

JINOYAT HUQUQIDA JAZONI OG'IRLASHTIRUVCHI HOLATLARNI QO`LLASHNI TAKOMILLASHTIRISH MASALALARI

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Annotatsiya. Ushbu maqolada muallif tomonidan jazo va javobgarlik, jazoni og'irlashtirish tushunchasi, jazoni og'irlashtiruvchi holatlarni qo'llashning ahamiyati, asoslari va shartlari, bu boradahi qonunchilikdagi muammo va kamchiliklar xususida so`z yuritilgan.

Shuningdek, bir qancha xorijiy davlatlar tajribasi o`rganilib ular asosida taklif va tavsiyalar bayon qilingan.

Kalit so`zlar: jazo, javobgarlik, jazoni og'irlashtirish, jinoyat subyekti, jinoyat obyekti.

Аннотация. В данной статье автор обращается к понятию наказания и ответственности, отягчению наказания, важности, основаниям и условиям применения обстоятельств, отягчающих наказание, проблемам и недостаткам в законодательстве в этом отношении.

Также многие зарубежные страны изучают опыт и описывают предложения и рекомендации, на основе которых они сделаны.

Ключевые слова: наказание, ответственность, отягчение наказания, судимость, судимость.

Annotation. In this article, the author refers to the concept of punishment and responsibility, aggravation of punishment, the importance, the basis and conditions for the application of circumstances that aggravate punishment, the problems and shortcomings in the legislation in this regard.

Also, many foreign countries are exploring the experience and describe the proposals and recommendations on the basis of which they are made.

Keywords: punishment, responsibility, aggravation of punishment, criminal record, criminal record.

The Criminal Code of the Republic of Uzbekistan enshrines the principles of legality of criminal law, equality of citizens before the law, democratism, humanism, Justice, responsibility for guilt.

In addition, the head of state, in his address to the Oliy Majlis on December 28, 2018, noted: "...in the past period, the relationship in society, the way people live, their consciousness, worldview have changed. It is known that the

legislation contains substances related to the aggravation or relief of punishment. But they should not remain completely dependent on the human factor, that is, at the discretion of the investigator or judge. Otherwise, the criterion of justice that is sacred to us will be violated..." [1]. Of course, the question is that the appointment of punishment for a crime should not depend on the human factor, and if we conclude from the speech of our president, then there is a reasonable opinion that the criterion of justice is inextricable with aggravating circumstances. It should be noted again that the improvement of the criminal law of the president of the Republic of Uzbekistan Decree No. 3723 "on measures to radically improve the system of criminal and Criminal Procedure legislation" in subparagraph 2 of Paragraph 3 of the concept:

"Strict coordination of the sanctions of criminal penalties with the degree and nature of the social danger of crimes, ensuring the rational and proportionate application of alternative types of punishments " [2]. It can be seen that in order to bring this item to life, it is necessary to take an uncompromising attitude towards the persons who committed the crime, to protect the rights and freedoms of individuals, to ensure the practical application of the principles of justice and humanity in the appointment of punishment for the crime, to individualize the punishments for the crime, to The role of punishment aggravating and mitigating circumstances is very important in the implementation of these. The lack of sufficient skills in the practical application of punitive mitigating and aggravating circumstances in the appointment of punishment by the judicial-investigative authorities leads to the injustice of the punishments imposed for the crime, the awakening in citizens of a sense of confidence in the state. Taking this into account, the court is obliged to judge the aggravating and mitigating circumstances of the punishment by objectively assessing the crime. Their implementation was expressed to a certain extent, including in the appointment of punishment, taking into account the mitigating and aggravating circumstances provided for by law at the time of the sentence.

The importance of researching cases established by Article 56 of the Criminal Code of the Republic of Uzbekistan is expressed in these and in revealing its essence and content, the problems of implementing these norms, theoretical aspects of individualization of punishment. This problem was also worked by the authors of textbooks on the course of criminal law and the general part of criminal law, reviews of the Criminal Code. It should be noted that in connection with the adoption of the Criminal Code of the Republic of Uzbekistan, there has been a need to think in a new way about aggravating

circumstances that will be important in the individualization of punishment, develop issues of a new interpretation of its theoretical provisions, reveal their content, apply it in practice, and develop issues.

