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THE CONCEPT OF PUNISHMENT AND GENERAL PRINCIPLES OF INFLICTION OF PENALTY IN CRIMINAL LEGISLATION OF UZBEKISTAN

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ABSTRACT

The article states that sentencing is the final stage of a crime, which can only be distinguished by the differences between the parties involved in the process. Also, issues related to the general principles of sentencing are presented on the basis of examples from the works of our ancient national scholars. Special attention was paid to examples of only one sentence for a crime committed in sentencing matters, and it was noted that according to the provisions of criminal law, each crime must require the application of only one main punishment, a special solution does not comply with the principles of humanity and justice. In addition, this article analyzes the general principles of sentencing, the theoretical views of scholars on the circumstances to be considered and mitigating circumstances in it, divided into four groups. At the same time, the issue of relevance of the norms of criminal law and mitigating circumstances in sentencing is analyzed on the basis of the Criminal Code of the Republic of Uzbekistan and the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of sentencing by courts". appropriate proposals have been developed.

KEYWORDS

Punishment, sentencing, form of guilt, aggravating and mitigating circumstances, act, damage, etc.

INTRODUCTION

It is known that the non-imposition of a fair punishment for the person who committed the crime leads to the violation of the principles of legality, justice and responsibility for the crime of the criminal law.

In criminal law, the rules of sentencing and the qualification of the crime make it possible to distinguish one crime from another.

Sentencing is the most responsible stage of the court's activity, where the principle of justice of the criminal law is manifested in practice and the level of justice implementation is revealed. Appointing a fair punishment to the person who committed the crime, taking into account his personality, the social danger of the crime committed, the amount of damage caused by the crime, and other circumstances of the case, makes the person who committed the crime feel that he has received a punishment commensurate with his deed. The emergence of such a feeling is the first, but the most important achievement of the purpose of punishment[1].

Courts must first ensure that the offense is properly characterized before sentencing. One of the main reasons why courts make mistakes in sentencing is that they do not give due importance to the nature of the crime [2].

Most of the issues will be resolved at the sentencing stage. A number of scientists argue that the unjustified imposition of severe punishment causes the subject to feel dissatisfaction with injustice, distrust of justice and the law, and such a situation becomes an obstacle to achieving the purpose of punishment [3].

In turn, one of the other important requirements for the punishment to be imposed is that the punishment should be fair. Ensuring that punishments are legal and

fair remains one of the urgent tasks facing the practice and theory of criminal law today. "We need to think deeply about the legality and fairness of every decision made by the judges. In this regard, it is necessary to ensure the true independence of the judiciary and the inevitability of responsibility for interfering with the judicial system. When deciding the fate of a person, the judge must have only justice in his mind, only truth in his language, and purity in his language" [4].

Punishment is the final stage of the committed crime, which can be distinguished only by the mutual differences of the parties involved in this process. The difference is that if the crime is committed by an individual, the punishment is applied by the court on behalf of the state, that is, the punishment is a legal consequence that follows naturally after the commission of the crime.

We can also find issues related to the general principles of punishment in the works of our ancient national scientists. For example, our well-known compatriot Abu Nasr Farabi said that it is fair to determine the punishment depending on whether the crime is dangerous or not harmful to the society, because the main goal of the law enforcement officers is also fair, even if methods such as beating with a stick and execution are used to achieve justice, they are not justice emphasizes that they are not great methods of decision-making [5].

In the period of Timurids, the "Temur Laws" is distinguished by the fact that special attention is paid to the issue of punishment. It is important that the punishment measures applied to the offenders in the country are elaborated in every way. In particular, it is said that no haste in sentencing is allowed.

In the Law, it is said about maintaining discipline in the kingdom by punishing sons, grandsons, relatives, emirs and ministers: "Trustworthy and important people of the royal palace should not be in a hurry to kill them, even if they betray the affairs of the kingdom and try to overthrow the kingdom. First of all, let them check the identity of their accusers and informers. Let the detractors test the truth of their claims by hitting a mica stone (a black colored stone used to determine the purity of silver and gold). Because in many cases, envious people and gossipers either blindly or greedily weave a lie, pretend it is real and achieve their goals. If the elders of the village and the elders of the city oppress a person of a lower rank, they should impose a fine commensurate with that oppression and the fault of each person. If the leaders and governors oppressed the people and ruined them, let them be punished. If someone's sin is proven, if they take a fine from him, then they should not flog him again. If they punish with whipping, they should not take a fine from him" [6].

As we have seen, at first, in sentencing matters, special emphasis was placed on the imposition of only one sentence for the crime committed.

The general principles of sentencing are specified in the first part of Article 54 of the Criminal Code of the Republic of Uzbekistan, and in the second part, the circumstances to be taken into account by the court when sentencing are listed.

We considered it appropriate to analyze the opinions of scientists about punishment by dividing them into four groups.

