

Peculiarities of Sentencing Persons with Mental Disorders That Do Not Exclude Mental Disorders

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Abstract: In our republic, attention has been paid to establishing responsibility for the commission of crimes by persons with mental disorders, bringing it in line with international standards, and a number of measures have been taken to overcome the legal gap and contradictions that hinder the effective protection of citizens' rights and freedoms. In this regard, early detection and diagnosis of mental disorders, improving the quality of treatment for people with mental disorders and the consistent continuation of the policy of improving criminal legislation, the widespread introduction of the humanistic principle into criminal penalties and their enforcement system are identified among the priorities for the development of the judicial and legal sphere, and research in this area is becoming increasingly important.

Keywords: Responsibility, punishment, crime, sanity, limited sanity, sentencing, mental disorder.

Introduction: According to Article 181 of the Criminal Code, a mental disorder of a person that does not preclude sanity legally entails the following two consequences: 1) is taken into account by the court when imposing a sentence; 2) the possibility of imposing compulsory medical measures.

The law does not clearly regulate how a mental disorder of a person is taken into account by the court when imposing a sentence, which does not preclude sanity, therefore the norm set forth in Article 181 of the Criminal Code of the Republic of Uzbekistan can be applied differently in law enforcement practice. The Supreme Court of the Republic of Uzbekistan did not express a specific position regarding persons suffering from mental disorders that do not preclude sanity. This issue is not reflected in Resolution No. 23 of December 12, 2008, "On Judicial Practice in the Application of Compulsory Medical Measures to Persons Suffering from Mental Disorders"[1]. According to Article 181 of the Criminal Code of the Republic of Uzbekistan, this circumstance does not apply to a mitigating or aggravating circumstance, it can only be taken into account when imposing a sentence.

Below we can list several approaches that may arise in

judicial practice and take this category into account when imposing punishment.

First approach. Mental disorders of a person that do not preclude sanity are not taken into account when imposing a sentence (determining the type and amount of punishment) and are important for resolving the issue of imposing compulsory medical measures only if there are appropriate recommendations of the forensic psychiatric report.

Second approach. The court officially states that it takes into account a mental disorder that does not preclude insanity when imposing a sentence, but does not specify how this is expressed; in fact, this does not affect the punishment.

Third approach. Actual consideration as a mitigating circumstance.

In this category of work, the following approaches can be distinguished:

1) Indication as a mitigating circumstance directly, but in conjunction with other mitigating circumstances. For example: confession, sincere repentance or active assistance in solving the crime, first conviction, state of health (mental disorder that does not preclude sanity).

It should be noted that the court may not explicitly

indicate a mental disorder that does not preclude sanity as a mitigating circumstance (taking into account the ambiguity of judicial practice), but may actually impose a sentence at the lower limit, which can be justified by information about the person and the state of health, as well as the unlawful actions of the victim.

If a minor suffers from a mental disorder that does not preclude sanity, the courts, as a rule, should reduce the punishment. In all such cases, the mental disorder of a minor is considered a mitigating factor.

For example, if a minor has mild intellectual disability with emotional-volitional disorders, as a result of which they are unable to fully understand and control their actions, the court should take this circumstance into account.

There may also be cases of incomplete consideration of the categories specified in Article 181 of the Criminal Code of the Republic of Uzbekistan. Courts do not take this into account when imposing punishment and do not impose compulsory medical measures, even if there are grounds for this, confirmed by a forensic psychiatric examination.

It can be said that, in accordance with

In the application of the category of law specified in part 1 of Article 181, the question of how this circumstance should be taken into account when imposing punishment and in what form it should be reflected in the court verdict presents serious difficulties. It is noteworthy that in the descriptive and substantiating part of the sentence, the courts believe that in one case, a mental disorder that does not preclude sanity may actually serve as a mitigating circumstance and affect the amount of punishment, and in another case, this may not be the case.

Without referring to the theory of criminal law, this issue cannot be resolved. The approaches of various researchers to the issue of criminal liability of such subjects, including taking into account historical retrospective, are as follows.

