



Grounds For The Termination Of A Criminal Case Due To The Expiration Of The Statute Of Limitations For Bringing To Justice (Uzbekistan's Experience)

Murodov B.B.

Associate Professor, Doctor Of Juridical Science, Associate Professor At The Department Of Criminal Procedure Law Of The Academy Of The Ministry Of Internal Affairs Of The Republic Of Uzbekistan

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ABSTRACT

Factors that prevent the effective application of the grounds for terminating a criminal case due to the expiration of the statute of limitations for bringing to responsibility are analyzed in the article. Recommendations are given for their elimination and further improvement of the procedural order for applying these grounds.

KEYWORDS

Expiration of the deadline for bringing to responsibility; termination of a criminal case; exemption from criminal liability; a person brought to criminal responsibility; suspect, accused.

INTRODUCTION

According to paragraph 1 of part one of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC), a criminal case shall be dismissed without the establishment of culpability in the

commission of the offense according to the statutory deadline of criminal prosecution has expired. According to Sh.G. Niyozova, setting the statute of limitations for criminal prosecution and execution of punishment serves to prevent violations of human rights,

preventing the possibility of living in constant fear of criminal liability¹.

Criminal cases terminated in Uzbekistan based on the expiration of the statute of limitations for bringing to responsibility account for about 22% of all terminated cases in investigative practice². This testifies to the widespread practice of terminating cases without identifying the perpetrators. In our opinion, the absence of a complete settlement of this type of criminal and criminal procedural relations acts as a separate factor. The lack of regulation of the provisions related to the application of the grounds of paragraph 1 of part one of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan “a statutory deadline of criminal prosecution has expired” is reflected in the following.

Firstly, although Article 373 of the CPC enshrines the provision on the termination of a criminal case if there are grounds provided for in Articles 83 and 84 of this Code, today there are still cases of going beyond this norm when applying the grounds “a statutory deadline of criminal prosecution has expired”. We can observe this in cases when establishing the provision of “a statutory deadline of criminal prosecution has expired”, part three of Article 367 of the CCP (the criminal case proceedings of which has been suspended due to non-ascertaining of the person to be engaged in a criminal case as an accused shall be dismissed) is taken as the grounds.

At first glance, this path can be considered a procedural error. However, if to look closely at the essence of the grounds “a statutory

deadline of criminal prosecution has expired”, you can see that it consists of two aspects, namely, “the expiration of the statutory deadline for bringing to responsibility the person brought to the case as an accused” and “failure to identify the person subject to prosecution in the case as an accused”. Thus, in investigative practice, when establishing “the expiration of the statutory deadline for bringing to responsibility a person brought to justice as an accused”, paragraph 1 of part one of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan is applied and in case of “failure to identify the person subject to prosecution in the case as an accused” – part three of Article 367. If to compare these provisions with each other, then in most cases, when the criminal cases are terminated based on the expiration of the statute of limitations for prosecution, the norm of Article 367 of the CPC is applied.

The considered factor indicates the advisability of dividing the grounds for terminating criminal cases, provided for in paragraph 1 of part one of Article 84 of the Criminal Procedure Code of the Republic of Uzbekistan, into two independent grounds. In this case, in our opinion, paragraph 1 of the first part of this article should be stated in the following wording:

- 1) The statutory deadline for bringing to justice the person brought to participate in the case as an accused has expired”;
- 2) The person who is subject to involvement in the case as an accused has not been

¹ See: Niyozova Sh.G. Problems of criminal liability and impunity in connection with the expiration of deadlines: Doctor of Juridical Science. ... dis. Abstract. – Tashkent, 2010. – P.10

² Note: Most of the cases terminated on this basis are theft cases.

established within the period provided for by law”*

We believe that the reflection of this proposal in the current legislation will serve to resolve the existing conflict clauses and misunderstandings arising in investigative activities.

