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Research Article

LIMITS OF ACCOUNTING FOR CASES OF MITIGATING PUNISHMENT IN THE APPOINTMENT OF PUNISHMENT BY THE COURTS ACCORDING TO THE CRIMINAL LAW OF UZBEKISTAN

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ABSTRACT

In this article, the author analyzes limits of accounting for cases of mitigating punishment in the appointment of punishment by the courts according to the criminal law of Uzbekistan.

The article scientifically-theoretically analyzes theoretical and legal problems of limits of accounting for cases of mitigating punishment in the appointment of punishment by the courts according to the Criminal Code of the Republic of Uzbekistan. In this case, the signs of the objective side of this crime, its specifics are covered on the basis of the opinions of national and foreign scientists, as well as legislative analysis.

As author explains the mitigating circumstances specified in the special part of the Criminal Code of Uzbekistan serve a special function: they lead to the occurrence of a type of criminal content, consequently, to the creation of a different sanction. Given this role, these circumstances are valid as special signs of the crime. Such crimes are called crimes, which have cases of mitigating punishment.

Proposals for the development of national legislation have been put forward in the analyzed issue.

KEYWORDS

Theory of criminal law, qualification of an act, mitigating circumstances, lowering the level of social danger, judicial practice, recalculation of mitigating circumstances.

INTRODUCTION

In the theory of criminal law, two types of mitigating situations are distinguished: those that are included in the criminal structure and affect the qualification of an act (provided for in the special part of the Criminal Code of Uzbekistan); those that are not included in the

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criminal structure and affect the punishment (provided for in the General part of the Criminal Code of Uzbekistan). This distinction is based on the norms of the Criminal Code, since in criminal law cases of mitigating punishment perform various tasks. Consequently, these cases can be divided into two separate groups: 1) cases that qualify specific criminal compositions; 2) cases that alleviate punishment.

Cases of the first type are considered a means of differentiating criminal liability, and the legislator determines with its help the punishment that usually has to be assigned. Cases of the second type are considered a means of individualization of punishment, and the court determines a separate punishment with its help.

Among the crimes in which Criminal Code of Uzbekistan has cases of mitigating punishment are the following:

- deliberate manslaughter by deviating from the limits of necessary defense (article 100;
- deliberate murder, deviating from the limits of the necessary measures to apprehend a person who committed a socially dangerous act (Art. 101);
- to deviate from the limits of necessary defense and intentionally inflict severe bodily harm (Art. 107);
- intentionally causing severe bodily harm by deviating from the limits of the necessary measures to apprehend a person who committed a socially dangerous act (Art. 108).

MATERIALS AND METHODS

The doctrinal views on the limits of accounting for cases of mitigating punishment in the appointment of punishment by the courts according to the criminal law of Uzbekistan. For this, methods of scientific cognition were used, such as analysis, historical-comparative method, abstraction and comparison.

RESULTS OF RESEARCH

Mitigating circumstances are important for the qualification of a criminal offense, seriously lowering the level of social danger of both the offense and the person who committed it, affecting the penalty and greatly reducing it. For example, intentional homicide qualifies under Section 97 (1) of Criminal Code of Uzbekistan. The sanction of this article provides for punishment in the form of imprisonment for ten to fifteen years [1]. However, if the intentional killing was committed by deviating from the necessary defensive limit, which applies as a sign of the composition of the crime, the act is qualified under Section 100 of the Criminal Code of Uzbekistan and punishable by up to three years of correctional work or imprisonment for up to three years.

According to Part 3 of Article 55 of the Criminal Code of Uzbekistan, if the state of mitigation of punishment is provided for by the article of the special part of this code as a necessary sign of the content of the crime, it is not re-taken into account in the appointment of punishment, that is, the legislator took them into account at the time of within the framework of these sanctions, the judge prescribes a separate punishment to a particular person, taking into account other mitigating circumstances specified and not specified in the law [2]. Thus, the Legislature has set limits on the consideration of cases that mitigate punishment when imposing a penalty.

In particular, the mitigating condition of" deviating from the limits of necessary defense " is an inevitable sign of crimes in articles 100 and 107 of the Criminal Code of Uzbekistan. Consequently, it cannot be re-accounted for when prescribing penalties for committing the specified crimes [3].