Limited sanity as an aggravating circumstance. Currently, this position exists in a somewhat vague form. For example, R.I. Mikheev proposes to consider a mental disorder that does not preclude sanity as an aggravating circumstance if the person evades the application of compulsory medical measures and commits a new crime, as well as in the case of using their mental disorders to evade responsibility or commit a crime [2]. However, the list of aggravating circumstances (Article 56 of the Criminal Code of the Republic of Uzbekistan) is not interpreted in a closed and even extended manner within the framework of the description of the person, and such amendments to

the law contradict the principles of justice and humanism. The illness should not be considered an aggravating circumstance and should not worsen the condition of the convict [3].

A similar approach can be seen in the proposals of some authors who propose to exclude the possibility of parole for persons suffering from mental disorders or make the possibility of parole dependent on the presence and risk of mental disorders.

Such proposals direct legal regulation towards the initial provisions of the anthropological and sociological schools of criminal law, which propose the appointment of vague sentences (without a court decision on the term of punishment), the extension of the term of imprisonment imposed by the court after its expiration, the application of preventive security measures only on the basis of the potential danger of a person with a mental disorder [4]. From the point of view of modern reality, the inadequacy of such an approach becomes apparent, since it contradicts the principle of guaranteeing human rights enshrined in the Constitution of the Republic of Uzbekistan, leads to the imposition of an objective accusation, contradicts the principles of responsibility for guilt (Article 9 of the Criminal Code of the Republic of Uzbekistan), justice (Article 8 of the Criminal Code of the Republic of Uzbekistan), humanism (Article 7 of the Criminal Code of the Republic of Uzbekistan), the grounds for criminal liability (Article 16 of the Criminal Code of the Republic of Uzbekistan).

Limited sanity is a mitigating circumstance. In the literature, there is a position that a mental disorder that does not exclude sanity is a mitigating circumstance, therefore short terms of imprisonment should be established instead of long terms [5]. According to some authors, the mitigation of punishment stems directly from the provision of the law, since part 2 of Article 181 of the Criminal Code of the Republic of Uzbekistan requires taking into account mental disorders when imposing a sentence [6]. A number of authors propose to include this category in the list of mitigating circumstances established by part 1 of Article 55 of the Criminal Code of the Republic of Uzbekistan, and the corresponding article (Article 181) clearly indicates that a mental disorder of a person should be taken into account by the court as a mitigating circumstance in a manner that does not preclude sanity [7].

In the case of different expressions, authors from this point of view approach the solution of this issue within the framework of the concept of diminished sanity: as a result of a mental disorder, a person has less freedom, less guilt, and therefore should be punished less.

According to G.V. Nazarenko, the principle of proportional reduction of guilt exists in the judicial practice of Poland, Germany, and other countries [8].

As noted above, the inconsistency of the concept of "reduced sanity" was substantiated by Yu.M. Antonyan and S.V. Borodin [9]. As a result of a mental disorder, not the guilt itself, but only the ability to consciously perform voluntary actions is limited.

We agree that as a result of the unconditional reduction of punishment, a certain category of persons suffering from mental illnesses may have "a certain impression of the privilege of their mental state," which will allow them to commit a crime again without fear of severe punishment [10].

Based on the foregoing, we consider the proposals of individual authors to include mental illnesses that do not preclude sanity in the list of mitigating circumstances (part 1 of Article 55 of the Criminal Code of the Republic of Uzbekistan) to be justified. For abnormal subjects, the mandatory mitigation of punishment corresponds to the purposes of the punishment, the principle of correspondence of the imposed punishment to the degree of social danger of the committed act and the personality of the guilty party.

However, another circumstance - completely ignoring this circumstance when imposing a sentence - is unacceptable. It is not always possible to approach the solution of this issue from the point of view of the criminal liability of fully sane persons. As a result of a mental disorder, the ability for conscious-volitional behavior in committing a crime can be significantly limited. As a result of the influence of a mental disorder, especially in its interaction with a severe psychotraumatic situation or other psychogenic factors, the level of awareness of the surrounding reality significantly decreases, permissible boundaries are eroded, the boundaries of normative behavior become blurred; factors holding impulsive motives and reactions, internal criminal motivation, are pushed aside; the reasons for refusing to carry out criminal intentions become blurred and unclear. The individual finds themselves in a situation where the line separating their legal behavior from crime turns out to be so insurmountable. Such a person has a certain level of consciousness and will, even if it is decreased, and there are signs in their psyche that determine intent or negligence, but in some cases this circumstance must be taken into account when imposing punishment.

