



NECESSITY AND SOCIAL JUSTIFICATION OF RESTRICTION OF INDIVIDUAL RIGHTS IN CRIMINAL PROCEEDINGS OF THE REPUBLIC OF UZBEKISTAN

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Annotation

The article analyzes the need to restrict individual rights in the criminal process, the social basis of the restriction. Also, the sphere, types and forms of restriction of individual rights in criminal proceedings are classified based on the nature, content and method of implementation.

Keywords: criminal procedure, individual rights and freedoms, procedural coercion, limitation of individual rights.

Introduction

Judicial and legal reforms, which have become an integral part of the socio-economic processes carried out in the Republic of Uzbekistan to build a strong democratic state and a just civil society, serve the realization of the constitutional principle of the human person and his rights and freedoms.

Therefore, the legal, social and political significance of the issue of ensuring the rights and freedoms of the individual in our country is becoming increasingly relevant. Uzbekistan has ratified a number of international legal instruments adopted by the UN General Assembly, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - respect for the value, the state's commitment to the basic ideas reflected in the above international documents on the protection of human life, health, rights and freedoms. Because only a democratic state based on the rule of law is able to fully ensure the freedom of the individual and lay the foundation for his perfect development.

The Constitution of the Republic of Uzbekistan regulates the inviolability of the rights and freedoms of the individual and may not be restricted or deprived without a court decision.

At the same time, it should be noted that the Constitution, as a document defining the boundaries of the state and government, contains rules, obligations and duties that





must be fulfilled by citizens, state bodies, officials, self-government bodies, public associations and other legal entities.

In the Constitution of the Republic of Uzbekistan the term "restriction" is used five times (Articles 19, 28, 29, 62, 117) and the provisions corresponding to the phrase "restriction of rights" which are close in content to it have been quoted six times (Articles 25, 27, 33, 37, 53, 57). In practice, the meaning of the concepts covered by these terms is very broad.

In general, the inviolability of the person is a general legal institution, which usually includes the physical and mental inviolability, personal freedom and security of the individual. It should be noted that the Constitution of the Republic of Uzbekistan guarantees everyone the right to freedom and personal inviolability (Article 25), as well as the obligation to respect the rights, freedoms, dignity and dignity of other people (Article 48).

Inviolability is a concept that is inextricably linked with freedom. Freedom means - the condition or right of being able or allowed to do, say, think, etc. whatever you want to, without being controlled or limited. Inviolability means - the fact of having to be respected and not removed or ignored.

In the same place, attention should be paid to this, one of the important values of civil society is to ensure the freedom of man, after all, "freedom is an irreplaceable value that characterizes the essence of man". Authorship classification has been developed according to the results of the study of works aimed at the classification of freedom in science.

In our opinion, the freedom of society and the individual is manifested in the following areas:

- 1) Participation in the relations between a Citizen, Public Associations and the state, that is, in the management of society (political freedom);
- 2) Occurring in the process of production (socio-economic freedom);
- 3) Free development of science, art and culture (spiritual freedom);
- 4) Strengthening and development of spiritual and moral wealth of society (moral freedom);
- 5) Implementation and observance of legal norms that give authority, restore rights, violate and prohibit (legal freedom).

So, freedom of the person is given to the person and is an opportunity to think, to act, to achieve the purposes within the limits of the views, desires and imagination. In everyday life, a person's freedom is understood as the ability to behave, to govern, according to one's own will, regardless of one's will or compulsion. In turn, legal freedom is defined by legal norms that give authority in the performance of socially



recognized actions, restore the right, complicate and prohibit, and serve as its measure.

Proceeding from the above, the universal status of a person is the sum of the basic rights and freedoms, duties and legitimate interests of a person. The law determines the presence of the person in society of the land, and the duty indicates the norm of this freedom, the limit, and imposes social responsibility on the person. After all, according to a number of scientists, legal interest is not always manifested in the rights of a person, but it is in the protection of the state.