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In terms of the law, "unlawful violence or grave abuse committed by the victim, as well as his other unlawful acts", which caused the commission of crimes provided for by articles 98 and 106 of the Criminal Code of Uzbekistan, cannot be re-taken into account as a mitigating condition in the appointment of punishment, since it is indicated as a sign of the composition of the crime in Article 98 of the Criminal Code of Uzbekistan provides for a punishment for intentional killing in the event of intense mental arousal. The disposition of this article states: "deliberate manslaughter in the event of a sudden state of intense mental excitement caused by unlawful violence or severe abuse committed by the victim, as well as by his other acts of indecency".

Article 106 of the Criminal Code of Uzbekistan provides for punishment for intentionally causing severe or moderately severe bodily harm in the event of intense mental arousal. The disposition of this article states: "the intentional infliction of severe or moderately severe bodily harm in the event of sudden intense mental excitement caused by unlawful violence or severe abuse committed by the victim, as well as by other acts of non-conformity that can cause the death or health of the culprit or his loved one".

In the contents of this crime, the legislator associates the emergence of a state of intense mental excitement with the alleged abuse or grave abuse committed by the victim, as well as his other illegal actions, that is, the state of mitigating this punishment is an inevitable sign of the crime, and this excludes the possibility of re-accounting it when prescribing punishment [4].

Judicial practice analysis suggests that recalculation of mitigating circumstances may occur in other situations. For example, the case of an" incomplete crime " is taken into account by the courts as a mitigating situation under Part 2 of Article 55 of Criminal Code of Uzbekistan, while the law (Article 58) sets out special rules for the appointment of punishment for an incomplete crime.

In particular, under Section 58 (2) of the Criminal Code of Uzbekistan, "the term or amount of punishment for preparing for a crime and for an attempt to commit a crime shall not exceed three quarters of the maximum penalty provided for in the relevant article of the special part of this code".

Thus, when the court prescribes the punishment for the guilty person for preparing for the crime or for an attempt to commit a crime. It follows the provisions of Article 58. This article provides for a more lenient punishment than a crime that is specially drawn up and that's it, taking into account the circumstances mentioned. The fact that the crime is not the end is also taken into account as a mitigating condition of punishment means that the same situation is taken into account twice [5].

The composition of each crime also indicates the type and amount of punishment, that is, the sanction, within the limits established by law. Within the same sanction, the subject must be assigned a certain penalty [6]. When prescribing a separate punishment within the framework of a sanction, cases of mitigating punishment, taken into account as an element of the composition of the crime, are of paramount importance [7].

For example, a state of intense mental arousal is a qualifying sign of criminal content, such as deliberate manslaughter, intentional infliction of severe or moderately severe bodily harm. At the same time, the depth of the state of intense mental arousal, the degree of its severity, is not the same. Within the framework of the term" strong mental arousal", different levels of this condition can be distinguished,

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and when imposing a punishment, this should be taken into account as a state of mitigating responsibility [8]."

For his part, Traynin put forward the opposite point of view: "in the composition of the crime, the type and amount of punishment corresponding to the crime in question is indicated within the limits established by law. This task of the composition of the crime is determined by the fact that with each general sample definition given to the crime in the disposition of the law, with the composition of each crime, the general sample punishment, which is always established by the sanction of the law, is appropriate. The basis for the application of the model punishment is served by characters included as elements in the composition of the crime, and the basis for the application of the individual punishment – characters not included in the crime. At the disposal of the judge remains a wide range of cases that are not included in the composition of the crime as criteria for determining individual punishment [9]." Thus, the author did not admit that the mitigating circumstances intended as a sign of the content of the crime could have an effect on the individualization of punishment.

In Leikina's view, " the legislator lists among the aggravating and mitigating circumstances such that they will be relevant to the determination of the penalty and its individualization, not including in the composition of the crime as its signs. And the specific content of the signs of the composition of the crime is taken into account not as mitigating (aggravating) cases of punishment, but as those that characterize the degree of social danger of the crime committed [10]". In other words, the author does not deny the possibility of double accounting for the same circumstances, the fact that certain signs of the content of the crime can affect the degree of social danger of the crime and the punishment.

Some scholars have completely denied that Penal mitigation cases can be seen as qualifying signs of criminal content. For example, Kruglikov wrote: "opinions seem doubtful that mitigating and aggravating circumstances can apply to the composition of a crime itself or its individual characters and play the role of inevitable signs of the composition of a crime [11]".

Thus, the mitigating state of punishment, which is intended as a sign of the composition of the crime, cannot be re-taken into account when prescribing punishment, but the court can take into account the degree of manifestation of this state in practice when determining the penalty. This cannot be re-taken into account the same situation. The degree of manifestation of the sign of the composition of the crime in practice applies as a completely new, separate punishment-relieving state, affecting the type and amount of punishment.

