



THE PLACE OF SENTENCING FOR CRIMES WITH PLEA AGREEMENTS IN THE PUNISHMENT SYSTEM

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Abstract

The concept and significance of plea agreements, their social and legal necessity, historical development, and some practical issues related to sentencing are discussed, with proposals and recommendations presented. To reliably ensure citizens' rights and freedoms, the essence of sentencing for crimes with plea agreements is clarified, opinions on some practical issues are expressed, and proposals are developed.

Keywords: Guilt, confession, agreement, punishment, right, freedom.

Recent reforms in our republic's sentencing system aim to strengthen the principles of humanism, justice, and legality. These reforms seek to increase the effectiveness of crime prevention, protect human rights in sentencing, and ensure transparency in judicial processes.

Today, revising the system of punishments and their implementation mechanisms, morally rehabilitating those found guilty of crimes, and introducing punishments and other legal measures aimed at preventing potential crimes remain pressing issues.

Within the framework of this research, determining the place of sentencing for crimes with plea agreements in the overall sentencing system is an important issue addressed by recent legislation.

Chapter XI of the Criminal Code of the Republic of Uzbekistan, titled "Sentencing," outlines the grounds for sentencing and circumstances to be considered. Article 54 of the Criminal Code provides the following norm regarding general grounds for sentencing: "A person found guilty of committing a crime in accordance with the established legal procedure shall be punished. The court imposes punishment within the limits set by the relevant article of the Special Part of this Code, in accordance with the provisions of the General Part."

When imposing punishment, the court considers the nature and degree of social danger of the committed crime, the motive for the act, the nature and extent of damage caused, the personality of the guilty party, and circumstances mitigating or aggravating the punishment.

The fact that the criminal legislation of some developed modern states does not define general grounds for sentencing (for example, in England, Germany, and other countries), and that such grounds are defined in the criminal legislation of the Republic of Uzbekistan itself, indicates that the criminal law can serve as an example of humanitarian and democratic principles.

In scientific sources, the general principles of sentencing and the principles of sentencing are considered as closely related concepts, since the principles of sentencing largely serve the functions of these principles[2]. In doing so, the authors assess the general principles of sentencing as fundamental ideas enshrined in the norms of criminal law, applied

by the courts as the main guidelines for imposing a just and appropriate punishment on each accused, and draw attention to their interrelationship.

Within the framework of this issue, it is useful to cite the views put forward by A.S. Yakubov and other authors on the general principles of sentencing. In their opinion, "the general grounds for sentencing stem from the norms of criminal legislation and constitute a system of legal instructions based on the principles of the Criminal Code, on the basis of which the court determines the type and measure of punishment applied to a person found guilty of committing a crime"[3]. As can be seen from this definition, the views of A.S. Yakubov and others on this issue are more consistent with practice. Because courts rely on these general principles when sentencing persons who have committed crimes.

As additional information, it can be said that Article 54 of the Criminal Code clearly defines the general grounds for sentencing, according to which a person found guilty of committing a crime in accordance with the procedure established by law is subject to punishment. According to the Criminal Code, the court assigns punishment in accordance with the rules of the General Part, within the limits specified in the article providing for criminal liability in the Special Part.

Adherence by the courts to these general principles in the determination of punishment ensures the appointment of a lawful and just punishment to the person who committed the crime. At the same time, the authors, relying on legislation, separately identify various elements in the system of general principles of sentencing.

In legal science, researchers include a number of cases in the system of general grounds for sentencing. For example, F.M. Mingalimova added the following to the list of general grounds existing in criminal legislation: a) the fairness of punishment; b) the imposition of punishment in accordance with the provisions of the General Part of the Criminal Code; c) the establishment of punishment in compliance with the norms of the Special Part; d) the application of a more severe type of punishment only if it is impossible to achieve the goals of punishment provided for by law; e) the court's consideration of the nature of the crime and the degree of danger to society; f) the personality of the person who committed the crime; g) the influence of the imposed punishment on the correction of the convict and his family situation.

We also fully agree with the opinion of the renowned scholar M. Rustamboev that "The socio-political essence of punishment depends on the state's policy of combating crime, and this policy depends on the legal ideology, political, economic, cultural, moral, and other influential views and perceptions in society" [5].

The unjustified imposition of a severe punishment creates in the subject a feeling of dissatisfaction with injustice, distrust of justice and the law. It is also appropriate to say that such a situation also becomes an obstacle to achieving the goal of punishment[6].

