



Research Article

INFLECTING PENALTY IN THE CRIMINAL LAW OF UZBEKISTAN

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ABSTRACT

This article analyzes some features of improving the penal institution for criminal offenses in Uzbekistan's criminal law. In particular, the theoretical views of scientists on the commission of several crimes and recidivism are studied. At the end of the article, the author developed proposals to improve criminal law in this area.

KEYWORDS

Criminal law, punishment, multiple crimes, recidivism, judgement, conviction and more.

INTRODUCTION

In recent years, the Republic of Uzbekistan has undergone significant organizational and legal reforms in the fight against corruption. Judicial and legal reforms play an important role in this. An example of this is the Resolution of the President of the Republic

of Uzbekistan dated 07.11.2018 No PP-4006 "On the Measures for Radical Improvement of Criminal and



Penal Legislation" on improvement measures "and many others.¹

At the same time, the ongoing judicial and legal reforms, in particular in the criminal law, require the comprehensive study of their institutions in law enforcement and practice.

One of such institutions is the institution of punishment for several crimes. Analyzing the theoretical views of scholars on the use of penalties for several crimes, we see that in most cases, scholars give a definition of the institution by its type. In this regard, we analyze the theoretical perspectives of national and foreign scholars on the imposition of penalties for several crimes by dividing them into five groups. After all, its forms are essential in understanding the nature of the institution of punishment for several crimes.

The first group of scholars describe the concept of committing several crimes as criminal offenses as committing crimes with the same criminal nature. In particular, G.G.Krivotapov committed several crimes:

- a) The commission of two or more crimes, specified by one or more articles (the part of the clause) of the Criminal Law;
- b) Each of the two or more crimes is committed independently and is recognized as a single offense and qualifies with separate clauses of the criminal law (parts of the clause);

¹ The resolution of the President of the Republic of Uzbekistan from November 7, 2017 of No. PP-4006 "About measures for radical improvement of the criminal executive legislation" decisions of the Government of the Republic of Uzbekistan " www.lex.uz

² The criminal law of Russia. Practical course: textbook // Wolters Kluwer Russia. 2010. - S.772

³ U.Aloev. Q.Rozimova . Some issues of observance of international legal norms of fight against legalization of criminal incomes in the Republic of Uzbekistan. Jour of Adv

- c) It considers that every crime is part of a number of offenses must retain its criminal and legal consequences arising from its fact.²

U.Aloev also commented that the majority of countries do not define the concept of "multiple crimes" in the criminal law, noting that the criminal law envisages a clause or part or some clause or clause of the Special Part of the Criminal Code. Offenses that two or more offenses committed by one and the same person at the same time or at different times constitute several offenses.³

The second group of scholars describe several definitions of crime based on several forms of crime. In particular, according to I.G Vozjannikova, several types of crimes referred to in the General Part of the Criminal Code. In particular, according to IG Vozjannikova, several types of crimes referred to in the General Part of the Criminal Code, such as a set of crimes, multiple convictions, recidivism and conviction of a person who has no criminal recidivism, are understood as several crimes.⁴ According to V.P Malkov, several crimes are manifested in two ways: duplication and an ideal set of crimes, and these two concepts are equal and equal legal concepts.⁵

Chapter 8 of the Criminal Code of the Republic of Uzbekistan does not define the concept of "several crimes", except for several types of crimes (Clause 32 of the Criminal Code), crimes (Clause 33 of the Criminal

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⁴I.G. Vozjannikova. Relapse of crimes in the criminal law of Russia: concept, types, meaning. The dissertation is for the degree of candidate of legal sciences in the specialty 12.00.08 - criminal law and criminology; penal law. - Moscow 2014, - p. 12-13.

⁵ Malkov V.P. The multiplicity of crimes: the nature, types, legal meaning Monograph. Kazan: Taglimat, 2006 .-- 140



Code), recidivism (Clause 34 of the Criminal Code) several crimes are understood.

The third group of scholars describe several concepts of crime based on real and ideal aggregate characteristics of crimes. In particular, A.I. Sorokin emphasizes the "real and ideal" features of a number of crimes, with the preservation of criminal legal consequences for these crimes and no procedural barriers to prosecution.⁶

While explaining several notions of crime, it is necessary to take into account that in some cases more than one offense is committed at different times, in other cases several crimes under one or more articles of the Special Part of the Criminal Code are committed simultaneously.

The fact that two or more crimes are committed by one and the same person at different times is fundamentally different. That is, if in some cases several offenses are committed without being prosecuted for any crime committed, in other cases, after the person has been prosecuted for the crime (during the preliminary investigation or at the trial), moreover, crime is different from the criminal liability or punishment on the grounds provided by Clauses 66, 661, 68, 70, 73, 75, 76.