Secondly, the release from liability of the person who committed the crime, just because the statute of limitations has expired, does not look entirely correct. After all, this person, not admitting his guilt for the crime committed, does not compensate for the damage caused and, most importantly, does not repent for what he did. In this regard, in the theory of criminal and criminal procedural law, a consensus has not yet been formed regarding such grounds for terminating a criminal case as “a statutory deadline of criminal prosecution has expired”.

Some scientists adhere to the position that the expiration of long periods of criminal prosecution and conviction of a person who committed a crime, after a certain time, failure to comply with the sentence often does not have the proper educational and general preventive effect and therefore are inappropriate³. At the same time, Sh. G. Niyozova notes that a person who has committed a crime after the expiration of the statutory deadline loses his public danger, and this serves as the basis for releasing him from responsibility⁴.

* The ground under paragraph 2 of this article (“the committed crime or the person falls under the act of amnesty”), in turn, goes to the next paragraph.

³ Criminal law. General part: textbook / A.S. Yakubov, R. Kabulov, and others. – Tashkent, 2004. – P.428.

In our opinion, for the application of the grounds under consideration, the following provisions must be found: the commission of the act by a person involved in a criminal case as a suspect, accused or defendant; expiration of the statute of limitations for bringing to responsibility, enshrined in the Article 64 of the Criminal Code of the Republic of Uzbekistan (hereinafter referred to as the CC); loss by the person who committed the crime of his public danger; failure of the suspect, accused or defendant to commit a grave or especially grave crime, which is the reason for the interruption of liability under Article 64 of the Criminal Code.

It is these provisions, in our opinion, that are important conditions for the application of such grounds for the termination of a criminal case, as the expiration of the statute of limitations for prosecution. However, at the same time, in the course of the termination of the case on this basis, special attention must be paid to the loss of a person’s public danger. With an incomplete loss of the degree of social danger of a person, the release from liability based on the analyzed basis will be logically incorrect.

Indeed, the inexpediency of bringing a person to justice after a considerable period can be explained by the fact that the properties of material evidence are lost, witnesses and other participants over time, significant circumstances, as a result of which it becomes difficult to make the right decision in the case. Besides, the expiration of a certain period

⁴ See: Niyozova Sh.G. Problems of criminal liability and impunity in connection with the expiration of deadlines: Doctor of Juridical Science. ... dis. Abstract. – Tashkent, 2010. – P.7

changes the behavior of each person, his nature, and attitude towards life. If the person put on the wanted list has not committed another crime for 25 years (during which he was hiding), then this indicates the loss of the degree of his public danger and the uselessness of re-education through prosecution. That is, in our opinion, there is no need to apply punishment to this person, which, according to Article 42 of the Criminal Code of the Republic of Uzbekistan, the penalty shall be imposed for correction, suppression of further criminal activities, as well as prevention of commission of new crimes by a convicted person, and by other individuals.

However, the above factor cannot justify the termination of a criminal case upon the expiration of two, four, eight, or fourteen years, provided for by criminal legislation, based on the severity of the crime committed, while the person himself subject to prosecution has not been established. According to F.M. Mukhitdinov, the adoption of such a decision by the inquiry officer, investigator or prosecutor may lead to an incomplete establishment of the truth in the case. In this case, the criminal procedure cannot be considered to have achieved its goals⁵.

We believe that in this provision the legislator acted based on the goal of ensuring the effectiveness of the direct activities of the bodies of inquiry and preliminary investigation. So, taking into account the lack of opportunity to establish the person who committed a socially dangerous act and bring him to justice

within two years, the need to focus the main attention of the investigating authorities on counteracting newly committed crimes, the expediency of reducing the number of unsolved crimes⁶, the evasion of the person who committed the crime from the preliminary investigation (a search was not announced against him) the legislator decided to release him from liability.