Taking into account the above, we believe that in order to achieve uniform application of criminal law, it is necessary to bring the legislative point of view to an evolutionary conclusion and state Part 3 of Article 55 of the Criminal Code of Uzbekistan in a new wording.

It should be noted that the legislator, while prohibiting re-accounting for the mitigating condition provided for in the article of the special part of the Criminal Code of Uzbekistan as a sign of the composition of the crime, allows re-accounting for the mitigating condition provided for in the General part of the Criminal Code of Uzbekistan in the appointment of punishment.

For example, the seventh section of the General part of the Criminal Code of Uzbekistan is devoted to the features of juvenile liability. Article 81 of the Criminal Code of Uzbekistan provides for types of punishment assigned to minors, whose terms and amounts are

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significantly reduced in comparison with the general procedure. At the same time, the commission of a minor's crime was defined as an independent mitigation of punishment in Part 1 of Article 55 of the Criminal Code of Uzbekistan.

Consequently, the courts follow the provisions of the seventh section of the General part of the Criminal Code of Uzbekistan, which provides for a lighter punishment, taking into account the age and mental-physiological characteristics of persons of this category, when prescribing penalties for juvenile offenders, at the same time taking into account the mitigating condition of this punishment under Article 55 of the Criminal Code of Uzbekistan. Thus, a double relaxation of punishment occurs.

In our view, this approach of the legislator contradicts the rule of the theory of criminal law that the same state of mitigation of punishment cannot be taken into account twice.

In this context, the suitability of clause "j", enshrined in Section 1 of Article 55 of Criminal Code of Uzbekistan, raises serious doubt.

For this reason, we have proposed to exclude the mitigating condition of this punishment from Part 1 of Article 55 of the Criminal Code of Uzbekistan.

In addition to the situations mentioned above, the circumstances that mitigate the punishment in the appointment of a sentence cannot also be re-accounted for as circumstances characterizing the identity of the culprit.

In other words, if this or that mitigating condition is provided by law (Part 1 of Article 55 of Criminal Code of Uzbekistan) as a mitigating condition, or is found to be a mitigating condition according to the open list of mitigating conditions (Part 2 of Article 55 of Criminal Code of Uzbekistan), it cannot be re-accounted for in describing the identity of the culprit.

At the same time, the analysis of judgments indicates that the courts include among the circumstances characterizing the person of the culprit a positive description from the place of residence or work, awards for combat and selfless labor, prior non-conviction (for the first time being prosecuted), remorse for his actions, confession of his own guilt, the presence of the guilty, that is to say that in practice they refer to the Penal mitigation cases provided for by Section 55 (1) of the Criminal Code of Uzbekistan and to those not provided for by the law as penal mitigation cases, but treated as penal mitigation cases under Section 55 (2) of the Criminal Code of Uzbekistan. Thus, the same case is given a double legal assessment, which is contrary to the general principles of imposing punishment.

At this point, a natural question arises: is the accounting of information about the person of the culprit not superfluous in the system of general grounds for the appointment of punishment, after all, the information describing the identity of the culprit is practically covered by circumstances that alleviate the punishment?

But the person of the culprit can also be described from the negative side, and according to the content of Article 56 of the Criminal Code of Uzbekistan, the list of aggravating circumstances is exhaustive and cannot be widely interpreted. In such a situation, we are not given a list of circumstances aggravating the punishment so that information about the identity of the culprit is excluded from the line of criteria for imposing a penalty, and at the same time, circumstances characterizing the person of the culprit from the negative side can be taken into account within Article 56 of the Criminal Code of Uzbekistan.

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The law defines the nature of social danger of a crime as another criterion for imposing punishment. In accordance with the decision of the plenum of the Supreme Court of the Republic of Uzbekistan No. 1 of February 3, 2006 "On the practice of punishment for crimes by the courts", the nature of social danger of a crime is the object of aggression (human life and health, property, public safety, etc.k.), the form of guilt, is determined by which category (Article 15 of Criminal Code of Uzbekistan) the criminal act is included in the law [12]. At the same time, the object of aggression, the form of guilt and the category of the crime are taken into account by the legislature when drawing up the sanction of the substance for the crime committed, and, in our eyes, do not need re-accounting.