Although the scientists of the first group distinguished the general principles of sentencing and the circumstances to be taken into account in sentencing

as separate topics, they did not distinguish them as concepts [7].

In the works of Russian scientists, the general principles of sentencing and the circumstances taken into account in sentencing are not separated as legal categories. In particular, in commentaries on the Russian Criminal Code, when commenting on the general grounds for sentencing, it is limited to commenting on the circumstances that should be taken into account by the court in sentencing with the general grounds provided by the law [8]. In particular, while A.I. Rarog emphasizes the approach to the circumstances taken into account by the court from the point of view of individualization of the punishment, he does not define the circumstances taken into account when imposing the punishment [9].

However, this category is also mentioned in the second part of the article, which is known as the general grounds of sentencing. A similar situation is observed in the works of other Russian scientists [10]. Scholars of this group define the general principles of sentencing as the basic requirements established by law that must be followed by the court when sentencing each defendant, stressing that the general principles of sentencing are recognized as legality, justice and individuality of punishment, and the general principles of sentencing lists the following cases as:

- the maximum term of punishment does not exceed the limit established for a specific crime;
- the individualization of the punishment, at the same time, scientists belonging to this group include in these cases the degree and nature of the social danger of the crime committed, the personality of the guilty person, as well as all social characteristics, all aggravating and mitigating

circumstances, family conditions of the guilty person [11].

Scholars of the second group emphasize that the general basis of sentencing is related to the principles of criminal law. In particular, M. Rustamboev said that the general principles of sentencing are primarily related to the principles of the criminal law, that Article 10 of the Criminal Code of the Republic of Uzbekistan states that "every person who is found to have the elements of a crime must be held accountable", with the principles of Articles 4-10 of the Criminal Code stating that the imposition of punishment is directly related, it is emphasized that the punishment or other legal impact measure applied to a person guilty of a crime should be fair as an example of his opinion. That is, the general principles of sentencing should be in accordance with the level of social danger of the crime, and the court emphasizes the consideration of a number of issues of sentencing in accordance with the provisions of the General Part, within the framework defined in the article on responsibility for committing a crime of the Special Part of the Criminal Code [12].

D.J.Suyunova and B.D.Akhrorov, while analyzing the problems of sentencing, showed that, first of all, in sentencing, all principles of criminal responsibility, including legality, equality of citizens before the law, democracy, humanity, justice, and the inevitability of responsibility should be followed [13]. At this point, it is worth noting that the debate among most scholars whether all the principles of the General part of the Criminal Code apply to the general principles of sentencing is still unresolved. Some, including T.V. Nepomnyashiy, believe that the principles of humanity, justice, and legality of criminal law belong to the general basis of sentencing, while other scientists support the view that not all principles of criminal law, but only the differentiation of punishment is the

general basis of sentencing. Other principles such as legality, humanity, and justice are universal legal principles.

M. Usmonaliev put forward a similar opinion, according to the general principles of punishment: firstly, it is related to the general principles of the criminal law; secondly, the general basis of sentencing is that the court imposes a sentence in accordance with the provisions of the General Part within the framework defined in the Article of the Special Part of the Criminal Code, which provides for responsibility for committing a crime; thirdly, another general basis for the imposed punishments is that it states that the punishment must be imposed in accordance with the norms of the general part of the criminal law [14].

It is noteworthy that the scholars of the third group, when they say the general grounds of sentencing, list all the grounds taken into account in sentencing as general grounds [15]. Including N.P. Pechnikov and V.N. Chernyshov indicated the following factors as the general basis for sentencing:

- 1) the issue of a person's guilt is decided only by the court;
- 2) appointment of one of the types of punishments provided for in the relevant article of the Special Part of the Civil Code;
- 3) taking into account all norms and principles of the General Part of the Criminal Code (justice, inevitability of responsibility, humanity, etc.) when imposing punishment;
- 4) taking into account the nature of the crime and the level of social danger when imposing a punishment;
- 5) presence of mitigating and aggravating circumstances;
- 6) marital status of the guilty person.

According to V. Duyunov, the general basis of sentencing is a set of rules of principle importance in assigning any type of punishment for any crime provided by the court [16].

M.I. Bajanov emphasizes that the general principles of sentencing are the criteria set by the law that the court should follow when sentencing in each specific case [17]. V.P. Malkov defined the general principles of sentencing as the initial rule formed in the current criminal legislation, which must be followed by the court in each specific case. G.S. Gaverov described the general grounds of sentencing as the requirements established by the criminal law, which must be based on the court's sentencing [18].

Scholars in the fourth group connect the general principles of sentencing with the process of applying the sanctions of the criminal law. This also follows from the content of the law. According to Part 1 of Article 54 of the Criminal Code of the Republic of Uzbekistan, "...the court shall impose a punishment in accordance with the provisions of the General Part within the framework specified in the Article of the Special Part of this Code, which provides for responsibility for committing a crime."