In our view, the point of view of V.A.Melik-Mkrtchyan, which substantiates the necessity of applying long terms of imprisonment to the considered category of persons, is controversial. Undoubtedly, a relatively long

stay in a correctional institution allows for adaptation to the conditions of serving the sentence, but such adaptation does not contribute to special prevention, taking into account the high probability of criminogenic poisoning of the individual. Individuals with mental disorders are more easily influenced by others and are released socially maladjusted with a deformation of personal settings [11].

Limited sanity manifests itself in some cases as a mitigating circumstance, and in some cases as a circumstance that does not affect the punishment.

According to some authors, limitation should be considered as a mitigating circumstance only in context and along with all other circumstances of the case. According to the authors of this point of view, limited sanity should not play a decisive and fundamental role in sentencing, it can be considered by the court as a mitigating circumstance, however, it may not be recognized as such and may remain neutral. This should be considered as a mitigating circumstance due to the nature and degree of social danger of the crime, the personality of the perpetrator, aggravating and mitigating circumstances, and, among other things, limited sanity [12]. Undoubtedly, the court must proceed from the general grounds for sentencing (Article 54 of the Criminal Code of the Republic of Uzbekistan), that is, take into account the nature and degree of social danger of the crime and the personality of the criminal, including mitigating and aggravating circumstances. At the same time, one of the elements of the characteristic is a mental disorder that does not exclude sanity.

However, proponents of this position do not specify in which specific "other circumstances" limited sanity is considered a mitigating circumstance and in which case it should remain neutral. If we proceed from the rule that limited sanity acts as a mitigating circumstance only in connection with other mitigating circumstances, in the absence of aggravating circumstances, when the social danger of the crime is not very high, this largely nullifies the consideration of this category as such. This is analogous to the idea that, for example, the minority of the offender is taken into account as a mitigating circumstance, if there are no aggravating circumstances. In our view, supporters of this position do not resolve the issue of taking into account limited sanity, but in fact circumvent it, referring to the general grounds for imposing punishment. In this regard, we consider it necessary to further develop this position, to more clearly define the criteria under which conditions (in which cases) limited sanity can be a mitigating state and under which conditions it should remain a neutral state.

In some cases, the situation arises not caused by the subject, not dependent on his will, or against his will. Such an objective situation, interacting with the peculiarities of the pathological manifestation of a mental disorder, disrupts the subject's volitional abilities when there is an immediate object capable of satisfying this need, when it is unable to overcome the impulses of an actual need. Preliminary planning, a clear program of actions, and the deliberation of a criminal plan are absent, since such individuals are characterized by the choice of inadequate goals, methods, means, and instruments of committing a crime in a directly arising situation [13].

However, within the framework this psychopathological mechanism, a mental disorder does not always serve as the main direct cause of committing a crime and the implementation of criminal intent. In some cases, a person can intentionally create psychogenic situation themselves. The implementation of criminal intent is determined not by the presence of a mental disorder, but by the personality itself, its values and moral views. Impulsive acts can also be caused by a strictly emphasized attitude towards an action repeatedly committed by this person (kleptomania, pyromania) [14]. At the same time, a person has the opportunity to overcome the suddenly arising need to commit an act, recognized by him as illegal and socially dangerous, if he makes volitional attempts, knows how to control himself.

In this regard, we support the point of view of O.D. Sitkovskaya, according to which it is necessary to pose the question of whether a person is aware of the presence of a psychological disorder in themselves, their character, and the possibility of influencing behavior in a certain situation [15]. Based on the case materials and expert opinions, the court must study important issues for the individualization punishment: whether the subject sought to reduce the risk of falling into a criminal psychogenic situation, whether they sought a legal way out of this situation, whether they demonstrated sufficient volitional efforts and compensation methods to restrain their criminal interest, whether they consumed alcohol, whether provocative, victim-like behavior was carried out by the victims. In the case of a positive answer, the issue of mitigating the punishment may be raised.

The most common sexual crimes are rape and acts of sexual violence. Conducted by individuals with excitable, less frequently unstable, schizoid, and psychasthenic types of psychopathy. At the same time, more than half of those convicted of rape (both those with and without mental disorders) treat women extremely negatively, blaming them for their actions. S. Grof sees in this a "perinatal aspect" - an attempt to

unconsciously reproduce the state of biological birth, causing violence, suffering, suffocation, arousal, while at the same time taking revenge on the mother in the person of his victim [16]. The process of forming motivation for sexual behavior in men (both psychopathic and mentally healthy) is mainly determined by deviations in psychosocial development, the presence of intrapersonal and interpersonal conflicts.