The fourth group of scholars, in a number of criminal terms, envisages not only the conviction but also the conviction. According to V.P. Malkov, a number of

crimes mean "committing two or more crimes by a person, whether at least two of them, without legal consequences or without procedural barriers to prosecution, whether or not they have been convicted."⁷ V.V. Savin emphasized that it is expedient to consolidate the notion of several crimes in criminal law, including several crimes, regardless of the conviction of two or more offenses, provided by various clauses or parts of the Special Part of the Criminal Code. The preservation of the criminal consequences of at least two of the crimes and the procedure for initiation of a criminal case.⁸ M.S. Rustambaev expressed the same opinion, saying that under the law, a number of crimes mean that two or more crimes have been committed by a person, regardless of whether or not they have been convicted.⁹

I.B. Agaev said that the commission of two or more crimes, which expressed the signs of the composition of an independent crime, if at least two of these crimes do not have cases of denial of criminal and legal consequences, a person for these crimes will be found to commit several crimes, regardless of whether the person was previously brought to criminal responsibility.¹⁰

The fifth group of scientists consider several concepts of crime to be the same as repeated crime. Some scholars argue that the name of several criminal institutions does not fully reflect the essence of the

⁶ A.I. Sorokin The multiplicity of crimes and its criminal law assessment. Abstract of dissertation for the degree of candidate of legal sciences in the specialty 12.00.08 - criminal law and criminology, Criminal executive law. - Moscow, 2008. - S. 12.

⁷ Malkov V.P. The multiplicity of crimes: the nature, types, legal meaning Monograph. Kazan: Taglimat, 2006. - 140 p.

⁸ Good. E.V. Application of criminal law. Moscow - 2004, S-506

⁹ Rustambaev M.Kh. Comments to the Criminal Code of the Republic of Uzbekistan: General Part - Tashkent: Science, 2016. - B. 608.

¹⁰ Agaev I. B. Multiplicity and repetition of crimes in the qualification of criminal law acts of terrorism against security: national and international aspects // International cooperation of Eurasian states: politics, economics, law. M., No. 1 2017. P.74



term, and argues that the use of the term "multiple crimes" or "repetition of crimes" is correct.¹¹

It should be noted that all crimes that constitute several crimes are committed by only one person, regardless of the individual's role, that is, the performer, the organizer, the proof-bearer, and the assistant.¹² In identifying several crimes, only those acts that are the basis for prosecution are taken into account. If the grounds for prosecution of a person for an act are void, such a crime shall not be counted in the culpability of several offenses. Nor does it take into account the expiration of a criminal record.¹³

Based on the above, several definitions of crime are suggested as follows:

Multiple offenses mean two or more crimes committed by a person.

According to the current criminal legislation of the Republic of Uzbekistan, recidivism is the most dangerous type of crime. This is because of the persistence of criminal intentions, the reluctance of the perpetrator to return to the right path, and his disrespectful treatment of public order in more severe ways than in other forms of recidivism. The unification and professionalism of this category of criminals also

have a negative impact on the quality of crime. This indicates a high level of social danger of recidivism.

Clause 34 of the Criminal Code establishes recidivism, which is a particular type of crime, and commits a new intentional crime after a previous conviction for a deliberate crime. In criminal law, recidivism is divided into ordinary, dangerous, very dangerous types. These types of penalties are applied to recidivism based on these types of punishment.¹⁴

Before examining specifics of imposing punishment for recidivism, let us briefly dwell on the concept of recidivism. "Recidiv" is derived from the Latin word "recidivus", which means "returning."¹⁵

We analyze scholars' views on the concept of recidivism by dividing them into the following groups:

Scientists of the first group argue that reckless crimes should also be considered recidivism. I.M.Tyazhkova notes that reckless offenses should also be regarded as recidivism, and that the harm caused by carelessness is almost equal to the amount of damage committed by intentional crimes.¹⁶ Kozlov also proposes to include recidivism in the current criminal law, which includes not only the intentional form of guilt but also the form of negligence.¹⁷

¹¹ Matlyubov B. The totality of crimes: qualification. Textbook. - Toshkent, 2008. - P.72.

¹² Geldibaev M.Kh. -Criminal law (general part) additions made to the Russian criminal law, M: 2016. - P.164.

¹³ U.Aloev. Q.Rozimova. "Some Features of Improving the Penal Institution for Several Crimes in the Criminal Law of Uzbekistan in the Fight against Corruption" Journal Of Adv Research in Dynamical & Control Systems, (Q 4) 2020. Vol. 12, Issue-02.