M. Kh. Rustamboev stated that the legal consequence of committing a crime in accordance with the provisions of the criminal law is the imposition of punishment, where each crime must require the application of only one main punishment, the special solution of this issue does not correspond to the principles of humanity and justice [19]. In our opinion, consistent adherence to the general principles of sentencing, uniform application of the law and consistency of judicial practice should serve to ensure fair sentencing by the court.

The opinions put forward about the general grounds of sentencing are almost similar, and the general grounds of sentencing are legal requirements that must be taken into account by the court when setting a sentence and at the same time stem from the principles of the criminal law.

The general principles of sentencing include mitigating and aggravating circumstances to be taken into account in sentencing [20]. Also, when we analyzed the verdicts on the punishments imposed on several crimes and several verdicts, we witnessed cases where the punishment was imposed without taking into account the previous and subsequent behavior of the defendant, the living conditions of the defendant.

Regarding the general issues of sentencing, the Supreme Court, while making a separate comment on each of the circumstances that are taken into account when imposing a punishment, which is strengthened in the criminal law, interpreted the scope of the circumstances that are taken into account when imposing a punishment in a wider way, and the object of the crime is an attack on the nature of social danger (human life and health, property, public safety and etc.), explains the form of guilt, which category of the criminal act is included in the law (Article 15 of the Criminal Code) [21].

The level of social danger of a crime, unlike the nature of social danger, includes the circumstances of the crime, i.e., the level and stages of the realization of the criminal intent, the method of committing the crime, the amount of damage or the severity of the consequences, the role of the defendant in the crime committed in participation [22].

The level of social danger of crime is an indicator of this quantity. The type and amount of the sanction is

determined by the article of the Special Part of the Criminal Code. The social danger of the crime is determined by the object of the attack. This is a necessary sign for qualification. If the objective factors describing the person of the culprit include age, gender, pregnancy status, his conviction, behavior in the family, society, occupation, state or social status are included in the social factors [23].

In addition, mitigating circumstances in sentencing in criminal law are one of the controversial issues in the scientific circle of jurists. The relevance of mitigating circumstances in sentencing is explained by the fact that the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of sentencing by courts for crimes" and Article 55 of the Criminal Code do not limit the scope of mitigating circumstances. Therefore, during sentencing, other circumstances not specified in this article may be taken into account as mitigating circumstances (for example, the first time a crime of low social danger is committed, the defendant has a young child, the crime is committed due to showing mercy to someone, the perpetrator directly committed the crime then providing medical or other assistance to the victim, etc.). The conclusion that such a situation is considered mitigating must be justified in the sentence [24].

Circumstances mitigating the punishment are the circumstances that reduce the level of social danger of the committed crime and the person who committed the crime and are the basis for imposing a lighter punishment. The Criminal Code of Uzbekistan (Article 55) provides a list of mitigating circumstances. It is not strict, and the court may consider other circumstances not specified in this article as mitigating circumstances when sentencing the guilty party. Macalan, the presence of young children in the care of the perpetrator, elderly or disabled parents are mitigating

circumstances. Mitigating circumstances are not part of the crime, but are outside of it. If two or more crimes were committed and a person pleaded guilty to some of them, this circumstance is taken into account as a mitigating factor only at the time of sentencing for the crimes for which the plea was filed [25]. There is no firm consensus on the scope of mitigating circumstances by the court in sentencing. In this regard, a group of scientists believes that it is necessary to clearly define the scope of mitigating circumstances when imposing punishment. Partially agreeing with this opinion, it is necessary to expand the range of mitigating circumstances in sentencing based on the views of scientists and the analysis of court judgments. Based on this opinion, it is proposed to add the following to Article 55 of the Criminal Code.

Article 55. Mitigating circumstances:

- 1) plead guilty, show sincere remorse, or actively assist in solving a crime;
- 2) reconciliation with the victim (civil claimant);
- 3) voluntary elimination of material damage caused by crime;
- 4) providing medical or other assistance to the victim after the crime has been committed;
- 5) committing a crime due to difficult personal and family conditions or in other difficult situations;
- 6) committing a crime due to coercion or financial, service or other dependence;
- 7) committing a crime in a state of strong mental excitement caused by violence, severe insult or other illegal actions of the victim;
- 8) committing a crime beyond the reasonable limits of necessary defense and last necessity, causing damage in the course of apprehending a person who has committed a socially dangerous act;
- 9) committing a crime by a minor;

- 10) the presence of a minor child under the care of the perpetrator;
- 11) the commission of a crime by a pregnant woman;
- 12) committing a crime under the influence of the victim's illegal or immoral behavior;
- 13) serious illness of the guilty party or his/her parents, other persons replacing them, their incapacity for work;
- 14) that the guilty parent or the child has no other breadwinner.

When imposing a sentence, the court may consider other circumstances not provided for in this article as extenuating circumstances.

If the mitigating circumstance is provided as a necessary feature of the crime in the article of the Special Part of this Code, it is not taken into account when imposing a punishment.

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