Sexual murders are most often observed in epileptoid and schizoid psychopaths [17]. There are the following motives for their commission: in order to suppress the victim's resistance (here the perinatal aspect is visible), in order to hide the traces of a sexual crime. Sexual sadism is often widespread among people suffering from excitable or schizoid type psychopathy, intellectual disability, and organic brain damage [18]. The main motivation for this type of crime is aggressive-egoistic (self-affirmation), aggressive-aversion (unconsciously repeating the state of biological birth), and orgasmic relief [19].

Comparison of the motivation of sexual offenders suffering from mental disorders with the results of studying the motives of sexual crimes of mentally competent individuals [20] allows us to conclude that the motives of both categories of sexual crimes are the same: 1) overcoming sexual tension, achieving orgasm; 2) self-affirmation, personal compensation due to the victim's humiliation; 3) resolution of intrapersonal or interpersonal conflicts; 4) educational motive; 5) entertainment motive.

Thus, within the framework of the considered pathopsychological mechanism, a mental disorder disrupts only the first two levels of conscious-volitional regulation (needs and their objectification) and does not significantly affect the third level (thematic-social actions), does not affect the implementation of the decision to commit a sexual crime.

In the literature, there are statements that pathological sexual desires can be so strong that they are deprived of the ability to refrain from the corresponding actions [21].

However, our study of the personality of serial sex killers showed that in most cases, they created conditions for committing crimes and were prepared for them (A.R. Chikatilo, who, under a valid pretext, lured the victims into a forest thicket or other, quieter place; V.S. Kulik gained the children's trust and lured them to a deserted place; A. E. Slivko managed a children's tourist camp, whose members were involved in the production of "adventure films," S. A. Golovkin equipped a basement in his garage for violent sexual acts and the killing of teenagers, G. M. Mikhasevich

lured the victims into his car and took them to a deserted place.

When preparing for crimes, they demonstrated rationality and caution (A.R. Chikatilo, G.M. Mikhasevich adhered to a clear action plan for recruiting victims, V.S. Kulik abandoned his criminal intentions at the slightest threat and fled the scene), often hiding traces of the crime (A.Yu. Pichushkin escaped from the corpses through sewer hatches - all missing persons were considered missing for a long time).

It is important to note that sexual offenders are aware of the strength of their sexual interests, the peculiarities of their course, their stimulation or weakening, the specific influence of certain triggers on their psyche in certain situations. For example, A. E. Slivko, in letters to his wife and in his diary, expressed the fear that children might inherit his anomaly, described in detail the wave-like nature of the occurrence of "deviations," the specific influence of blood odor on it, and the stimulating effect of awareness of the secrecy of his actions [22]. Yu.L. Tsyuman noted in his testimony the awareness of the harmful effects of alcohol on it, as well as the stimulating effect of the legs of women in black tights [23].

A specific stimulus that intensifies a pathological need can be provoked by the subject themselves or arise against their will. However, a person can exhibit strong volitional actions, restrain themselves by applying known compensation methods, or, conversely, intensify stimulating influences and increase pathological needs. Moreover, in most cases, a person is able to behave and control themselves even when violence begins to be used against the victim. The level of self-control can decrease to a certain extent only after the implementation of criminal intent begins.

Based on the foregoing, we believe that a mental sexual disorder affects only the deformation of sexual desire, transformation into deviant forms (only stereotypical methods of satisfaction, typical instruments and means of crime, stereotypical victims affect the choice of the subject), but lies at the basis of the implementation of the decision to commit a sexual crime. In the psychopathological mechanism of committing crimes related to the disruption of the subjecting of needs, the most important role is played by the personality of the subject (his criminal inclinations and views, ignoring socially acceptable methods of behavior), often creating a criminal psychogenic situation, intensifying his pathological desires. In this case, a mental disorder that does not preclude sanity cannot be considered a mitigating circumstance.

