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EXECUTION PROCEDURE AND CONDITIONS OF THE PENALTY OF
RESTRICTION OF LIBERTY IMPOSED ON JUVENILES

Kulturaeva Sarvinoz

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Abstract: In this thesis, the author examines the particular characteristics of restriction of liberty imposed on juvenile offenders, as well as the unique aspects of their enforcement process.

Keywords: minors, criminal punishment, restriction of liberty, execution of sentence.

The penalty of restriction of liberty imposed on juveniles is provided by the Law of the Republic of Uzbekistan “On Amendments and Additions to Certain Legal Acts of the Republic of Uzbekistan” (No. URL-389) dated 10 August 2015, which amended the Criminal Code of the Republic of Uzbekistan. As one of the punishments alternative to deprivation of liberty, this sanction may be applied as a principal sentence to a juvenile convicted of a crime in the Republic of Uzbekistan, for a term of six months to two years.

It should be noted that the essence of the sanction consists in the court forbidding the convicted person to leave his/her place of residence for reasons established by the court. The restriction may apply for either the entire day or for a specified part of the day. According to the decision of the Supreme Court of the Republic of Uzbekistan Plenum (No. 1 of 3 February 2006), 25¹, the term “place of residence” refers to the dwelling where the convicted person permanently resides, such as a house, an apartment in a multi-storey building, or other residential space [1].

It is equally important to acknowledge that this form of punishment has a long history in foreign jurisdictions – often referred to as “house arrest” – and though named differently, its substance is similar. According to American criminal law scholars J. R. Lilly and R. B. Ball, historically the “house arrest” measure has developed into two types: first, a pre-trial measure by law-enforcement agencies restricting the person to his/her home under strict control; second, a criminal sanction imposed by the court, restricting a convicted person’s freedom while allowing residence at his/her home [2].

From this definition we may infer that the penalty of restriction of liberty consists in restricting the movement of a person found guilty of a crime, without completely severing his/her ties to society, by confining him/her to the residence or other specified living quarters for a certain period under conditions defined by the court. A distinctive feature of the execution of this penalty is that the convicted juvenile does not lose his/her social connection—his/her ties with family members or co-residents may continue—while his/her freedom is still restricted.

Under Article 48¹ of the Criminal Code of the Republic of Uzbekistan the types of prohibitions (restrictions) that a court may impose during execution of the penalty of



Date: 27th October-2025



restriction of liberty are set out. In addition to the main prohibition not to leave the residence, the following additional restrictions may be applied:

- not to visit places prohibited by the court;
- not to participate in public events;
- not to engage in activities prohibited by the court;
- not to possess or carry items prohibited by the court;
- not to operate a vehicle;
- not to change residence, place of work or study without the consent of the penal-executive body;
- not to associate with certain persons;
- not to use communication devices or the Internet;
- not to consume alcoholic beverages;
- to compensate the material and/or moral damage caused to the victim;
- to obtain employment or enrol in education, etc.

Analysis of court practice indicates that some of these restrictions are tailored according to the nature of the crime committed and the social dangerousness of the individual. For example, on 1 April 2021 the Shaykhontokhur District Court of Tashkent City reviewed criminal case No. 1-1003-2104/44 involving a juvenile B. Yusupov, found guilty under Article 266(3)(a) of the Criminal Code, and pursuant to Articles 57 and 841 of the Criminal Code, was sentenced to restriction of liberty for two years. The execution of the sentence was entrusted to the leadership of the local police department at his place of residence. Under Article 481 of the Criminal Code Yusupov was subject to:

- curfew from 21:00 to 07:00;
- not to change residence or employment/education without the supervising authority's consent, and not to leave the Republic;
- not to associate with persons prone to crime;
- not to admit visitors (except close relatives);
- not to consume alcohol or drugs;
- not to operate a vehicle.

Additionally, he was ordered to compensate material damage by 1 May 2021 [3].

It should be stressed that in the Republic of Uzbekistan the execution of the penalty of restriction of liberty is governed by Article 441 of the Criminal-Executive Code of the Republic of Uzbekistan, which stipulates that execution is carried out by the probation unit of the district (city) or by another body designated by the court. The execution procedure and conditions are also regulated by the "Regulations on the Organisation of Execution of Punishments in the Form of Restriction of Liberty, Corrective Labour and Community Service, and on Supervision of Persons Sentenced to Probation" approved by Order No. 157 of the Ministry of Internal Affairs of the Republic of Uzbekistan (dated 27 July 2017).

Distinctive features of execution of the penalty of restriction of liberty include:

Date: 27th October-2025



1. The execution begins from the day the juvenile is registered by the probation unit, and that day is counted in the term. When calculating the term, any period during which the juvenile was absent from his/her residence without valid reason is not added to the term.

2. For juveniles serving this penalty, monitoring and preventive work is carried out jointly by probation inspectors, local state authorities, educational institutions, public organisations and other relevant bodies.

3. For a juvenile under full residence ban to leave, any departure from the administrative area of residence or change of residence requires application to the prosecutor via the penal-executive inspectorate.

4. A personal file is maintained for the convicted juvenile; upon opening the file, a “guardian sheet” is completed and sent to the migration and registration department to control the person’s registration at the place of residence. If the juvenile fails to comply with the execution conditions, the probation unit must issue a written warning listing the prohibitions and restrictions imposed.

5. For juveniles sentenced to restriction of liberty, the court may order electronic monitoring devices connected to the internal affairs department’s duty section.

It should be noted that if a juvenile deliberately evades serving the penalty of restriction of liberty, the supervising authority may submit a motion to the court to replace the restriction with another type of punishment. Under Article 85(4) of the Criminal Code, a penalty of deprivation of liberty may not be imposed on a juvenile who committed a crime before turning eighteen and whose social dangerousness is low, or whose offence was unintentional or minor. Thus, it is appropriate to incorporate into the criminal-executive legislation the rule that if a juvenile sentenced to correctional labour, community service or restriction of liberty evades the penalty, the unserved portion may not be replaced by imprisonment. This would prevent divergent interpretations by courts when substituting another punishment for non-compliance.

Turning to foreign jurisdictions, many European countries, as well as Mexico and the United States, apply the penalty of restriction of liberty and probation supervision to juveniles. These systems often include dedicated officers and psychologists who provide guidance [4].

In Lithuania and Poland the sanction typically imposes duties and restrictions, and in cases of non-fulfilment the court may replace it with cash payment to the victims’ fund [5].

In England electronic monitoring of juveniles under restriction of liberty is under the jurisdiction of the probation service. In Singapore the youth policy and sports ministry administers the probation service for juveniles. In the Russian Federation’s Criminal-Executive Code, a juvenile may be authorised to leave the place of residence if death or serious illness of a close relative occurs, or medical treatment cannot be provided at the residence, or there is a natural disaster [6].

Date: 27th October-2025

Given this, it is advisable to introduce into Uzbek legislation a norm specifying under what circumstances a juvenile subject to restriction of liberty may leave the place of residence (for example, in case of natural disaster or medical emergency). Such a norm would help avoid varying interpretations by execution bodies when determining cases of evasion of the penalty.

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