Every right is a kind of freedom. Baytin M.I. asserts that man will be free when he acts in accordance with the law. Mirazov D.M. believes that "... human freedom should be as far as the rights of others begin". Smirnov M.V. believes that "freedom and personal inviolability are one of the most important spiritual values that a person can have by birth". Utarbaev A.K. argues that "... any right, first of all, finds its limits in the objective termination of the problems associated with it". Voevodin L.D. and Krasnov M.A. believe that "in a society where a person recognizes his duties as a natural need, as well as" debt" before society and other citizens, duties can not be recognized as a restriction of freedom".

The Constitution of the Republic of Uzbekistan stipulates that citizens should not violate the legitimate interests, rights and freedoms of other persons, State and society in the implementation of their rights and freedoms. The law is aimed at protecting the rights and freedoms of citizens, as well as giving certain powers to officials. The legal ban limits the "freedom" of action against the law, but at the same time guarantees the protection of the rights and freedoms of citizens who diligently comply with the requirements of the law.

At the same time, it should be noted that in a number of areas of state activity - administrative-legal, criminal-procedural, criminal-legal and criminal-executive activities, the restriction of fundamental human rights and freedoms in the interests of society is allowed.

The degree of individual freedom in criminal proceedings is determined by the sum of the constitutional and procedural rights that belong to the individual. For example, the defendant's right to protection is the freedom to reject the accusation guaranteed by law, the transparent conduct of cases is the freedom of citizens to freely enter the courtroom, the independence of the judges – this is their freedom from any external influences, freedom of expression, etc.

Referring to the right to personal inviolability, Patyulin V.A. believes that law enforcement agencies can not be limited as a result of the legal actions of their employees. According to Patyulin V.A., in this case the right to inviolability is not



limited, but the inviolability itself is limited to the factual situation. Yakubov A.S. and Mirazov D.M., on the other hand, argue that a person's constitutional right to inviolability may also be restricted on legal grounds (for example, the use of detention as a precautionary measure against an accused).

Summarizing the above, one can conclude that the constitutional, personal, political, economic and social rights and freedoms of a person can be limited in the process of criminal proceedings. It should be noted that these rights and freedoms can be limited in most cases by the consent of one of the state bodies responsible for the conduct of the case (judge, prosecutor) or without its opposition.

This means that in the field of criminal procedure law, it is especially important to define the limits of the restriction of fundamental human rights and freedoms. Because in this area of law, social and legal relations with persons who have not yet been found guilty by the court will be entered into, and will lead to the application of majeure measures against persons who are being charged with committing a crime. The right to personal liberty and freedom of movement of persons not found guilty by a court in the course of coercive detention and the application of precautionary measures of detention and house arrest; (possession, use and disposal) is restricted, and the right to personal liberty is also restricted when placing the accused in a medical institution. Other constitutional rights of a person on the grounds and in the manner prescribed by law for the purpose of gathering evidence in a criminal case - search and seizure (inviolability of the home), seizure of postal and telegraphic items, their review and seizure (confidentiality of correspondence and correspondence, personal life inviolability), in the process of witnessing and examination (physical inviolability), in the process of obtaining samples for personal search and expert research (personal and physical inviolability).

An entity that refuses to comply with the law in the course of procedural activity is free only in appearance, but its unlawful "freedom" is limited by the application of coercive procedural measures on the basis of public authorities.

The entry of a person into a criminal-prosecutorial relationship does not lead to a change in his legal, constitutional status, which determines his freedom in society. Perhaps he will also have a special prosecutorial (accused, suspect, victim, witness, expert, translator, impartial and other) status – in an additional way.

If the general legal status of an individual (personal, political, economic and social rights and freedoms) is established as a basis, it is possible to determine the general extent of the restriction of rights in criminal proceedings, provided that they are limited in the application of coercive procedural measures.





In legal literature, there are different views on the universal status of a person, including the system of legal interests (rights) that make up the right to personal freedom. Based on the analysis of the opinions expressed in this regard, we think that it is worthwhile to divide the personal rights and freedoms of a person into two large areas – the Institute of personal inviolability (Article 25 of the Constitution of the Republic of Uzbekistan) and the Institutes of human personal inviolability (Article 27 of the Constitution of the Republic of Uzbekistan).