S.V. Borodin emphasizes that the general grounds for sentencing consist of the criteria that should be applied by the court when sentencing each defendant for a specific crime.[7]

A.V. Kladkov defines the general grounds for sentencing as the basic requirements that must be fulfilled by the court for each crime, regardless of whether the crime was committed individually or in complicity, when assigning any type of punishment.[8]

Z.M.Salihov proves that general grounds are manifested as basic legislative instructions of universal significance and at the same time perform the function of specific technical rules, that is, they determine the "technique" of applying general regulatory rules for each specific



case of sentencing, that general grounds do not automatically determine the grounds for sentencing and its individualization, but indicate to the court what circumstances should be taken into account in this process[9]. G.K.Buranov and L.R.Valeva emphasize that "general grounds for sentencing are primary in relation to its specific rules. A change in the former inevitably leads to a restructuring of the entire structure of the latter. If a specific rule contradicts the general principles of sentencing, it must be repealed." [10] Thus, special rules for sentencing should not contradict the general rules, but rather clarify them, should not bypass the general rules.

Summarizing the above norms and opinions, the general principles of sentencing serve as legally established criteria applied by the court in each criminal case. These grounds allow the court to determine the appropriate type and measure of punishment for a person found guilty of committing a crime. The principles of sentencing are considered a broader concept than general principles, as they apply to all aspects of judicial activity. The general principles of sentencing are taken into account only when sentencing a person found guilty within the framework of a specific criminal case.

Although the system of punishments, types, and general rules for sentencing are widely and comprehensively covered in legal literature, the issues of sentencing for crimes for which a plea agreement has been concluded have not been sufficiently studied. Theoretical and practical issues regarding sentencing have been studied in considerable detail. This includes numerous textbooks, commentaries on the law, monographs, and other works dedicated to the analysis of the norms of the Special Part of the Criminal Code. At the same time, scientific research devoted to the problems of the institution of sentencing in our country is becoming increasingly relevant today. However, at the same time, in these studies, the problems of sentencing for crimes for which a plea agreement has been concluded have not been studied collectively.

When imposing punishment, the court takes into account the nature and degree of public danger of the committed crime, the motive of the act, the nature and amount of damage caused, the personality of the guilty party, and the circumstances mitigating and aggravating the punishment. This norm is also enshrined in paragraph 3 of Resolution No. 1 of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 3, 2006, "On the Practice of Sentencing by Courts." Some authors consider each of the circumstances taken into account in sentencing as an independent element of the general grounds for sentencing.[11]

The need to pay attention to the general grounds for imposing punishment, its aggravating and mitigating circumstances in the process of applying each norm of the institution of sentencing is reflected in legislative acts. From this it follows that aggravating and mitigating circumstances should also be taken into account when sentencing for crimes for which a plea agreement has been concluded.

When analyzing the punishment system for crimes for which a plea agreement has been concluded, it is necessary to assess its place in the punishment system. Therefore, let us turn to the study of the role of sentencing in the punishment system for crimes for which a plea agreement has been concluded.

Article 55 of our current legislation recognizes the following as mitigating circumstances:

- a) confession, sincere repentance, or active assistance in solving the crime;
- b) voluntary compensation for the damage caused;

- c) committing a crime as a result of difficult personal, family circumstances or in other difficult circumstances;
- d) committing a crime due to coercion or material, official, or other dependence;
- d) committing a crime in a state of intense emotional distress caused by the violence, grave insult, or other unlawful actions of the victim;
- e) to commit a crime exceeding the reasonable limits of necessary defense, extreme necessity, to detain a person who has committed a socially dangerous act, to cause harm at a reasonable risk related to professional or economic activity;
- g) commission of a crime by a minor;
- z) commission of a crime by a pregnant woman;
- i) commission of a crime under the influence of the unlawful or immoral behavior of the victim.[12]

However, when imposing a sentence, the court may also find mitigating circumstances other than those provided for in this article.

The next practical significance of mitigating circumstances is manifested in the release of a person from liability or punishment. For example,

A plea agreement is concluded if the following conditions are met:

- 1) the suspect, the accused understood the essence of their actions, as well as the consequences of the motion they filed;
- 2) the petition is submitted voluntarily and after consultations with the defense counsel participating in the case;
- 3) the suspect, accused does not deny the suspicion or accusation made by the inquiry or investigation body, the evidence available in the case, as well as the nature and amount of the damage caused, and has compensated for it.[13]

In our criminal procedure legislation, the fulfillment of the above-mentioned obligations is defined as a necessary condition. The fulfillment of these conditions by the person who committed the crime is the basis for concluding an agreement.

M.V. Goloviznin expressed his opinion about the possibility of determining the legal essence of the plea agreement as a procedural basis for applying incentive measures and special rules when concluding a plea agreement[14].

Typically, mitigating circumstances are defined as those that individualize the punishment, provided for by law or recognized by the court as mitigating circumstances, reducing the degree of social danger of the crime, and (or) socially reflecting the person who committed the crime when imposing the sentence.[15]

M.V. Goloviznin expressed his opinion about the possibility of determining the legal essence of the plea agreement as a procedural basis for applying incentive measures and special rules when concluding a plea agreement.

