

Basics of Imposing Punishment in the Form of Compulsory Community Service and Their Improvement

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DOI:

<https://doi.org/10.47134/jsd.v1i4.2366>

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Received: 08-01-2024

Accepted: 16-02-2024

Published: 27-04-2024



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Abstract: In this article, the author discusses the legal basis of imposing a sentence in the form of mandatory community service, the criminal law norms of this type of punishment, in particular the imposition of a lighter sentence, the imposition of a punishment when the guilty person is actually remorseful for his actions, the imposition of punishment for incomplete and complicit crimes, the commission of several crimes. Aspects related to the manner in which the norms can be applied, such as the imposition of punishment for several convictions, have been thoroughly analyzed. At the same time, the author put forward his proposals for the improvement of norms related to the imposition of mandatory community service punishment and its execution.

Keywords: Criminal-Legal Theory, Imposing A Lighter Sentence, Imposing A Penalty When The Guilty Person Is Actually Sorry For His Act, Imposing A Penalty For Incomplete And Complicit Crimes, Imposing A Penalty For Committing Several Crimes, Imposing A Penalty For Several Convictions, Prospects For Improving The Legislation

Introduction

The assigning of punishment for a crime is an essential social process that involves a variety of perspectives and techniques. According to Professor M.X.

Rustambaev, "The Appointment of punishment is one of the main links to the protection of social relations from the criminal justice side (Тулганова, 2018)." The reason for this is the punishment itself, which is a key element of the mechanism of criminal justice protection, and the State clarifies how correctly and efficiently the process of choosing punitive measures is organized and to what extent it produces results," notes professor G.Z.Tulaganova, who argued that "sentencing is a decisive aspect of the administration of justice in a criminal case.

Methodology

The initial step in the research process was gathering and reviewing all of the relevant material. The acquired data were completed and examined in the following phase. In light of the findings, conclusions were made.

The court's sentence states that the actual criterion indicating the degree of social danger of the committed crime, as well as the shortest path that helps the guilty recover morally, must be a practical tool that allows the convicted person and others to prevent the commission of future crimes. "The court has exclusive jurisdiction over sentencing.

According to Article 28 of the Republic of Uzbekistan's Constitution, "the case of every person accused of committing a crime shall not be charged until a legal procedure, a transparent review, and his guilt is established in court (Рустамбаев, 2016).

In criminal law, it is established that the court prescribes punishment in the scope specified in the article of the special part, in accordance with the provisions of the general part of the criminal law, which provide for liability in the appointment of punishment to a person convicted of a crime (Scheepers, 2022).

The court considers the nature and level of social danger of the crime committed when determining punishment, the cause of the act, the nature and extent of damage caused, the identity of the perpetrator, and the circumstances that mitigate and aggravate the punishment (Р.Кабулов М.Х. Рустамбоев А.А. Отажонов ва бошқ., 2019а).

An examination of the rules governing the appointment of a required public works sentence reveals that, in addition to the general grounds for the appointment of a sentence, the CC also prescribes unique rules for the appointment of a sentence. This can include provisions such as the appointment of a lighter sentence (Article 57 of CC), the appointment of punishment when the perpetrator is practically remorseful for his act (Article 571 of CC), the appointment of punishment for incomplete and participatory crimes (Article 58 of CC), the appointment of punishment for committing multiple crimes (Article 59 of CC), and the appointment of punishment for multiple sentences (Article 60 of CC).

To impose a lighter sentence (Article 57 CC).

While issuing a reduced sentence is one of the most thoroughly researched rules in criminal law theory, it is also one of the most commonly applied in court practice. In particular, A.In recent years, Isakov claims that courts are adopting softer sentencing guidelines more extensively, which is tied to the severity of the punishments listed in the legislation, and that this provision allowed judges to impose a relatively lesser term (Исоқов, 2023).

