



Research Article

THEORETICAL AND PRACTICAL ASPECTS OF SENTENCING FOR CRIMES IN WHICH THE GUILTY IS TRULY REMORSEFUL AND A PLEA AGREEMENT HAS BEEN CONCLUDED

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Qunduz Yuldashevna Rozimova

Associate Professor Of The Department Of Criminal Law, Criminology And Anti-Corruption Of Tashkent State University Of Law, Phd In Law, Uzbekistan

ABSTRACT

This article analyzes the theoretical and practical aspects of sentencing for crimes in which the guilty is truly remorseful and plea bargains have been concluded. Also, the issues related to sentencing for crimes in which the guilty has actually repented of his actions and a plea agreement has been made are analyzed based on the opinions of national and foreign scholars. In this article, the issues of sentencing for crimes in which the guilty is actually remorseful for his actions and a plea agreement has been concluded are analyzed based on the decisions of the Plenum of the Supreme Court. The issues of concluding a plea agreement and imposing punishment for crimes committed were also considered in the Criminal Code of the Republic of Uzbekistan and the Code of Criminal Procedure. At the same time, in this article, the criminal codes of foreign countries were reviewed and analyzed in order to improve the norms concerning the imposition of punishment for crimes in respect of which a plea agreement was concluded when the guilty person repented of what he had done in practice.

KEYWORDS

Punishment, sentencing, guilt, plea agreement, mitigating and aggravating circumstances, crime, responsibility, principle, level of dangerousness of the crime, nature and other circumstances.

INTRODUCTION

Punishment when the guilty person actually regrets his act is considered one of the relatively new institutions in the criminal law, this norm was established in Article 57-1 of the Criminal Code by the Law -245 dated May 18,

2010 "On Additions to the Criminal Code of the Republic of Uzbekistan".

The current criminal law stipulates the following three conditions for the imposition of punishment for the guilty party's actual remorse for his act:

- 1) plead guilty, show genuine remorse, or actively assist in solving the crime. Also, it is noted that sincere remorse for one's guilt implies the following situations;
 - a) to be present taking the blame;
 - b) actively assisting in the detection of crime;
 - c) actively helping to expose other participants in the crime;
 - d) actively assisting in the search for property obtained as a result of crime.[1]

However, the decision No. 1 of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of sentencing for crimes by the courts" does not clarify what actions are manifested in pleading guilty, showing sincere remorse or actively helping to solve the crime.

- 2) voluntary elimination of the damage caused. In legal sources, it is emphasized that voluntary elimination of damage is understood as payment of material damage caused to the victim or organization after the crime has been committed, with the perpetrator consciously understanding the importance of his act.[2]

It should be noted that the decision No. 1 of the Plenum of the Supreme Court of February 3, 2006 "On the practice of sentencing by courts for crimes" focuses on the compensation of the material damage caused as a result of the crime. For example, in the decision of the Plenum of the Supreme Court of June 26, 2015 "On some issues of judicial practice in cases related to crimes against the safety of transport and its use", it is important to recover the material damage caused as a

result of these crimes when dealing with cases of crimes against the safety of transport and their use. a separate explanation was given to the courts.[3]

In addition, there is a separate decision of the Plenum of the Supreme Court of December 27, 2016 "On the judicial practice on the application of the legislation on compensation for property damage caused by crime", paragraph 1 of which provides compensation for property damage caused by crime to citizens, organizations, institutions, enterprises, entrepreneurship subjects, as well as the state's property rights and interests are of great importance in protection.

- 3) the absence of aggravating circumstances in the committed act. A strict list of aggravating circumstances is defined in Article 56 of the Criminal Code. In this case, the current Criminal Code defines 14 cases as aggravating circumstances in sentencing, and in accordance with the law, the court cannot consider other circumstances as aggravating, taking into account the nature of the committed crime.

The above-mentioned conditions envisage the imposition of punishment when the guilty person actually regrets his act, and as a result of non-compliance with any of them, the court cannot impose punishment in accordance with Article 57-1 of the Criminal Code.

In this case, the provisions related to the guilty party's remorse for his actions appear in criminal law as a special form of mitigating circumstances.

It should be noted that the theoretical issues of the institution of punishment when the guilty person actually regrets his act have not been sufficiently researched by national legal scholars.

In particular, M.K. Rustamboev, expressing his opinion on the provisions of Article 571 of the Criminal Code, states that in the presence of mitigating circumstances, the court has the right to impose a lighter punishment on the guilty person, that is, to choose a lighter type of punishment or reduce its amount within the sanctions of the Special Part of the Criminal Code. At the same time, it notes that the rules of sentencing when the guilty person actually repents of his act will apply to cases where a person is found guilty of committing one or more crimes. [4]

In the works of other national jurists, the issue of punishment when the guilty person actually regrets his act is limited to the interpretation based on the norms of the criminal law. Little thought has been given to the theoretical aspects of sentencing when the guilty person is actually remorseful for his actions. [5]

When examining the case law materials, the courts have been imposing a lighter punishment according to the procedure provided for in Article 57 of the Criminal Code, even if all the conditions specified in Article 57-1 of the Criminal Code are present.