Taking into account aggravating circumstances in the appointment of punishment allows, as noted above, the individualization of punishments, thereby ensuring the appointment of a fair punishment. The aggravating circumstances of punishment are associated with two aspects: the social danger of the act and the social danger of the person who committed the crime. They say that aggravating circumstances reveal part of this danger and therefore also have criminal legal significance in the appointment of punishment for a socially dangerous act.[3]

In the criminal legislation of different countries of the world, aggravating circumstances can be considered as an independent list in the general provisions of the criminal code or as a component of the substance disposition.

The concept of punishment aggravating circumstances has been sufficiently analyzed in the legal literature, on which the opinions of various scientists differ. For example: doctor of Legal Sciences professor Z.S. Zaripov's opinion:

Punitive aggravating circumstances are those that do not fall under the signs of the composition of the crime, describe the objective and subjective circumstances of the crime, and take into account when assigning a more severe punishment within the framework of the sanction.

When imposing punishment, the court takes into account not only the behavior of the person accused of committing a crime at the time of committing a crime, but also the behavior before committing a crime and after committing a crime.

Prof. E.X.Norbohtayev believes that the establishment in law of the same punishment for crimes in which the level of social danger is close to each other ensures the fairness of punishment. This suggests that it is necessary to reduce as much as possible the relative specific sanctions in criminal law, mainly to increase absolute sanctions, to abandon mitigating and aggravating circumstances.

In our eyes, prof. E.X.Norbotayev understands the equality of citizens before the law in the face of punishment. In our opinion, equality before the law should be understood as the inevitability of criminal liability for a crime. [4]

In the presence of circumstances aggravating the punishment, the court applies the severity of the punishment provided for by the sanction of the article. But at the time of the appointment of punishment, the guilty person's Act may

not deviate from the scope of the sanction of the qualified substance. Cases of punishment turning Ozer CC

Given in Article 56, they are:

- a) in relation to a woman whose pregnancy is obvious to the culprit;
- b) in relation to a young child, an old man or a person in a helpless state;
- c) in relation to a person or his close relatives in connection with the fulfillment of a service duty or civil duty;
- g) in relation to the guilty person on the material side, in terms of service or in relation to another dependent person;
- d) with extreme cruelty;
- e) in a way that is dangerous for many;
- j) using a young child or a person whose mental state is obvious to the culprit;
- z) the origin of serious consequences as a result of the crime;
- i) using general disaster conditions or in the event of a state of emergency or in the process of mass riots;
- k) in mercenary or otherwise low intentions;
- l) on the basis of racial or national hostility or enmity;
- m) by a group of persons in advance by collusion or by an organized group or criminal association;
- n) the repeated or intentional Commission of a new crime by a person who has previously committed a deliberate crime;
- o) committing a crime in a state of intoxication or under the influence of Narcotic Drugs, their analogues, psychotropic or other substances that affect a person's intelligence.[5]

The list of cases that turn the punishment given above is strict and it is not possible to find other cases as aggravating ones. It is also noted in Paragraph 8 of the resolution of the plenum of the Supreme Court of the Republic of Uzbekistan No. 1 “on the practice of imposing penalties for a crime by the courts”. Article 56 of the Criminal Code of the Republic of Uzbekistan

Based on Part 2, we can consider the specific characteristics of aggravating conditions.

Aggravating circumstances are divided into two groups:

The first is contained in Article 56 of the general part of the JK, aggravating circumstances that can be applied to all crimes;

The second is aggravating circumstances in which the JK is its component, provided for in the relevant substance in a special part. S. V. Borodin believes that the aggravating circumstances specified in the General part are determined

in individual articles of the special part. [6] this situation would not be wrong from a principled point of view. For example, in Article 97 of the JC as low intentions l) caused by bullying; m) at the heart of religious bigotry; n) for the purpose of cutting off members of a person and transferring them to another person (transplant) or using parts of a corpse; o) manslaughter is intended in order to hide another crime or facilitate its commission.