When examining the application of the regulations for the appointment of a lighter term in the penalty of forced public works, the following three distinct trends can be identified:

First, apply a punishment that is less than the minimum duration of forced public work specified under the criminal justice sentence outlined in the CC (Matlhaba, 2023; Tsiervas, 2023). According to Article 57 of the CC, the court, after considering the conditions that significantly diminish the level of social danger of the committed crime, determined that in particular cases, even less punishment is inflicted for the crime described in the article of the special section of the CC.

In this case, it should be noted that when imposing a penalty on a person, the court may impose a mandatory public works penalty for a period not less than the penalty specified in Article 451 of the mandatory public works, but even less than the minimum of mandatory public works required by the sanction for the committed crime.

Article 124 of the CC mandates a mandatory punishment of three hundred sixty to four hundred and eighty hours for Public Works. However, depending on the circumstances, the court may impose a punishment of less than three hundred and sixty

hours but not less than one hundred and twenty hours. Additionally, the court may impose a lighter punishment than mandatory public works.

Although the sanction under Article 57 of the CC does not allow for a light type of punishment from mandatory public works, one of the lighter types of punishment can be imposed even from mandatory public works if circumstances significantly reduce the level of social danger of the crime. As you are aware, according to the core of Article 43 of the CC, fines and penalties for deprivation of a specific right are light penalties in comparison to the necessary penalty for Public Works (Gardiner, 2022). 19 criminal justice sanctions that provide for the CC's mandatory public works penalty do not include a fee, and 141 criminal justice punishments do not have a specific disenfranchisement (as a fundamental punishment), but can be imposed under Article 57 of the CC. For example, for committing a felony under Section 1 of Article 105 of the CC, mandatory public works, correctional work, restriction of liberty, or imprisonment may be imposed (Izquierdo-Condoy, 2023). However, the court may impose one of the penalties of fine or deprivation of a certain right (as the primary punishment) for this crime under Article 57 of the CC. In this instance, it is not allowed to diverge from the scope of the terms of the penalties of fines or deprivation of a specific right, which are applied in place of the necessary public works penalty, as provided for in articles 44 and 45 of the CC; Third, those who commit crimes before the age of eighteen should face a less severe punishment. The analysis shows that, while the rules for imposing a lighter punishment for minors are not specified, the individual deadlines for the imposition of that punishment are strengthened when the general rules of the juvenile punishment system for each type of punishment are established (Dlamini, 2019). For example, knowing that Article 17 of the CC sets the minimum age of responsibility for Article 171 at 16, we can see that a minor can be allocated even less than the minimum term of the mandatory public works penalty provided for by this article. Specifically, under Article 171(2) of the criminal justice system, the offender faces a fine ranging from twenty-five to fifty times the minimum monthly salary, mandatory public works lasting from three hundred to three hundred and sixty hours, correctional labor lasting from two to three years, restriction of freedom lasting from one to three years, or imprisonment. However, according to Article 821 of the CC, mandatory public works are limited to a range of sixty to two hundred and forty hours. It's established that minors cannot be sentenced to mandatory public works exceeding two hundred and forty hours, even if the sanction implies a harsher punishment. Notably, Part 3 of paragraph 10 of the plenum of the Supreme Court of the Republic of Uzbekistan No. 21 of September 15, 2000, "on judicial practice in cases of crimes of minors," states that Article 85 of the Criminal Code suffices when imposing imprisonment penalties on minors, without requiring additional application of Article 57 of the Criminal Code (*"Вояга Етмаганларнинг Жиноятлари Ҳақидаги Ишлар Бўйича Суд Амалиёти Тўғрисида"* Ги Ўзбекистон Республикаси Олий Суди Пленумининг 2000 йил 15 сентябрдаги 21-Сонли Қарори, n.d.).