For example, on October 18, 2022, during the consideration of the case against the defendant K.M. by the Uchtepa district court of Tashkent city under part 2 of Article 266 of the Criminal Code, although all the requirements stipulated in Article 57-1 of the Criminal Code were present, the court - based on Article 57 of the Criminal Code, K.M. was sentenced to 4 (four) years of imprisonment [6]

b) that the courts are not given a clear explanation about the punishment when the guilty person actually regrets his act, there are no strict norms for this type of punishment in the criminal law.

In judicial practice, it is necessary to pay attention to the number of cases tried by the courts in order to study the situation of punishment when the guilty person actually regrets his act. It is noteworthy that, according to the information of the Supreme Court of the Republic of Uzbekistan, in 2012-2022, courts applied Article 57-1 of the Criminal Code and found that no punishment was imposed. [7]

In this case, the fact that the courts do not impose a punishment based on Article 57-1 of the Criminal Code should be recognized as a loophole in the criminal law, not the judges.

So, from these numbers, it can be concluded that there is no need to impose punishment under Article 57-1 of the Criminal Code when the person guilty of applying the Law actually regrets his act.

c) Article 57-1 of the Criminal Code remains more burdensome than Article 57 of the Criminal Code.

d) the institution of punishment when the guilty person actually regrets his act does not exist in the criminal law experience of most foreign countries.

In particular, when studying the criminal legislation of countries such as Russia [8], Kazakhstan [9], Moldova [10], Azerbaijan [11], it was found that there is no separate article on imposing punishment when the guilty person actually regrets his act.

On February 18, 2021, the Law "On Amendments and Additions to the Criminal and Criminal Procedural Codes of the Republic of Uzbekistan" was adopted, and with this law, the Criminal Procedural Code and the Criminal Code instituted a plea agreement and imposed punishment for crimes for which a plea agreement was concluded. The introduction of norms is one of the important reforms.

A plea agreement is an agreement concluded with the prosecutor based on the petition of the suspect or the accused, who agreed to the charge brought against him in a criminal case, eliminated the harm caused to the suspect, and actively contributed to the discovery of the crime. is considered [12].

Circumstances in which a plea agreement cannot be concluded, if:

- 1) if there is a reason for applying coercive medical measures;
- 2) if a person has committed several crimes and one of them does not meet these requirements.

The investigator, the investigator shall send the petition to the prosecutor within 24 hours from the time of receipt of the plea agreement. The prosecutor considers the request to conclude an agreement within 72 hours from the time of receipt. After the agreement is signed, the prosecutor must approve the indictment or indictment and send the case to court. Agreement cases should be considered in general procedure, not later than 1 month from the time when the criminal case was brought to the court together with the agreement. [13].

When entering into a plea agreement, the accused must not deny the accusation, the nature and amount of the damage caused, the conditions for the voluntary submission of the plea, the sincere remorse of the punishment when the guilty person actually regrets his act, the application for the admission of guilt or the active assistance to solve the crime, similar to the terms of voluntary liquidation of damages.

In this case, even in the institution of plea bargaining, the absence of a condition that the aggravating circumstances required for the imposition of punishment when the guilty person is actually

remorseful for his actions remains one of the advantages of this institution.

It should be noted that this institution is widely used in law enforcement practice in many countries in Europe, Russia, Kazakhstan, Kyrgyzstan[14] and the USA.

Jurist S. Azimov, while analyzing the legislation of foreign countries and our national legislation on the plea agreement, emphasizes that there are certain restrictions on the use of this institution in our current legislation. He notes that this may lead to obstacles in the full use of this institution, including the fact that in our legislation, a request for a plea agreement can be made only for serious crimes that do not have a great social risk and are not very serious. As a basis for his opinion, the lawyer states that there are no restrictions on the severity of the crime in the criminal procedure law of Moldova and Latvia. At the same time, the non-application of the plea agreement for all crimes is contrary to the principle of equality of the criminal process, it leads to the correct conclusion that the restriction of the rights of citizens, the non-application of this institution for extremely serious crimes, which require a lot of time, effort and expense, is inconsistent with its original purpose and essence. [15].

In accordance with the law, the following conditions are established for the conclusion of the plea agreement:

- that the accused (suspect) understood the essence of his actions and the consequences of the submitted petition;
- that the petition is submitted voluntarily after consultation with the defense counsel participating in the case;
- the suspicion or accusation made by the investigative body or inquiry, the available evidence related to the

case, the amount and nature of the damage caused have not been denied and eliminated.