When we say the right to personal inviolability – it is understood that the freedom and personal safety of any person or citizen is guaranteed by the state. This guarantee guarantees human life, health, physical inviolability, sexual freedom and physical inviolability; honor, dignity, spiritual freedom; mental immunity; the personal freedom of the individual, expressed in the ability to self-govern and to choose his place of residence at will, is expressed in the prevention of encroachments on personal security, their prevention and the inevitability of punishment for such aggressions.

The second broad area of personal rights and freedoms is the inviolability of a person's private life. Privacy is the freedom to be alone; freedom of communication; confidentiality of correspondence, telegrams and telephone conversations, daily records and personal records; confidentiality of sexual and private life in general; medical secret; adoption is a secret. Attempts to formulate the concept of inviolability of a person with a very wide range of coverage, including the concept of inviolability of personal life, were also previousl.

The right to personal life and the right to housing inviolability are regulated in Article 27 of the Constitution of the Republic of Uzbekistan, in which the terms "personal life" and "non-disclosure of the secret of correspondence and telephone conversations" are expressed in an equally strong content. However, the theoretical analysis of the presented concepts shows that "personal life" is a basic concept, "housing inviolability" and "keeping the correspondence secret" are additional concepts that fall into its composition. It should be noted that the state protection of personal life is inextricably linked with the relationship in the field of family and marriage, guaranteed in Article 63 of the Constitution of the Republic of Uzbekistan.

The need to restrict a person's constitutional rights can be justified by the fact that when one of the participants in the proceedings refuses to perform the obligation voluntarily, it arises in situations that prevent the establishment of the truth in the case, protection of rights and legitimate interests of others. This requires the application of procedural coercion. It should be noted that procedural coercion applies only to participants in the process who refuse to perform their social duty, procedural obligations. That is, if a participant in the criminal proceedings obstructs





the investigation or judicial proceedings, fails to fulfill the obligations imposed on him, as well as to prevent further criminal activities of the suspect, the accused and to ensure the execution of the sentence, law enforcement agencies to apply coercive measures are right.

This is manifested in the application of state majorities measures when the suspect, the accused, the victim, the witness, the expert and the expert, the translator, the impartial and other participants in the criminal process are evading or not fulfilling their social duties.

The above-mentioned cases are Gulyamov Z.X. believes that it is proessional, in some cases expressed in the application of criminal-legal sanctions. Rakhmonkulov A.X. noted that proessional sanctions are expressed in the law in forcing the participants of the proessional to fulfill the obligations imposed on them.

One group of authors argues that "coercive measures are an element of the criminal procedure mechanism that helps to enforce the requirements of the law in the event that a certain person does not fulfill or does not fulfill the established procedural obligations".

The concept of "procedural coercion" encompasses all types of influence that exists on any participant in the process. As a result of such influence, a person is forced to fulfill proessional obligations against his or her addiction. At the same time, the measures of influence on the participant of the process are not only proessional (the risk of coercion or coercion into the performance of any proessional obligation), but also criminal (for example, the risk of criminal liability for refusing to give testimony to a witness and the victim), disciplinary (for example, the risk that the expert may be punished), civil law (for example, the risk of litigation for a participant in the proceedings for non-appearance due to unjustified reasons) and publi (for example, a warning to a lawyer who is not diligent in his duties by the Qualification Commissions of the Chamber of Advocates).

There are other classifications of coercive measures of criminal procedure. For example, Livshits Yu.D. distinguishes the following types of coercion: 1) precautionary measures; 2) measures taken to identify and collect evidence; 3) measures taken to maintain order during the court session; 4) other measures. In the opinion expressed, it is necessary to recognize that other measures of prevention (except for precautionary measures) have not been taken (for example, dismissal of the defendant), that not all measures of proessional responsibility have been recorded, have been excluded from the context of measures to restore the right in the form of cancellation and amendment of illegal proessional acts.



Gaynov I.D. divides procedural coercive measures into two main groups: 1) indirect influencing (receipt of decent conduct, personal guarantee, supervision of a minor, bail, etc.); 2) direct influence (detention, transfer of a serviceman under the supervision of a commander, house arrest, imprisonment, forcible transfer, removal from office, confiscation of property). In the presented classification, the measures of protection of the legal order in the form of the abolition of fine, as well as illegal and unreasonable possessive acts, the dismissal of the investigator and the prosecutor from the proceedings, the refusal, the use of rights, the issuance of private awards, etc., are overlooked. Among the means of supply is the absence of a number of possessive actions (testimony, examination, screening, experimentation, sampling for examination, etc.), which are mandatory, despite the discontent of the corresponding process participant.