For the first time in the history of the criminal law of Uzbekistan, the rule that provides for the possibility of expanding the list of cases of mitigation of punishment was enshrined in Article 33 of the fundamentals of the criminal law of the Union of the SSR and allied Republics adopted in 1958, and this applies to the description of the perpetrator, consequently, all the circumstances that required the relief of punishment were associated with the realization that it was impossible to reflect in the law.

Thus, the introduction of this new rule into the law was motivated by many years of judicial practice. Despite the fact that the law has firmly established a full list of cases of mitigation of punishment, for many years, cases of mitigation of punishment not specified in the law have been taken into account when prescribing punishment by courts.

V.I.Tkachenko, in his work" General fundamentals of sentencing", states that judicial practice includes among the mitigating circumstances the following:

- violation of the work of mechanisms, violation of the influence of the forces of nature on social relations guarded by law, deviating from the limits of the measures allowed at the time to eliminate the threat posed by aggressive actions of animals;
- committing a crime by deviating from the limits of the measures allowed at the time of the capture of the offender;
- committing a crime by deviating from the limits of the measures allowed at the time of forcing actions to fulfill a legal duty;
- committing a crime under the influence of strong mental excitement caused by actions not related to a violation of the law (betrayal of a wife or husband) or actions directed against objects such as private property, safety of movement, order of management, as well as committing a crime against life and health behind negligence under its influence;
- committing a crime in the conditions of defense against false aggression [13].

In short, the mitigating circumstances of punishment not specified in the law were widely used in judicial practice both before and after their application was allowed by law.

Article 55 of the Criminal Code of Uzbekistan provides for an open list of mitigating circumstances, which gives courts the right to consider other circumstances not provided for by this article as mitigating circumstances when imposing a sentence. But the finding of this situation as a mitigating state of punishment should be justified in the verdict.

Judicial practice analysis shows that the following cases are accounted for by the courts as mitigating circumstances of punishment:

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- previous non-conviction (first conviction, first commission of a crime, previous non-prosecution);
- positive characterization from the place of work (study, separation from society) ;
- the presence of persons incapable of labor in their care (including the presence of underage children);
- the presence of diseases (including the presence of mental anomalies);
- satisfactory characterization;
- that there are no serious consequences as a result of the crime;
- that the victim begged not to be severely punished;
- that the crime is not so severe;
- crime is not complete;
- engaged in socially useful work;
- the performance of the culprit;
- that the culprit played a less active role in committing a crime.

In addition, some judges have also taken into account the following circumstances as mitigating circumstances in their sentencing:

- the fact that the Labor team issued a petition to soften the punishment;
- separation of protectors from the public by the Labor team;
- a minor living in a guilty family (not coming out of the influence of his parents);
- study in higher and secondary educational institutions;
- that the culprit did not receive a salary for a long time;
- the fact that the family is in a difficult financial situation;
- that the culprit fell under the influence of people older than him (persons with criminal experience;
- that the culprit has taken a course of treatment from addiction;
- that the war is disabled;
- that the culprit is an old man;
- the awareness of the untruthfulness of his actions;
- deeply regretted his deed;
- independent suspension of criminal actions (in this case, the point is to voluntarily return from committing a crime);
- positive characterization by the victim;
- -lack of occupation;
- committing a crime on the basis of an adversarial relationship;
- entering the path of moral recovery;
- lack of prior administrative responsibility;
- for the past three years after the commission of the crime, the defendant has not committed any offenses.

Judicial practice also takes into account the "absence of severe consequences" as a mitigating condition for punishment. We have doubts about the validity of this finding to be a mitigating state of punishment.

The results of the study of the criminal compositions provided for in the special part of the Criminal Code of Uzbekistan indicate that most of them were intended as a sign that qualified the origin of severe consequences, taking into account the fact that the legislator set tightened sanctions. Consequently, lighter sanctions are provided for in criminal compositions that do not have this sign, and they do not require self-relief even at the expense of considering the absence of severe consequences as a mitigating condition for punishment. Therefore, the fact that the absence of severe consequences is seen as a mitigating condition for punishment, in our opinion, is not appropriate.

We also have doubts about the legality and validity of considering a case of" First-Time Crime "("previous non-conviction"," first-time criminal prosecution","

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non-administrative liability") as a mitigating case of punishment.

While Malkov opposes the fact that this situation is considered as a mitigating situation, he argues that committing a crime (for the first time or again) should not alleviate the punishment, but cause the punishment to be applied [14].