Article 57-2 of the Criminal Code stipulates that the amount or term of the punishment imposed for crimes for which a plea agreement has been concluded should not exceed half of the maximum punishment stipulated in the relevant article (part) of the Special Part of the Criminal Code.

In accordance with the law, the court must pay attention to the fulfillment of the following conditions when imposing a sentence and entering into a plea agreement in accordance with Part 57-2 of the Criminal Code:

that the accused (suspect) understood the nature of his actions and the consequences of the petition he submitted;

that the petition is submitted voluntarily and after consultation with the defense counsel participating in the case;

the suspicion or accusation made by the inquiry or investigative body, the evidence available in the case, as well as the nature and amount of the damage caused have not been denied and eliminated.

According to Article 586-9 of the Criminal Code, the court, after considering the decision to enter into a plea agreement, if:

1) if there are no grounds for approval of the agreement or procedural legal requirements are violated when concluding the agreement;

2) if the court does not agree with the conditions related to the qualification of the crime in the charge against the defendant provided for in the agreement;

3) if there is reasonable doubt in the court about the defendant's guilt;

4) if the parties abandon the concluded agreement, issue a ruling on refusal to approve the agreement and send the criminal case to the prosecutor for investigation according to the general rules or for reconsideration of the agreement.

The judgment of the court may be filed by the defendant, the victim (civil plaintiff), their legal representatives, the defense attorney, and a private protest by the prosecutor.

The analysis of statistical indicators related to the activity of the courts in the implementation of justice during 2021 shows that there are the following problems in the application of this institution.

a) in practice, the number of plea agreements is still low compared to the total number of cases handled by the courts. In particular, in 2021, 47,657 criminal cases against 61,263 persons were considered by the courts, of which 87 criminal cases against 120 persons were criminal cases received with the approval of a plea agreement. In this case, 86 (98%) of the 118 cases that came to the courts to approve the plea agreement were approved, and 1 (2%) was rejected. 12 of the 87 requests for approval of the plea agreement against the 120 persons received were of low social risk, 52 were not so serious, and 23 were serious crimes. Out of 118 persons in 86 criminal cases in which the plea agreement was approved: 26 or 22% were fined; Correctional work for 43 people or 36 percent; 26 or 22 percent of freedom restrictions; 14 or 12 percent were sentenced to imprisonment; 6 persons or 5.1 percent were given a suspended sentence; 3 people or 2.5 percent were sentenced without a sentence.

b) in practice, the courts do not comply with the deadlines for consideration of plea agreements. In particular, it is stipulated that the plea agreement should be reviewed no later than one month after the criminal case was brought to the court together with the agreement. In particular, out of 86 criminal cases against 118 persons, which were considered by the courts in 2021 and a plea agreement was approved: 77 cases against 104 persons, or 88.1 percent, were considered within 1 month, 9 cases against 14 persons, or 11.9 percent It has been reviewed for more than 1 month and allowed to violate the law.

c) analyzes show that courts have not established a uniform practice in the application of the term or amount of punishment for crimes for which a plea agreement has been concluded.

Article 57-2 of the Criminal Code stipulates that the term or amount of the punishment imposed for crimes for which a plea agreement has been concluded should not exceed half of the maximum punishment provided for in the relevant article (part) of the Special Part of the Criminal Code.

However, the analysis of judicial practice shows that not all courts follow this requirement.

It should be noted that this institution is primarily an effective mechanism for restoring the rights of victims and civil plaintiffs in criminal cases, and is aimed at quickly and fully solving crimes, determining who is guilty of committing a crime, determining the circumstances related to it, as well as eliminating the damage caused by the crime.

The following conclusions were reached during the research on sentencing when the guilty person is actually remorseful for his actions:

a) in the current criminal law, when the guilty person actually regrets his act with the imposition of a light punishment, the imposition of punishment logically repeats each other, and the border between them is not clearly defined;

b) in fact, Article 571 limits the possibility for the court to apply a lighter punishment than the one provided for in the sanction.

In particular, Article 54 of the Criminal Code stipulates that the court must take into account mitigating circumstances when imposing punishment on general grounds.

According to Article 571 of the Criminal Code, the criminal law requires the court to take into account the mitigating circumstances specified in Article 55 of the Criminal Code, even when the guilty person is actually remorseful for his actions. The main difference is that the aggravating circumstances of the first part of Article 56 of the Criminal Code do not exist for imposing punishment when the guilty person, as provided for in Article 571 of the Criminal Code, actually regrets his act. It is worth noting that even when the court imposes a lighter punishment based on Article 57 of the Criminal Code, there may not be circumstances that aggravate the punishment in the case.

In order to improve law enforcement practice and national legislation, the following is proposed:

1. Release of Article 571 of the Civil Code.
2. Supplementing Article 57-2 of the Criminal Code with part 2.

A plea agreement is an agreement entered into by a person for crimes they have committed. The court may also discuss the application of Article 57 of this Code when imposing a sentence.

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