, including restrictions on freedom of movement, as well as strengthening public control through the introduction of digital technologies;

- further simplification of the system of registration of citizens at the place of residence and creation of additional conveniences for the population, completion of the reforms initiated in this area;

- consistent continuation of the policy of improving criminal, criminal procedure, and penal enforcement legislation, widespread introduction of the principle of humanism into the system of criminal penalties and their execution;

- priority areas have been identified, such as improving preventive mechanisms for the prevention of torture and adopting a special law in this area.

In addition, a number of measures aimed at ensuring the rights, freedoms, and other legitimate interests of convicts have been adopted in Uzbekistan, including the Law of the Republic of Uzbekistan "On Amendments and Additions to the Criminal-Executive Code of the Republic of Uzbekistan, aimed at ensuring reliable protection of the rights and legitimate interests of convicts" dated June 30, 2020 [8], the Decree of the President of the Republic of Uzbekistan "On Measures to Raise the Activities of Internal Affairs Bodies in the Field of Ensuring Public Safety and Combating Crime to a Qualitatively New Level" dated March 26, 2021 [9], the Presidential Decrees "On Measures for the Fundamental Improvement of the Activities of Internal Affairs Bodies in the Field of Enforcement of Punishments Related to Imprisonment" dated August 11, 2017 [10], "On Measures for the Fundamental Improvement of Criminal-Executive Legislation" dated November 7, 2018 [11], "On the Liquidation of the Specialized Penal Colony No. 19 of the Ministry of Internal Affairs of the Republic of Karakalpakstan" dated August 2, 2019 [12], "On Additional Organizational Measures to Further Improve the Activities of Internal Affairs Bodies in the Field of Ensuring Public Safety and Combating Crime" dated April 2, 2021 [13], as well as the Resolution of the Cabinet of Ministers "On Organizational Measures to Ensure the Effectiveness of Institutions Executing Punishments Related to Deprivation of Liberty" dated March 5, 2020 [14].

The essence of all these measures is to ensure unconditional observance of the rights of convicts and detainees, respect for their honor and dignity, strengthen control over the proper performance of official duties by employees while excluding cases of corruption and abuse of office, carry out large-scale institutional reforms in the judicial and legal sphere of the country, implement international obligations in the field of human rights, create favorable conditions for convicts and detainees regardless of their political and religious views, take comprehensive measures aimed at observing their rights and freedoms, respect their honor and dignity, improve criminal executive legislation including legislation that incorporates the principle of humanism in further enhancing detention conditions in places of deprivation of liberty, abolish restrictions on participation in elections for persons held in places of deprivation of liberty for crimes that do not pose a great public danger and less serious crimes in accordance with the Electoral Code of the Republic of Uzbekistan, and pardon persons sentenced to imprisonment who have sincerely repented of their deeds and firmly embarked on the path of correction.

Also, in his Address to the Oliy Majlis and our people on December 29, 2020, President Sh.M.Mirziyoyev emphasized that "reforms aimed at guaranteeing the protection of human rights and freedoms, ensuring the rule of law will be consistently continued in the new year.



In particular, based on international standards, 25 settlement colonies will be gradually reduced. From now on, if the punishment imposed on a person sentenced to imprisonment for the first time is replaced by a lighter one, they will be placed under probationary supervision without transfer to a settlement colony. As a result of this mitigation, 6,000 individuals currently serving sentences will have the opportunity to stay with their families under the supervision of their mahallas. At the same time, the authority to submit proposals for the replacement of punishment with a milder one and conditional release will be transferred from penal institutions to newly created humanitarian commissions"[15]. It would not be an exaggeration to say that the unconditional observance of the rights of convicts, respect for their honor and dignity has risen to a new level.

It should be noted that the Decree of the President of the Republic of Uzbekistan dated November 7, 2018 "On Measures for the Fundamental Improvement of Criminal-Executive Legislation" [16] provides for the elimination of these problems and shortcomings and the improvement of criminal-executive legislation.

The resolution approved the "Concept for Improving the Criminal Executive Legislation of the Republic of Uzbekistan for 2019-2021."

The Concept notes that the Criminal-Executive Code of the Republic of Uzbekistan, adopted in 1997, serves as a legal basis for ensuring the rule of law and the inevitability of responsibility, reliable protection of the rights, freedoms, and legitimate interests of convicts, their upbringing and moral correction in order to prevent repeated crimes, a radical reform of the activities of educational institutions in the penal system, the introduction of innovative pedagogical technologies into the process of training convicts, the revision of mechanisms for vocational training, primarily for minors and convicts without a profession, and a number of other positive works.

In addition, the Decree requires the development and implementation of fundamentally new priority areas of state penal enforcement policy, providing for the following main aspects: "Improvement of the penal enforcement system, further strengthening of measures for the systematization and harmonization of the norms of penal enforcement legislation," "Correction of convicts and prevention of their recidivism," "Ensuring reliable protection of the rights, freedoms, and legitimate interests of convicts," "Expected results from the implementation of the Concept," and each of these issues is reflected in separate chapters.

Today, special attention is paid to this sphere in our country, and its legal framework and mechanism are constantly being improved. In particular, the Decree of the President of the country Sh.M.Mirziyoyev "On Measures for the Fundamental Improvement of Criminal-Executive Legislation" [17], adopted on November 7, 2018, is a clear example of this. This document defines seven priority areas for further improvement of the regulatory framework in the sphere of ensuring the execution of criminal punishments, which are:

firstly, the unification, systematization, and harmonization of the norms of criminal-executive legislation;

secondly, the introduction of qualitatively new mechanisms to ensure unconditional observance of the rights of convicts, respect for their honor and dignity;

thirdly, improving the system of forming law-abiding behavior in the minds of convicts, a respectful attitude towards people, labor, rules and traditions of public life;

Fourthly, further expansion of the rights of convicts in accordance with generally recognized international standards;

Fifthly, the development of a system for organizing the education, vocational training, and employment of convicts, primarily minors and youth;

sixth, a radical revision of the mechanisms for the execution of punishments not related to imprisonment, increasing the effectiveness of control over the behavior of persons conditionally convicted and conditionally released early from serving a sentence;

seventh, strengthening public control over the activities of penitentiary institutions, ensuring their close interaction with civil society institutions in the social adaptation of persons released from places of deprivation of liberty[18].