At this point, the question arises: "Can the fulfillment by the person who committed the crime of the conditions established by the plea agreement concluded with him be considered a mitigating circumstance?"

It's difficult to give a precise answer to this question. The reason is that the list of mitigating circumstances provided for in Article 55 of the Criminal Code is not specified in Article 572 of the Criminal Code. In general, the absence in Article 572 of the Criminal Code of the conditions specified in Article 5861 of the Criminal Procedure Code, dedicated to the plea agreement, hinders the disclosure of its criminal-legal nature. The fact that the terms of the

plea agreement are not specified either as a mitigating circumstance or in the article of the plea agreement itself can be considered one of the gaps in our legislation. This leads to the conclusion that this circumstance was not recognized by the legislator as a mitigating circumstance.

In our opinion, the fulfillment of the terms of the plea agreement, as a mitigating circumstance, is a special type of actual remorse for one's guilt, since it has two features:

- firstly, requires a mandatory procedural form. A.S. Aleksandrov and V.V. Kolesnik expressed their views on this matter;[16]

- secondly, a person who has committed a crime cannot be limited only to fulfilling the condition of reporting their criminal act to the Internal Affairs Department. This situation is also noted in the scientific literature: "The cooperation proposed by the accused cannot be limited to assisting in the investigation of the crime committed by him and eliminating its consequences; other circumstances should also be taken into account"[17].

Therefore, considering the terms of the plea agreement in the process of sentencing, it can be recognized as a mitigating circumstance.

We know that when imposing punishment, the presence of not only mitigating but also aggravating circumstances is considered important, and the courts take into account the imposition of punishment on a person. According to Article 56 of the Criminal Code, aggravating circumstances include:

- a) against a woman whose pregnancy was known to the guilty party;
- b) in relation to a child, an elderly person, or a person in a helpless state;
- c) in relation to a person or his close relatives in connection with the performance of official duties or civic duty;
- d) in relation to a person materially, in service, or otherwise dependent on the guilty party;
- d) with extreme cruelty;
- e) in a way that is dangerous to the majority;
- j) using a young child or a person whose mental disorder is known to the guilty party;
- z) the occurrence of grave consequences as a result of the crime;
- i) using the conditions of a general catastrophe or during a state of emergency or in the process of mass riots;
- k) for mercenary or other base motives;
- l) based on racial or national hatred or animosity;
- m) by a group of persons by prior conspiracy or by an organized group or criminal association;
- n) the commission of a repeated or new intentional crime by a person who has previously committed an intentional crime;
- o) committing a crime while intoxicated or under the influence of narcotic drugs, their analogues, psychotropic or other substances affecting human intellect.

The significance of aggravating circumstances in sentencing for crimes for which a plea agreement has been concluded has been studied by scientists and received a negative response by most of them.

In our legislation, it is indicated that a plea agreement cannot be concluded if there are grounds for applying compulsory medical measures, and if a person has committed several crimes, and at least one of them does not meet the requirements established by this article.



Also, an agreement is concluded only with persons who have committed crimes that do not pose a great public danger, less serious and serious crimes.

The Criminal Code does not indicate that aggravating circumstances should be taken into account when sentencing for crimes for which a plea agreement has been concluded. Thus, there is an opinion that our legislation does not take into account aggravating circumstances when imposing punishment for crimes for which a plea agreement has been concluded. This issue can be understood in two directions. If the crime committed by a person contains aggravating circumstances specified in Article 56 (for example, "committed by a group of persons"), the punishment is not taken into account. If it is not enshrined in the norm, the question of whether it should be taken into account when imposing a sentence as an aggravating circumstance remains unanswered in our legislation.

S.A. Medvedko writes on this matter: "It is logical not to take into account the presence of this aggravating circumstance in a person wishing to cooperate in resolving the issue of imposing punishment under a plea agreement"[19].

Another important aspect is that the situation related to the presence (absence) of aggravating circumstances for the accused is not always clear. The accused himself, for various reasons, may not clearly know the legal grounds, may not have information about the mutual influence of newly committed crimes and previous crimes. At the time of concluding the plea agreement, these circumstances may or may not be known to the investigation, the prosecutor. In such a case, the conclusion of a plea agreement would not formally contradict the law.[20]

One of the problematic issues in the application of Article 572 of the Criminal Code of the Republic of Uzbekistan is the possibility of applying this norm in cases where aggravating circumstances are mandatory or qualifying features of certain elements of a crime, for example, the commission of a crime as part of an organized group. In the absence of such a qualifying characteristic in the corpus delicti, the question of influencing or not influencing the punishment as an aggravating circumstance in the issue of sentencing remains open. At the same time, one of the main goals of applying the norm of the institution of plea bargain is to achieve effectiveness in the fight against organized crime, the detection and investigation of crimes committed by members of criminal associations and organized gangs.

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