According to Salikhov, the courts have found "first-time crime"to be a mitigating condition of punishment, and in practice encourage the individual to commit a crime. The absence of a state of conviction is a normal and natural state of a citizen who is subject to the law. Consequently, it is not appropriate to encourage a person who committed a crime for the first time, that is, to alleviate the punishment taking into account this sign [15].

In our opinion, signs such as "First-Time Crime", "less serious crime" should not be taken into account in judicial practice as mitigating circumstances of punishment.

First-time Commission of a crime is typical of most crimes, while the lesser severity of a criminal act is taken into account by the legislature in drawing up the sanction and by the court in determining the social hazard nature of the crime.

The same can be said about such cases as "committing a moderately serious crime", "committing a crime behind negligence", which are considered by the courts as unreasonably mitigating circumstances of punishment.

An analysis of case law shows that courts often consider a positive characterization of the culprit from the place of residence, work, study as a mitigating circumstance of punishment when imposing a sentence. It is certainly impossible to completely deny the importance of information that characterizes the culprit from a positive side. In a number of cases, such descriptive information may reflect the original appearance of the culprit. At the same time, as Myasnikov noted, there are no cases that exclude the application of this rule: most serial killers were positively characterized as hardworking employees and family people from the workplace and place of residence, although these were actually nothing more than roles well played by cruel criminals[16].

As practice shows, officials who occupy responsible positions, commit serious crimes, are subject to a light punishment, not proportional to the act, due to which they are positively characterized, who evade socially useful labor, individuals who are not well-off with neighbors, who are alcoholic, who are less serious, or who have committed moderately serious crimes are condemned to be separated from society. This indicates that this situation should be re-evaluated.

In addition, the analysis of judicial practice shows that the courts use descriptions of the identity of the culprit in the appointment of a sentence without clarifying the relevant information. Sometimes this or that information describing the culprit is unreasonably taken into account.

Examples of cases where the factual information presented in the sentences, which characterizes the culprit, collides with the materials of the criminal case, are also not uncommon. This indicates that the courts do not take this situation as seriously as it should be taken into account.

Over time, under the influence of one or another situation, in connection with certain changes that have occurred in the country, certain Penal mitigation situations have lost their significance, it is the need to

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take into account other penal mitigation situations that are characteristic of this period.

In particular, after the Chernobyl AES accident on April 28, 1986, the courts began to consider the fact that the culprit was involved in ending the consequences of the accident in CHAES as a mitigating circumstance of punishment.

At the same time, it should be noted that the consideration of one or another cases as mitigating circumstances of punishment is individual in each particular situation and directly depends on the object of aggression. Certain mitigating circumstances can be taken into account when imposing penalties on persons who have committed any crimes, some mitigating circumstances are specific only to crimes against the person, while some mitigating circumstances are specific only to crimes against private property, etc.

For example, the mitigating punishment of" no material damage " is specific only to economic crimes, crimes against private property, and crimes that may result in property damage to a state, owner, or other property owner as a result of their commission.

Such mitigating circumstances as" serious financial situation","lack of a source of livelihood " can only be taken into account when prescribing penalties for persons who have committed economic crimes, crimes against private property, and crimes with tamagiric intentions.

The mitigating condition of the punishment of" providing assistance to the victim in treatment " is typical only for crimes in which the life or health of the victim is valid, either directly or as an additional object.

CONCLUSION

Taking into account the above, we believe that in order to achieve the same application of criminal law, it is necessary to bring the legislative point of view to an evolutionary conclusion and state Part 3 of Article 55 of the Criminal Code of Uzbekistan in the following wording:

"Punishment is not taken into account in the appointment of punishment if the mitigating condition is provided in the relevant article of a special part of this code as a necessary sign of the content of the crime, or in relation to it, a special rule is provided for in the General part of this code. The court can take into account the degree of its manifestation in practice when setting a penalty".

In order to solve this problem, the decision of the plenum of the Supreme Court will also be purposeful if appropriate explanations are given.

But the person of the culprit can also be described from the negative side, and according to the content of Article 56 of the Criminal Code of Uzbekistan, the list of aggravating circumstances is exhaustive and cannot be widely interpreted.

In such a situation, it is advisable to expand the list of punitive cases so that information about the identity of the culprit is excluded from the line of criteria for imposing a penalty, and at the same time, circumstances that characterize the person of the culprit from the negative side can be taken into account within Article 56 of the JC.

The law defines the nature of social danger of a crime as another criterion for imposing punishment. In accordance with the decision of the plenum of the Supreme Court of the Republic of Uzbekistan No. 1 of February 3, 2006 "On the practice of punishment for

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