On this basis, S.V.Borodin "excludes the consideration of aggravating circumstances provided for by Article 56 of the JK when cases affecting the qualification of a crime are applied separately, precisely in the appointment of punishment under this article. In relation to this issue professor M.X. Rustambayev puts forward the following opinion: "a crime referring to mitigating and aggravating circumstances has a completely independent composition, each such case seriously changes the signs that represent the object, objective side or subject of the crime.[7]

It is natural that in the criminal legislation of each state there are situations that aggravate and alleviate punishment. In this regard, it will be appropriate to study the experience of countries that are leaders in all directions in the world community and put human rights in high positions. Because if the experience of these countries pleases us, we will be able to take this into account in the process of improving legislation.

So first of all, let's look at the Criminal Code of the Russian Federation, which in many respects resembles ourselves, as well as consider the aggravating circumstances of punishment. Article 63 of the Criminal Code of the Russian Federation lists the circumstances aggravating the punishment. Russian legislation provides for an active role in committing a crime in paragraph "g", unlike US [8]. This concept means that this situation is also associated with the commission of a crime in a partnership, but it is precisely the active role of the offender in committing a crime that is required to take it into account as an aggravating punishment. It is understood as a proactive action of any partner (at different stages of committing a crime, they can be different partners) in the process of preparation and implementation of a crime. An active role can be expressed, for example, in the involvement of other persons in committing a crime, in guiding its commission, inflicting a large amount of bodily harm on the victim, etc. In addition, according to Paragraph "D" of this article, the commission of a crime using a person in a state of intoxication is also included as an aggravating circumstance. Analyzing this situation, a student of the Novosibirsk State Technical University, a student of the Faculty of law, S. D. Jambalova in her work says that the degree of intoxication in this case should be

such that it is the influence of the offender that should be higher in relation to his will.[9]

It is also noteworthy that according to paragraphs "e" and "E" of this article e) committing a crime based on political, ideological, racial, national or religious enmity or enmity or hatred or enmity against any social group;

e.1) committing a crime in order to avenge the legitimate actions of others, as well as in order to hide another crime or facilitate its occurrence [10] cases are also included in the list of cases aggravating the punishment. The situation of committing a crime in order to hide another crime in it is provided for by us only for intentional homicide in aggravating circumstances. As we know, a person does not kill only a deliberate person in order to hide his crime, he can commit other crimes. But in our legislation, in relation to this, no aggravating situation is established when another crime is committed. With this in mind, we offer to supplement the list of aggravating circumstances with this item.

If we look at the Swiss Criminal Code, then in this code the cases of mitigating punishment are concentrated in a special article (Article 64), but there is no special norm for cases of aggravating punishment, there is talk of cases of aggravating punishment only in one place. That is, in the case of a non-criminal crime of imprisonment, it is considered an aggravating situation if a person requires payment for the release of the victim, treats the victim cruelly, the term of imprisonment lasts more than ten days, or if serious damage to the health of the victim (Article 184) is caused.

In the Norwegian Criminal Code, the list of punitive cases is given in Article 56 of the criminal code but, a strict list of inflicting circumstances is not given in the code in a special norm, the authority to take these cases into account is transferred only to the court, and in the articles of a special part of the Criminal Code it is For example, the Norwegian Criminal Code

According to Article 85: "a person who has violated or contributed to the King's order of neutrality during the war between foreign countries is entitled to a fine or

Punishable in the form of imprisonment for up to 4 years. In particularly aggravating cases, a sentence of up to 4 years in prison can be imposed". Another example, according to Article 104a: "a person who created or participated in a private military organization, attracted or supported members of such an organization, is punished with imprisonment for up to 2 years. If an organization or its members have a stock of weapons or explosives, members under the age of 18, use persons under the age of 18 for military action, or if

there are other aggravating circumstances, a imprisonment sentence of up to 6 years is imposed”[11]

In conclusion from the above, the circumstances aggravating punishment occupy the most important place in the individualization of punishment in criminal law. The circumstances aggravating the punishment are one of the most important conditions for the individualization of punishment, as established by Article 54 of the CEC of the CEC, the court takes into account the nature and degree of social danger of the crime committed in the appointment of punishment, the reason for the act, the nature and amount of damage caused, the identity of As can be seen from this rule, aggravating circumstances can be in every case that must be taken into account when imposing a punishment provided for by Article 54 of JK.

