

## **SOME COMMENTS ON THE RELATIONSHIP BETWEEN RESTRICTION OF FREEDOM AND CONDITIONAL SENTENCE**

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### **ABSTRACT:**

**The similarities and differences between restriction of freedom and conditional sentence according to the Criminal Law of the Republic of Uzbekistan are analyzed in this article. The researcher tried to justify that they are separate institutions.**

**KEYWORDS: restriction of freedom, conditional sentence, punishment, release from punishment.**

### **INTRODUCTION:**

Reforms being carried out in the country in the judicial and legal sphere, in turn, have not bypassed the criminal justice system. In particular, in the process of liberalization of the criminal legislation of the Republic of Uzbekistan, a number of alternative punitive measures were added to the penal system in the form of imprisonment. One such measure is criminal punishment in the form of restriction of freedom, which does not provide for the segregation of prisoners from society. The criminal penalty in the form of restriction of freedom was introduced into the penal system by the Law of the Republic of Uzbekistan of August 10, 2015 «On introducing amendments and addenda to some legislative acts of the Republic of Uzbekistan».

One of the most pressing issues today is the widespread use of penalties for offenders, which do not provide for the segregation of prisoners from society. President Shavkat Mirziyoyev drew attention to this issue and noted the need for continuing activities on

further improvement and liberalization of criminal legislation [1].

Therefore, we believe that in the future there will be a tendency for the state to impose more coercive measures that are not related to imprisonment. This also applies to restriction of freedom and conditional sentence.

### **RESULTS AND ITS DISCUSSION:**

Today, the problem of comparative legal analysis of custodial sentences and conditional sentences is often debated among legal scholars [2].

These debates highlight legal restrictions that constitute the content of these criminal law enforcement measures, similarities in the forms and methods of control over their implementation, as well as their distinctive features.

Here we are talking about the similarity of the restrictions applied to prisoners. However, according to the Article 72 of the Criminal Code, only a person conditionally sentenced by a court has certain obligations (to compensate for the damage caused during a certain period of time, to inform the body supervising the conduct of the conditionally sentenced person in case of change of entrance to work or study, place of residence, work or place of study, to register at these authorities from time to time, to be absent at 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). Restriction of freedom is manifested in the prohibition (restriction) of certain rights and

freedoms of the convict by the court.

It is clear that the law stipulates that within the framework of restriction of freedom, the court restricts the constitutional and legal status of the individual. It is about forcing a person to endure certain hardships, and this is a punitive sign of restriction of freedom. This is because the law provides for the establishment of certain legal restrictions that lead to a change in the legal status of persons sentenced to restriction of freedom, and the punitive function of this punishment is manifested in the need for the offender to perform certain duties and endure the restrictions established by the sentence [3, p. 187].

According to Y.A. Permilovskaya, «all the restrictions that constitute a restriction of freedom are aimed at restricting certain constitutional rights and freedoms that lead to the suffering of the convict, thereby ensuring the moral correction of the convict and the prevention of new crimes» [4, p. 360]. Indeed, the function of punishment constitutes the essence and content of criminal punishment and serves as a means of achieving its purpose [5, p. 229].

In a conditional sentence, however, the court provides the convict with an opportunity to prove that he or she is corrected and wants to lead a law-abiding lifestyle. A person who violates the requirement of the law must be interested in the performance of the obligations imposed on him, so that such coercion is not intended to cause suffering (so there is no punitive function). Conditional sentencing is a form of incentive that demonstrates the confidence expressed by the court in the accused. He is given the opportunity to prove his recovery and remorse. At the same time, the offender is not isolated from society and does not significantly change the living conditions, which makes it possible to lead a law-abiding lifestyle [3, p. 187-188].

Therefore, as professor M.H.

Rustambayev rightly notes, the legal essence of a conditional sentence is the conditional release of the convicted person from the actual serving of the sentence [6, p. 506].

At the same time, the analysis shows that the sentence of restriction of freedom and probation also differ in the amount of restrictions and obligations imposed on the convict, the duration, the range of persons not applicable, the legal consequences. In particular, in our opinion, these cases can be systematized as follows:

**1) on the scope of restrictions and obligations imposed on the convict:** one of the 2 main prohibitions (restrictions) provided for in part 1 of the Article 48<sup>1</sup> of the Criminal Code and 10 additional prohibitions (restrictions) provided for in part 3 of the Article 48<sup>1</sup> of the Criminal Code can be set. According to the Article 48<sup>1</sup>, part 4, the court may impose on the person sentenced to restriction of freedom the obligation to compensate for the material and moral damage caused by him, to work or study, as well as other obligations that facilitate his recovery. Hence, there is no limit to the number of obligations that can be imposed on a person sentenced to restriction of freedom. In a conditional sentence, according to the Article 72, part 3 of the Criminal Code, the court may impose 7 obligations on the convict. In this case, the scope of the obligations that can be imposed is strict, and the court has no right to impose other obligations.

**2) on terms of implementation:** in accordance with part 2 of the Article 48<sup>1</sup> of the Criminal Code, restriction of freedom may be imposed for a period of 1 month to 5 years. A distinctive feature of conditional sentence under the Article 72 of the Criminal Code is that the court assigns two terms: a term of imprisonment and a trial period. The term of imprisonment is a constant measure because the sentence is not enforced in practice and the risk of executing it in full always puts pressure on the prisoner

throughout the entire probationary period. A trial period is a specific period during which a conditionally convicted person is required to prove that his or her behavior has changed [6, p. 508]. According to part 2 of the Article 72 of the Criminal Code, the trial period may be set from 1 to 3 years.

**3) in the range of not applicable persons:** restriction of freedom is not imposed in accordance with part 7 of the Article 48<sup>1</sup> of the Criminal Code in respect of servicemen, foreign citizens, as well as persons who do not have a permanent residence in the Republic of Uzbekistan. Conditional sentence does not apply to those convicted of a felony under the Article 72, part 7 of the Criminal Code, as well as to persons previously sentenced to imprisonment for an intentional crime, persons under the age of eighteen, persons with disabilities of the first and second groups, women, as well as except for persons over the age sixty.

**4) on legal consequences:** it is known that both the imposition of a custodial sentence and the imposition of a conditional sentence result in the state of conviction of the convicts. However, when a sentence of restraint of freedom is imposed, a person is considered convicted during the term of the sentence imposed and for two years after its passage, in accordance with the Article 78, part 1, paragraph "g" of the Criminal Code. A probationer is considered to have been convicted during the probation period in accordance with the Article 78, part 1, paragraph "a" of the Criminal Code. It appears that the state of conviction may last longer in persons sentenced to restriction of freedom.

#### CONCLUSIONS:

From the above analysis, it can be concluded that the difference between restriction of freedom and conditional sentence is primarily reflected in their legal nature. After all, according to the current criminal law,

«restriction of freedom» is a punitive measure, and «conditional sentence» is a form of release from criminal punishment. Hence, the essence of restriction of freedom as a measure of criminal punishment is manifested in its having a punitive function. The essence of conditional sentence as a form of exemption from punishment, as T.Yu. Kuzmina rightly noted, is in the trial (probationary period) and the trial, as the essence of the conditional sentence, manifests itself in the psychological impact on the convict and aims to correct it [3, p. 188]. At the same time, the sentence of restriction of freedom and conditional sentence also differs in the scope, duration, scope of persons who can not be applied, the legal consequences of the restrictions and obligations imposed on the convict.

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