¹⁴ K.Rozimova. U.Aloev. Heybatollah Najandiamnesh. ON SOME OF THE REASONS IN THE REGULATORY LEGAL ACTS THAT INFLUENCE THE OCCURRENCE OF CORRUPTION.

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¹⁵ Allanova A. Leaving and entering illegally the Republic of Uzbekistan (instructions and specific features) //Review of law sciences. – 2018. – T. 2. – №. 2. – C. 29.

¹⁶ Tyazhkova I.M. Negligent crimes using sources of increased danger. - St. Petersburg, 2002.S. 15-16.

¹⁷ Kozlov A.P., Sevastyanov A.P. Single and multiple crimes. St. Petersburg, 2011. S. 208–209.



Second group scholars, however, note that there is a significant difference between the level of social danger of carelessness and deliberate crime. I.G.Vozjannikova argues that it is not worthwhile to introduce crimes committed in the form of carelessness of the crime into the relapse, since quite a long time the relapse crime is applied only to repeated intentional crimes, on the other hand, the difference between the intentional crime and the intentional crime is greater.¹⁸

We do not think that reckless crimes should be included in recidivism. Because, under the current criminal law, the presence of an institution of criminal conviction for negligent crimes is irrelevant and has no criminal consequences. In addition, reckless offenses are also recidivism, which is the principle of justice provided for in Clause 8 of the Criminal Code, namely the imposition of punishment or other legal action on a person guilty of a crime, the gravity of the crime, the public danger of the crime. The requirement of compliance with the degree of violation of the law generally violates the concept of recidivism, which has been in effect for many years, as well as the structure of the existing criminal legislation.

Depending on the content of the Criminal Code. According to M. Rustamboev, recidivism is considered to be a deliberate new crime after a person has been convicted for a premeditated crime.¹⁹ Usmanaliev describes a recidivism of a person who was convicted

for a premeditated crime and committed a deliberate new crime without expiry of the term of conviction or removal of him in accordance with the law.²⁰

Tohirov pays great attention to the high level of social danger of the recidivist and emphasizes the need to further strengthen the responsibility for crimes committed by such recidivists.²¹ A.Allanova also gave a similar definition of recidivism.²²

Does this mean that a deliberate crime is recidivist from the time the judgement is announced to the date of enactment?

This issue was also mentioned in the Supreme Court's Resolution "On Qualifying Crimes in Commitment of Several Crimes" according to which a new crime committed from the moment of pronouncement of the sentence before the conviction of a convict, constitutes a recidivism. not enough. At the same time, according to Clause 56 of the Criminal Code, recidivism is considered as one of the aggravating circumstances. In addition, in a number of articles of the Special Part of the Criminal Code, recidivism is specifically designated as a qualifying mark.

The difference in the recidivism of a dangerous recidivism in an existing criminal offense is a deliberate new offense committed by a person who has committed a crime similar to the one previously convicted, and in other cases provided by the Criminal Code for other crimes. For example, if a person who

¹⁸ I.G. Vozzhnikova Relapse of crimes in the criminal law of Russia: concept, types, meaning. The dissertation for the degree of candidate of legal sciences, specialty 12.00.08 - criminal law and criminology; penal law. - Moscow, 2014. - 60 p.

¹⁹ Rustamboev M.H. Criminal Law. General part. - Tashkent. Science ZIYO, 2005. - B. 315.

²⁰ Usmanaliev M. Criminal law. General part. - Tashkent. The New Generation, 2005. 324.

²¹ ohirov F. Problems of liability for sexual crimes under the laws of the Republic of Uzbekistan. Author's dissertation for the degree of Doctor of Laws. - Tashkent, 2007.

²² ALLANOVA A. A. The Concept of Tanosil (Sexually Transmitted Infections) or HIV/AIDS Transmission and Criminal Liability Issues //International Journal of Pharmaceutical Research. – 2020. – T. 12. – №. 4.



has robbed someone else's property after the conviction has committed the same theft, his or her act will be punished by a sentence under Clause 169 (3) (a) of the Criminal Code that provides for liability for a "dangerous recidivist". This may also apply to robbery, extortion, embezzlement or racketeering.