We will also make the following proposals to improve these cases, taking into account foreign experience:

- determination of old age not only on the basis of age criteria, but also taking into account the physical condition of the individual;

- Part 1 of Article 56 of the CC to change the banid of “j”: “a young child or a severe mental state disorder is evident to the guilty person, or using a strong level of drunk personality.”;

- to provide for approximate versions of serious consequences for each crime, in which serious consequences are implied, in the substance disposition itself;

- Removing the sentence " in different low intentions “from paragraph “K” Part 1 of Article 56 of the CC;

- To commit a crime under the influence of Article 56 of the criminal code “O” in a state of intoxication or under the influence of Narcotic Drugs, their analogues, psychotropic drugs or other substances that affect the intelligence of a person, if this situation has affected the commission of a crime; as amended

- The inclusion of Article 63 of the Criminal Code of the rule that “if there are no circumstances mitigating the punishment in the person's Act and contain at least one of the aggravating circumstances of the punishment, the appointment of a punishment more severe than the measure provided for by the minimum sanction is mandatory for the court”;

- disregarding aggravating circumstances of a person's actions in the appointment of punishment in the event of a mitigating situation provided for in paragraph “I” of Part 1 of Article 55 of CC;

- The plenum of the Supreme Court of the Republic of Uzbekistan should develop its decision to take into account the aggravating circumstances of punishment.

Foydalanilgan adabiyotlar:

1. 2018-yil 28-dekabrda O'zbekiston Respublikasi Prezidentining Oliy Majlisga murojaatnomasi. // O'zbekiston Respublikasi milliy qonunchilik bazasi //lex.uz.
2. O'zbekiston Respublikasi Prezidentining "Jinoyat va jinoyat-protsessual qonunchiligi tizimini tubdan takomillashtirish chora-tadbirlari to'g'risida"gi PQ-3723 sonli qarori//<https://lex.uz/docs/-3735818#-3736684>
3. Сундеева Наталья Николаевна "Учет отягчающих обстоятельств при назначении наказания" 12.00.08 - уголовное право и криминология; уголовно-исполнительное право автореферат диссертации на соискание ученой степени кандидата юридических наук
4. M.Usmonaliev, P.Bakunov.Jazo tayinlashda yengillashtiruvchi holatlarni hisobga olish. O'quv qo'llanma. -T.: TDYU nashriyoti, 2006. -64 bet.
5. O'zbekiston Respublikasi Jinoyat kodeksi 56-moddasi.
6. Бородин С. В. Общая характеристика отягчающих обстоятельств умышленного убийства по Вьетнамскому законодательству. В кн: Совершенствование мер борьбы с преступностью и ее профилактика -Т.: 1980 -С. 31.
7. Рустамбаев М. Х. Осуществление правосудия по уголовным делам судами независимого Узбекистана. -Т.: "Узбекистон". 1994 С. 123.
8. "Уголовный кодекс Российской Федерации" от 13.06.1996 N 63-ФЗ (ред. от 05.04.2021, с изм. от 8.04.2021) //http://www.consultant.ru/document/cons_doc_LAW_10699/
9. Жамбалова С.Д. Курсовая работа по уголовному праву "Обстоятельства, отягчающие наказание" Новосибирск - 2010
10. "Уголовный кодекс Российской Федерации" от 13.06.1996 N 63-ФЗ (ред. от 05.04.2021, с изм. от 8.04.2021) //http://www.consultant.ru/document/cons doc_LAW_10699/
11. The penal code of Norway.// https://adsdatabase.ohchr.org/IssueLibrary/NORWAY_Criminal Code.pdf