However, the decision in question establishes the rule that "except for circumstances warranting lighter penalties not provided for by the specific article of the Criminal Code under which the defendant was convicted, is indisputable. (Пусрамбаев, 2021a) For instance, when a minor commits a crime endangering others, the court must impose one of

the penalties outlined within the framework of the sanction. The sanction for committing a crime as outlined in Section 1 of Article 117 of the CC stipulates penalties of up to three hundred hours of compulsory public works or up to two years of correctional labor (Nakhost, 2019). If it's acknowledged that a minor is unfit for work in such cases, the court cannot assign compulsory public works or correctional labor in accordance with articles 451 and 46 of the CC. Consequently, the court won't be able to impose a penalty other than a fine on the guilty party. In such instances, the court isn't obligated to apply Article 57 of the CC to impose a fine.

Based on the aforementioned analysis, we propose that the guidelines outlined in articles 82-86 of the Supreme Court Plenum of September 15, 2000, for sentencing minors, should be inferred from paragraph 3 of Decision No. 21 "on the judicial practice of Juvenile Crimes" dated September 15, 2000. This does not necessitate the application of Article 571 of the CC, but rather suggests amending the recommendation to allow for the imposition of other lighter penalties not specified in the relevant article of the CC under which the defendant was convicted.

Regarding the imposition of punishment when the offender has genuinely regretted their actions (Article 571 of the CC), it's stipulated that the imposed penalty duration or amount must not exceed two-thirds of the maximum penalty outlined in the relevant article of the Criminal Code (McMahon, 2020). The basis for imposing punishment when genuine regret is present includes the presence of circumstances mitigating punishment as outlined in paragraphs "a" and "b" of Article 55 of the Criminal Code, along with the absence of aggravating circumstances specified in Article 56 of the Criminal Code.

Courts must consider mitigating circumstances such as admission of guilt, genuine remorse, or active assistance in uncovering a crime (Article 55 "A" of the CC), voluntary restitution of damages (Article 55 "B" of the CC), and the absence of aggravating circumstances when determining punishment. It's essential to note that the maximum duration or amount of punishment, in the absence of aforementioned mitigating circumstances, is constrained by criminal law, ensuring that it does not surpass two-thirds of the maximum penalty stated in the relevant article of the special part of the Criminal Code (P.Кабулов М.Х. Рустамбоев А.А. Отажонов ва бошқ., 2019b). Furthermore, it's emphasized in legal literature that this rule applies not only to crimes involving deprivation of liberty but also to all forms of punishment, with adjustments made if the sanction pertains solely to monetary amounts rather than durations (Marceau, 2019). Within the framework of criminal justice sanctions outlined in the CC, a penalty is to be imposed according to the terms specified in the table below when considering the imposition of punishment for compulsory public works where the offender demonstrates genuine remorse for their actions (Жумаев, 2009).

No	Number of sanctions	Minimum and maximum terms of compulsory public work (per hour)	Minimum and maximum periods of compulsory public work (per hour) that can be appointed when Article 571 of CC is applied
1	1	160*	106
2	1	230*	153

3	15	240*	160
4	37	300*	200
5	1	200-300	133-200
6	7	240-300	160-200
7	1	240-360	160-240
8	1	250-400	166-266
9	63	360*	240
10	36	300-360	100-240
11	4	480*	320
12	3	300-480	100-320
13	2	360-400	120-266
14	21	360-480	120-320

* these sanctions do not specify minimum sentences.

Considering that Article 451 of the CC establishes the minimum term of compulsory public work at 120 hours, the minimum duration of punishment should not fall below 120 hours when applying the provision to impose a penalty on an offender who genuinely regrets their actions (Batton, 2019).

Regarding the imposition of punishment for incomplete crimes and crimes committed in participation (Article 58 of the CC), this rule sparks considerable debate among legal experts.