In addition, the Law of the Republic of Uzbekistan "On Amendments and Additions to the Criminal Executive Code of the Republic of Uzbekistan, aimed at ensuring reliable protection of the rights and legitimate interests of convicts" of June 30, 2020 [19] also serves to fill the gaps in the Criminal Executive Code.

Most importantly, the task has been set to develop a draft of the Criminal Executive Code in a new edition by June 1, 2020, based on the study of best foreign practices. The purpose of updating legislation should be not only to adopt laws, but, on the contrary, to think about what practical benefits new laws will bring to citizens tomorrow, how they will make their lives easier. (Several amendments and additions were made to the Criminal Executive Code after 2020. For example: February 15, 2023 No. 3PY-817, March 23, 2023 No. 3PY-825, August 28, 2024 No. 3PY-948).

Depending on the adoption and ensuring of the implementation of normative acts regulating the sphere of execution of sentences of imprisonment, we can see to what extent rule-making is carried out in this sphere.

At this point, let's briefly touch upon rule-making. Lawmaking activity relies on the analysis of the results of scientific research, scientific achievements, as well as the opinions of scientists, experts, and specialists. The systematic nature and completeness of the legal regulation of social relations are ensured by the categorization of normative legal acts, the absence of gaps, the inadmissibility of general, inactive norms that do not affect law enforcement practice, and the absence of collisions of normative legal acts [20].

The adequacy of legal regulation is expressed through the presence in legislation of normative legal acts that are actually necessary for the regulation of social relations in various spheres, as well as the reflection in normative legal acts of the objective needs of the socio-economic development of society and the state.

The stability of the legal regulation of social relations is ensured by the bodies and officials authorized to adopt normative legal acts, by ensuring the proper quality of normative legal acts, taking measures to ensure the completeness and effectiveness of the legal regulation of social relations in various spheres, as well as preventing rapid amendments to normative legal acts.

Types of normative legal acts are the Constitution of the Republic of Uzbekistan, constitutional laws, laws, resolutions of the chambers of the Oliy Majlis, decrees and resolutions of the President, resolutions of the Cabinet of Ministers, orders and resolutions of ministries, state committees and departments, decisions of local government bodies [21].

Laws are the Constitution of the Republic of Uzbekistan, constitutional laws and laws, resolutions of the chambers of the Oliy Majlis of the Republic of Uzbekistan.

Laws and other normative legal acts of the Republic of Uzbekistan are adopted on the basis and in pursuance of the Constitution of the Republic of Uzbekistan and cannot contradict its norms and principles.

Laws adopted on issues defined in the Constitution of the Republic of Uzbekistan are adopted in the form of constitutional laws.

Constitutional laws have higher legal force than laws.

For the adoption of constitutional laws in the Legislative Chamber and approval in the Senate of the Oliy Majlis, a two-thirds majority of the votes of the deputies of the Legislative Chamber and the Senate of the Oliy Majlis are required.

The laws of the Republic of Uzbekistan regulate the most important and stable social relations, including the main directions of state activity in the political-legal and socio-

economic spheres, and are adopted by the Legislative Chamber, approved by the Senate, signed by the President of the Republic of Uzbekistan, or adopted by referendum.

Normative legal acts on the main directions of domestic and foreign policy and the defense doctrine of the Republic of Uzbekistan are adopted only in the form of a law.

The laws of the Republic of Uzbekistan can be adopted in the form of codes, which are normative legal acts that consolidate the principles and norms of legal regulation of the most important social relations and ensure the full legal regulation of a certain sphere of social relations.

The execution of sentences of imprisonment is one of the most complex and responsible spheres of the state, requiring a careful attitude to human rights and freedoms. The availability and implementation of regulatory documents governing this activity, the degree to which court sentences serving as grounds for deprivation of liberty are enforced, and the effective operation of penitentiary institutions play an important role in the state's legal system.

According to legal scholars, the lack of a single and clear law regulating the execution of imprisonment remains an important problem in increasing the effectiveness of the country's penitentiary system and ensuring legal guarantees. The absence of a law serves as a necessary basis for determining the specific direction of work, which has a number of legal objectives. We believe that the development of a draft law regulating the execution of imprisonment will become the only objective and legal basis for regulating all criminal-executive legal relations in the execution of imprisonment.

The reason for this is that the very activity of executing imprisonment, on the one hand, should not contradict human rights and values. Also, the activities of executing sentences of imprisonment are aimed not at punishing the convict, but at ensuring his rehabilitation and reintegration into society. In this sense, a law based on social justice and legal democratic principles is required to determine the legal basis of penal enforcement activities and its effective implementation.

This law, according to legal scholars, will not only contribute to solving problems in the sphere of penal enforcement, but will also contribute to reducing overall crime and ensuring social justice in society. This is one of the most important factors in regulating the relationship between society and the state, and not only within the framework of legal or other sciences.

Therefore, the need to develop a law regulating the sphere of activities for the execution of sentences of imprisonment is, first of all, an important step aimed at filling legal gaps in the system of executing sentences of imprisonment, ensuring the rights and freedoms of convicts, and at the same time increasing the effectiveness of the activities of institutions executing sentences of imprisonment.

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