The crimes committed by persons who have been repeatedly granted the status of a dangerous recidivist after committing several crimes, also differ in the manner in which they are committed and by other means. It is noteworthy that the number of especially dangerous recidivists is growing in our country. If in 2016 there were detected 103 extremely dangerous recidivists in the republic, in 2017 the number of especially dangerous recidivists was 114.²³

Based on the foregoing considerations, it is important to note that the above data, based on the goals and objectives of the Concept of Improving Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan, approved by the Decree of the President of the Republic of Uzbekistan dated May 14, 2018, No. PP-3723, provide the only interpretation.²⁴

The current edition of the Criminal Code provides for a more severe recidivist or a particularly dangerous recidivist's responsibility for the relevant crimes. This rule is the reason for the use of aggravating circumstances and, consequently, the reason for raising the liability in the absence of aggravating circumstances on an "objective" basis, even if a person has committed a crime. For example, a person who is

recognized as a particularly dangerous recidivist commits a crime which is punishable under Part 1 of Clause 169 of the Criminal Code. Since the person has previously been recognized as a dangerous recidivist, his / her actions will be qualified under Part 16 of Clause 169 of the Criminal Code. As this example shows, the person was actually committing a minor crime but was convicted of a very serious crime. This rule is contrary to the principles of fairness, as a person has already served a sentence for a previous crime or a conviction has not been affected by the punishment for a new crime.

In addition, only serious and very serious crimes should be taken into account when recognizing a dangerous recidivist. This prevents unreasonable enhancement of responsibility. The same experience can be found in the Criminal Code of Kazakhstan. In this regard, it is advisable to refuse responsibility for the repetition of articles in the Special Part of the Criminal Code.

The experience of foreign countries (France, Japan, Korea) shows that these countries are not classified into recidivism types according to the severity of crimes in the CB. These crimes are taken into account only in sentencing.

In our opinion, it is still too early to completely abandon recidivism, so it is advisable for the JC to consider two types of recidivism in sentencing.

When deciding whether to recognize a person as a recidivist or a dangerous recidivist, his conviction for a

²³ K.Rozimova. U.Aloev. Heybatollah Najandiamnesh. ON SOME OF THE REASONS IN THE REGULATORY LEGAL ACTS THAT INFLUENCE THE OCCURRENCE OF CORRUPTION. European Journal of Molecular & Clinical Medicine. ISSN 2515-8260 Volume 07, Issue 02, 2020

²⁴ The Concept of Improvement of Criminal and Criminal Procedure Legislation of the Republic of Uzbekistan. Decree

of the President of the Republic of Uzbekistan "On Measures for Radical Improvement of the Criminal and Criminal Procedure Legislation System". May 14, 2018, pp. 3723. National Database of Legislative Acts, 15.05.2018, No. 07/18/3723/1225, No. 01/18/5547/1975

crime committed before the age of eighteen years, as well as the expiry or expulsion of conviction in the manner prescribed by law should not be taken into account.

In this regard, we propose to make the following amendments and additions to Clause 34 of the Criminal Code:

Clause 34 Recidivism

Part 2 A serious recidivist shall be deemed to be a crime committed by a person who has committed a serious and very serious crime, as well as an earlier serious crime.

Part 3 When deciding whether to recognize a person as a recidivist or a dangerous recidivist, his conviction for a crime committed before the age of eighteen, as well as the expiry or expulsion of conviction in the manner prescribed by law, shall not be taken into account.

We may say that although several forms of crime include recidivism, cumulative crimes and recidivism, only penalties for cumulative crimes are imposed under the provisions of Clause 59 of the Criminal Code. Penalty for recurrent and recidivism, which is a form of several crimes, is imposed by the articles of the Special Part of the Criminal Code, which are considered to be necessary symbols. It may be noted that this chapter is based on the analysis of the problems and criminal law practices that have been investigated in the course of the study, as well as repeatedly introducing criminal penalties for recidivism, as well as improving criminal law and recidivism rates. It is advisable to supplement with Clause 59-1. Given the fact that today, recidivism and recidivism are excluded from the relevant articles of the Special Part of the Criminal Code as qualifying marks, it is appropriate to introduce this norm.

There is also the need to introduce a special rule of punishment for recidivism, taking into account the social danger of new crimes committed by previously convicted persons.

Clause 59-1 Imposition of punishment for recidivism

When imposing a sentence for recidivism or a dangerous recidivism, the degree of the previous and subsequent crime shall be taken into account.

A person may not be exempted from criminal liability and punishment for recidivism and dangerous recidivism, as provided by the Special Part of the Criminal Code.

Radical improvement of the criminal legislation of the country is important in the implementation of systemic reforms in the fight against corruption. In this regard, the proposals and recommendations developed to improve several criminal law institutions in the course of the investigation will serve to further improve the Criminal Code of the Republic of Uzbekistan.

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