For instance, A.S. Jumaev highlighted in his study that the penalties outlined in the special part of the CC for the proper implementation of this rule (Рагимов, 2002), particularly the minimum and maximum durations of the penalties specified, do not align with the principles governing penalties for incomplete crimes. Similarly, R.A. Ragimov points (Рустамбаев М.Х. ва бошқ., 2018) out that when prescribing punishment for an incomplete crime, the reasons behind the crime not being completed and the circumstances influencing it are not taken into account (*Ўзбекистон Республикаси Олий Суди Пленумининг “Судлар Томонидан Жиноят Учун Жазо Тайинлаш Амалиёти Тўғрисида” Ги 03.02.2006 Йилдаги Қарори*, n.d.). Meanwhile, M.X. Rustambaev argues that Article 58 of the CC embodies principles of justice and humanity, promoting the comprehensive realization of the objectives of criminal punishment (Baker, 2020). In addition to Rustambaev's perspective, it can be observed that the challenges arising from applying the rules for imposing punishment for incomplete crimes stem not solely from the rules themselves but also from other factors affecting their application, such as inadequate designation of criminal legal sanctions or judicial oversight.

For crimes that remain incomplete in accordance with Article 58 of the criminal code, the mandatory public works stipulated by the criminal justice sanction of the CEC should not exceed 3/4 of the penalty duration, with penalties imposed according to the terms specified in the table below.

NO	Number of sanctions	Minimum and maximum terms of compulsory public work (per hour)	Minimum and maximum deadlines (per hour) of mandatory public works that can be appointed when applicable under Article 58 (for a non-final offence) of CC
1.	1	160*	120
2.	1	230*	172.5
3.	15	240*	180
4.	37	300*	225
5.	1	200-300	150-225
6.	7	240-300	180-225
7.	1	240-360	180-270
8.	1	250-400	187-300
9.	63	360*	270
10	36	300-360	225-270
11	4	480*	360
12	3	300-480	225-360
13	2	360-400	270-300
14	21	360-480	270-360

*** these sanctions do not specify minimum sentences.**

The second part of Article 58 of the CC outlines exceptional circumstances for applying this rule. These circumstances include cases involving extremely dangerous recidivists, members of organized groups, or criminal associations, as well as non-final crimes against peace and security. Additionally, it addresses crimes such as intentional murder with aggravating liability, sexual offenses against minors, and crimes related to weapons of mass destruction (Duxbury, 2021). When examining these types of crimes, it's noted that sanctions for such offenses typically don't entail mandatory public works penalties. However, if a crime committed by a highly dangerous recidivist or organized group does warrant such a penalty, it exempts the imposition of penalties for multiple offenses, as outlined in Article 59 CC.

According to Part 2 of Article 59, if the offenses consist solely of crimes of varying severity and social risk, the punishment is determined by either replacing the lighter sentence with a more severe one or by combining the sentences partially or fully. The resulting punishment cannot exceed the maximum penalty or the norm established for the most serious of the crimes committed (Sznycer, 2020). For crimes of lesser social risk and severity within the set, if at least one requires compulsory public works, the court will separately assess each punishment, considering fines or deprivation of specific rights. Each punishment is executed individually, as stipulated in Section 2 of Article 61 of the CC.

If all crimes in the set warrant only compulsory public works, the court determines the final punishment by partially or fully combining the penalties or by considering the maximum duration of compulsory public works. Notably, if some crimes within the set require fines or more severe penalties alongside compulsory public works, the definitive assignment of compulsory public works is precluded.

Scientists C.I. Velezhev, V.P. Markov, and I.L. For any of the crimes that make up the Tretyakov complex of crimes, a penalty in the history of compulsory affairs is prescribed, and for the rest of the crime(s), a fine and a punishment of a more severe type than the punishment of compulsory affairs, which means that the punishment of compulsory affairs cannot be definitively assigned (Вележев et al., 2006).