But it should be noted that this norm takes into account only the severity of the committed socially dangerous act and not the degree of public danger of the person who committed it. So, if a criminal act is committed repeatedly or by a dangerous recidivist, the degree of his public danger is aggravated, as a result of which the statute of limitations for prosecution should also change. Due to the absence of such a provision in Article 64 of the Criminal Code of the Republic of Uzbekistan, many criminal cases are terminated without reason, persons who have not lost their public danger are exempted from liability. To eliminate this aspect, in our opinion, it is necessary to introduce appropriate amendments and additions to Article 64 of the Criminal Code.

Thirdly, following part three of Article 64 of the Criminal Code of the Republic of Uzbekistan, a term of conviction shall be saved, if a person, who committed a crime and was charged with criminal liability, evades from investigation and trial. A term of conviction shall be resumed from a moment of apprehension of a person or surrender. In our opinion, the legislator uses the terms “saved” and “resumed” in this norm inappropriately. The term “saved” also means

⁵ See: Mukhitdinov F.M. Criminal procedure form: theoretical and methodological problems: Doctor of Juridical Science. ... dis. – Tashkent, 2005. – P.97.

⁶ Note: In some cases of investigative practice, cases terminated on the basis under consideration are equated to solved cases.

the meaning of a temporary interruption⁷. This can also lead to the preservation and extension of the statute of limitations for bringing a person to justice until he is brought to participate in the case as an accused. In this case, according to M. Usmonaliyev, it does not matter how much time passed before the evasion of the investigation and trial, that is, the terms provided for in the first part of Article 64 of the Criminal Code are renewed⁸. From the position of Sh.G. Niyozova, if a person escapes from custody to evade investigation and trial, then the statute of limitations is not suspended, but interrupted, and must be re-calculated from the moment of committing the crime of escape from custody or protection⁹.

In our opinion, taking into account the above provisions, in the considered norm of Article 64 of the Criminal Code it seems expedient to use “stops” instead of the term “saved”, and instead of “resumed” – “re-calculated”.

Fourthly, following part four of Article 64 of the Criminal Code of the Republic of Uzbekistan, “a term of conviction shall be saved if before the expiration of the terms established by this Article a person, who committed a serious or especially serious crime, commits a new intentional crime. In such instances, calculation of the term of conviction shall start de novo from the commission of a new crime. In other instances, if before the expiration of a term of conviction a person commits a new crime, this term for each crime shall be calculated individually”. So, following this rule, for crimes that do not pose

a great public danger, and less serious crimes (if they do not have a sign of repetition), regardless of the number of their commission, the statute of limitations for prosecution for each of them is calculated independently. This rule also excludes such a basic condition for the release of a person from liability in connection with the expiration of the statute of limitations, as the requirement for a person to lose his public danger. After all, the commission by a person of one crime after another indicates the presence of the degree of his social danger.

In our opinion, the logic of the institution of exemption from criminal liability, that is, its main essence is the forgiveness of the person who committed the crime. Here the question naturally arises: Who is to be forgiven? Undoubtedly, first of all, those who have lost their social danger repented of their deeds. This also requires amendments to the legislative norms governing the calculation of the statute of limitations for bringing to justice persons who have committed one crime after another.

In the second part of Article 46 of the Criminal Code of the former Uzbek SSR, the considered situation was associated with the commission of a new crime, for which a sentence of imprisonment for more than two years is possible. The form of guilt (intentional or negligent) was not given importance in this case. However, this, as noted above, does not

⁷ See: Criminal procedure of the Republic of Uzbekistan: Textbook / B.A. Mirensky, B.T. Akramkhodjayev, D.M. Mirazov, A.Kh. Rakhmankulov, V.V. Kadyrova, D. Kamalkhodjayev – Tashkent, 2014. – P.357.

⁸ See: Usmonaliyev M. Criminal law. General part: Textbook. – Tashkent, 2005. – P.546-547.

⁹ See: Niyozova Sh.G. Problems of criminal liability and impunity in connection with the expiration of deadlines: Doctor of Juridical Science. ... dis. Abstract. – Tashkent, 2010. – P.3.

indicate that the person has lost his social danger, having repented of his deed.