Tsokolova O.I., in turn, divides criminal procedural coercive measures into the following three groups: 1) coercive measures related to the compulsory separation of the suspect and accused from society (detention, pre-trial detention and house arrest, placement in a medical institution); 2) precautionary measures not related to isolation from the company; 3) other procedural coercive measures.

According to Inogomjanova Z.F. and Tulaganova G.Z. coercive measures of criminal procedure may have different meanings. The volume of all major measures allowed by law in the criminal process is divided into two independent parts: 1) criminal-possessive measures – serve for the successful resolution of criminal judicial functions (additional criminal liability is not applied); 2) criminal-possessive responsibility measures – the violation of criminal-possessive norms is assessed negatively by the state (articles 271, 272, 274 of the Criminal Procedure Code - penalty). The criteria for both cases are the basics and objectives of their application. Thus, coercive measures of criminal procedure and measures of criminal procedural liability are incompatible concepts.

Thus, summarizing the above points, the essence of the criminal procedural coercive measures that can be applied to the participants in the proceedings can be explained by the following criteria:

- a) Is a type of state coercion used by state bodies and officials responsible for criminal proceedings;
- b) The grounds for the application of coercion shall be: the condition that procedural actions be taken even in the event that a party to the proceedings is dissatisfied; annulment of illegal decisions as a result of improper actions of state bodies and officials responsible for criminal proceedings; imposition of a fine as a result of the



actions of a participant in the proceedings (during the trial); application of preventive measures against the suspect and accused by applying precautionary measures;

c) The application of any of the specified procedural coercive measures must be justified (for example, in order to apply a precautionary measure, it must be proved that the accused may be in hiding, the search and seizure must prove that the object is wanted, etc.);

d) In a coercive procedural form and, of course, after the initiation of a criminal case;

e) Restrictions on a person's rights and freedoms as a result of procedural coercion shall be kept to a minimum, out of necessity and necessity;

f) The purpose of the application of procedural coercion - to maintain law and order in the field of criminal proceedings, to prevent and eliminate violations of the law, to determine the truth in each criminal case, to eliminate problems in resolving them; to protect their interests and ultimately assist in the fight against crime.

The concept of restriction of the rights of an individual in criminal proceedings can be defined as follows, given the nature of the coercive measures that can be applied to the participants in the proceedings. To prohibit the full use of the constitutional rights of the participant of the process in order to ensure the implementation of the Criminal Procedure functions on the basis of a just, adequate and established procedure.

At the same time, recognizing that the legal restrictions on the constitutional rights of an individual have a complex classification, it is desirable to divide them into spheres, types and forms, depending on the nature, content and method of implementation.

Firstly, when it comes to the sphere of restriction of the constitutional rights of a person, it is understood that the restriction is related to one or another system of rights, and therefore the sectoral restrictions are classified as follows:

- 1) Constitutional-legal sphere;
- 2) Civil-legal sphere;
- 3) Administrative-legal sphere;
- 4) Crime-legal sphere;
- 5) Criminal procedure sphere;
- 6) Criminal-executive sphere;
- 7) Not related to the sphere of law.

Secondly, measures to limit the rights of a person can be classified according to the following criteria:

- 1) In essence – material and processual;
- 2) By the method of reflection in the law – directly and indirectly;
- 3) By type of restricted rights and freedoms – civil, political, economic-social and socio-cultural;





- 4) By type of regulatory legal Act – law and normative act;
- 5) On the validity period – permanent and temporary;
- 6) At the level of compliance with the law – legal and illegal;
- 7) By size – full and partial.

Thirdly, the restriction of an individual's rights under a restrictive form can take many forms. When we say a form of restriction of the rights of a person, we understand either the manifestation of his essence, or the method of its implementation. Depending on the circumstances, obligations, prohibitions, safeguards, sanctions, liability, etc. may serve as a form of restriction.

Thus, the above classification of the restriction of the rights of an individual is of great importance in preventing the illegal and unreasonable restriction of the rights of participants in the criminal process.