The psychopathological mechanism of crimes committed through negligence deserves separate study. However, the scope of this research does not allow for a detailed consideration of this issue. It should be noted that G.V. Nazarenko believes that the punishment of mentally retarded subjects can be mitigated "for crimes committed through negligence in the presence of a causal link between a socially dangerous consequence and a mental disorder" [24], since mental disorders suppress mental reactions, complicate the perception of surrounding reality and the ability to foresee the consequences of actions being committed. In general, we can agree with such a proposal.

Thus, experiments conducted by V.V. Guldan revealed the following fact: in the stories of mentally healthy individuals, the categories of past and future occur in 75% of cases, and in psychopathic individuals - only in 15% [25]. Mental disorders contribute to the manifestation of carelessness, negligence, and self-confidence, which underlie the commission of crimes through negligence.

However, we cannot say that in all cases of negligent crimes committed by persons with limited sanity, a psychological disorder serves as the main reason for committing a crime. We believe that the issue of imposing punishment for crimes committed through negligence should be resolved in each specific case based on a justified approach, a triad of factors of criminal behavior: "syndrome - person - situation."

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Based on the foregoing, we believe that an individual approach is necessary in solving the issue of mitigating punishment for persons with disabilities. In each specific criminally significant situation, the court (based on a detailed analysis of the case materials and the descriptive part of the expert psychiatric report) must determine what was the main reason for the commission of the crime, what played an important role in the acceptance and implementation of this criminal intent - the individual (his antisocial views, criminal worldview, disregard or disrespect for legal prohibitions) or a mental disorder (specific features of its genesis, the dynamics of its course, the syndrome).

If external factors played a decisive role in the

mechanism of the criminal act - the objective situation (for example, a provocative event not caused by the subject, arising against his will, a conflict, affective, psychogenic, and other situation) is interconnected with the peculiarities of the pathological manifestation of his mental disorder, in which case the punishment should be mitigated.

We consider the mitigation of punishment in this case to be fair and justified. Schizotypic disorder caused suspicion, a feeling of jealousy, and an inadequate affective reaction in a conflict situation. The decisive role in the mechanism of the criminal act was played not by the personality of the subject, not by his criminal views and inclinations, but by the psychogenic situation, interacting with the peculiarities of the pathological manifestation of the mental disorder.

A mental disorder that does not preclude sanity cannot be a mitigating circumstance if the decisive role was played by antisocial views and inclinations related to the personality of the subject (the criminal psychogenic situation was created by him, the danger of falling into such a situation was ignored, the peculiarities of his pathological manifestations in certain situations, he led himself to a psychotic explosion, did not show the necessary volitional actions, methods of compensation to restrain his pathological inclinations until they acquired an irresistible character).

In our opinion, it is advisable that the Plenum of the Supreme Court of the Republic of Uzbekistan, with the involvement of expert psychologists and psychiatrists, based on the generalization of judicial practice, provide appropriate recommendations for the application of Article 181 of the Criminal Code of the Republic of Uzbekistan, direct the law enforcement officer according to the specifics of certain psychopathological mechanisms of committing criminal acts, the degree of influence of certain mental disorders on criminal behavior in typical situations. The implementation of these proposals will allow avoiding errors in judicial and investigative practice and a more complete and comprehensive study of the circumstances of the case against persons suffering from mental disorders that do not preclude sanity.

Nazarimizda, Oʻzbekiston Respublikasi Oliy sudi Plenumi tomonidan ekspert-psixolog va psixiatlarni jalb qilgan holda sud amaliyotini umumlashtirish asosida Oʻzbekiston Respublikasi Jinoyat kodeksining 181-moddasini qoʻllash boʻyicha tegishli tavsiyalar berilishi, huquqni qoʻllovchini jinoiy qilmishlarni sodir etishning muayyan psixopatologik mexanizmlarining oʻziga xos xususiyatlari, muayyan ruhiy buzilishlarning tipik vaziyatlarda jinoiy xulq-atvorga ta'siri darajasi boʻyicha yoʻnaltirish maqsadga muvofiq hisoblanadi. Ushbu

takliflarning amalga oshirilishi sud va tergov amaliyotida xatolarga yoʻl qoʻymaslik va aqli rasolikni istisno qilmaydigan ruhiy buzilishga chalingan shaxslarga nisbatan ishning holatlarini yanada toʻliq va har tomonlama oʻrganish imkonini beradi.

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