At the same time, let us pay attention to the experience of foreign countries. In particular, in part two of Article 78 of the Criminal Code of the Russian Federation, it is stipulated that “if a person commits a new crime, then the limitation period for each crime shall be counted independently”, in part three of Article 83 of the Criminal Code of the Republic of Belarus – “The course of the statute of limitations is interrupted if, before the expiration of those specified in of the first part of this article of the time-limits, the person commits a new deliberate crime. The calculation of the statute of limitations, in this case, begins from the day a new crime is committed for each crime independently”, in part three of Article 49 of the Criminal Code of Ukraine – “The statute of limitation shall be forfeited where a person commits another medium grave, grave or special grave offense. In this case, a limitation period starts on the date on which such a new crime is committed. Each offense gives rise to its period of limitation”, in the fourth part of Article 60 of the Criminal Code of the Republic of Moldova – “The prescription shall be interrupted if, until the expiry of the terms, the person commits an offense for which, according to this code, the imprisonment punishment may be imposed for more than 2 years. The calculation of the prescription, in this case, starts from the moment of committing a new offense”. In the fourth part of Article 64 of the Criminal Code of the Republic of Uzbekistan, it is noted that a term of conviction shall be saved, if before the expiration of the terms established by this

Article a person, who committed a serious or especially serious crime, commits a new intentional crime. In such instances, calculation of the term of conviction shall start de novo from the commission of a new crime. In other instances, if before the expiration of a term of conviction a person commits a new crime, this term for each crime shall be calculated individually.

Based on the above, we believe that part four of Article 64 of the Criminal Code of the Republic of Uzbekistan should be stated in the following edition:

“The limitation period is interrupted if, before the expiry of the time limits specified in this article, the person who committed the crime commits a new deliberate crime. In such cases, the calculation of the limitation period begins anew from the day a new crime was committed”.

Fifthly, it is well known that several advantages concerning minors are formed in the norms of the current criminal and criminal procedure legislation¹⁰. They are manifested in the course of investigative actions, the use of a lawyer, sentencing, and other provisions. However, under article 64 of the Criminal Code and paragraph 1 of part one of article 84 of the Code of Criminal Procedure of the Republic of Uzbekistan, there is no separate procedure for minors. Meanwhile, in the criminal legislation of many developed countries, several advantages are defined for this category of persons in this area. So, in the criminal codes of the Russian Federation and the Republic of Kazakhstan, the statute of limitations for

¹⁰ Saidov B.A. Problems of guaranteeing the rights and interests of minors in the preliminary investigation // Protection of youth rights – a

guarantee of crime prevention: Proceedings of the International scientific-practical conference. – Tashkent, 2008. – P.98.

bringing minors to justice is two times less than for adults.

In general, based on the international experience in this sphere and the national mentality of Uzbekistan, as well as taking into account that the formation and development of minors have not yet been completed, and in the course of upbringing their nature may well change in a positive direction and the relatively short duration of the social danger of this category of persons¹¹, in our opinion, it is important to pay special attention to the preference of minors when calculating the statute of limitations for prosecution. Considering the release of minors from criminal liability, Sh. Berdiyev also gave scientifically grounded recommendations to halve the statute of limitations for prosecution, provided for in Article 64 of the Criminal Code of the Republic of Uzbekistan¹². Being in solidarity with the opinion of the scientist, we support this position, in connection with which we consider it expedient to introduce a new norm in the Criminal Code of the Republic of Uzbekistan in the following edition:

“Article 87¹. The statute of limitations for prosecution or execution of punishment when releasing a minor from liability or punishment, the statute of limitations for prosecution provided for in Articles 64 and 69 of this Code shall be halved”.

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¹² See: Berdiyev Sh. Problems of improving the exemption from criminal liability in the process of liberalization of criminal law: Doctor of Juridical Science. ... dis. – T., 2011. – P.193-194.

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