It should be noted that the punishment assigned for a set of crimes cannot exceed the maximum punishment stipulated by the corresponding article in the criminal code. (Розимова, 2018) For instance, if a person is sentenced to 300 hours of compulsory public work under Section 105 of the criminal code (with a maximum of 360 hours) and 200 hours under Section 112 (with a maximum of 240 hours), the total sentence would be 300 hours, as per the method of combining sentences. Additionally, if any crime within the set carries both compulsory public work and a harsher punishment for other crimes, according to Article 59, Section 2 of the criminal code, the court may impose the more severe punishment, with compulsory public work being substituted. This substitution suggests that compulsory public work penalties would be replaced by either restricted freedom or imprisonment (Swanson, 2019). According to Q.Yu. Rozimova, proposing a ratio of twelve hours of compulsory public work for one day of imprisonment and two days of restricted freedom is appropriate, as imprisonment is more severe than restricted freedom (Черненко & Суворова, 2013). Hence, it is recommended to replace eight hours of compulsory public work with two days of restricted freedom or one day of imprisonment. Regarding the imposition of punishment for multiple sentences.

Article 60 of the Criminal Code of Uzbekistan allows for the adjustment of the sentence if a convicted individual commits a new crime without serving their previous sentence.

This provision aims to address cases where moral correction and preventive measures have not been effective (Littlejohn, 2020). Consequently, if an individual commits a new crime while not fulfilling the obligations of a previous sentence, the court may add the unserved portion of the previous sentence to the new sentence. However, the current legislation does not specify the maximum duration for which compulsory public work penalties can be cumulatively imposed for multiple sentences (Рысрамбаев, 2021b).

Result and Discussion

In our view, it would be prudent to incorporate the maximum period specified by Article 451 of the Criminal Code (CC), which is no more than 620 hours, for compulsory public work penalties in such cases. These time limits, being of a general nature within the penal system, should be universally considered. However, we acknowledge the necessity of explicitly defining this rule within the CC itself. For instance, Article 50 (5) of the CC outlines the provision for sentencing history of imprisonment for multiple sentences,

allowing for a term of up to twenty-five years when imprisonment is imposed through the process outlined in Article 60 of the CC. As Professor M.X. Rustambaev emphasizes, "accurate and consistent sentence calculation ensures the legal and equitable imposition and execution of punishment, thereby aiding in achieving the objectives of punishment. Moreover, clear rules for penalty calculation facilitate the application of other criminal legislative measures such as replacement, calculation, and addition."

Furthermore, Section 2 of Article 60 of the CC states that the imposition of punishment by adding different types of punishment to many sentences is followed by the conditions outlined in Article 61 of the CC, and the most severe type of punishment is firmly given. According to Article 61 of the CC, if a person is assigned a more severe punishment accompanied by a mandatory public works sentence on several sentences, the penalty of the assigned heavier type is definitively assigned, and four hours of mandatory public work is equivalent to one day of imprisonment.

If a person is sentenced to a mild punishment (fine or restriction of a certain right), each case should be handled separately, in addition to the necessary punishment of Public Works on many sentences. In our view, it would be prudent to incorporate the maximum period specified by Article 451 of the Criminal Code (CC), which is no more than 620 hours, for compulsory public work penalties in such cases. These time limits, being of a general nature within the penal system, should be universally considered. However, we acknowledge the necessity of explicitly defining this rule within the CC itself. For instance, Article 50 (5) of the CC outlines the provision for sentencing history of imprisonment for multiple sentences, allowing for a term of up to twenty-five years when imprisonment is imposed through the process outlined in Article 60 of the CC. As Professor M.X. Rustambaev emphasizes, "accurate and consistent sentence calculation ensures the legal and equitable imposition and execution of punishment, thereby aiding in achieving the objectives of punishment. Moreover, clear rules for penalty calculation facilitate the application of other criminal legislative measures such as replacement, calculation, and addition."

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If a person is sentenced to a mild punishment (fine or restriction of a certain right), each case should be handled separately, in addition to the necessary punishment of Public Works on many sentences.

Conclusion

In conclusion, we emphasize that through the analysis of the mandatory community service penalty, there are some confusions in the legislation, inconsistencies in its implementation, and the need to illuminate the incomprehensible aspects of the theory and bring them to the correct form both for the theory and for the legislation and practice.

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