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THE INSTITUTION OF SENTENCING UNDER THE NEW CRIMINAL LAW OF THE KYRGYZ REPUBLIC

Abstract: For the efficient and systematic formation of a legal state in the Kyrgyz Republic, in which the rule of law would be the main principle, the optimal functioning of criminal law is necessary as one of the conditions. The full implementation of the ideas of humanism and justice in the process of sentencing has been and remains one of the main tasks of criminal law and judicial activity. It is in the punishment imposed by the court in each specific criminal case, as the mirror reflects the level of legal and moral development of society, its attitude to the person's personality, the degree of respect for her rights, the prevailing ideas about the priority forms of crime prevention, the role and possibilities of the court in regulating criminal -legal conflict, and social relations in general. Sentencing is a special stage that is central to the administration of justice.

Key words: Punishment, socialization, aggravating circumstances, alleviating circumstances, special rules for sentencing, principle of absorption, principle of partial or full addition of sentences, sentencing.

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Introduction

The issue of sentencing is quite relevant not only at present, but also in any period of the historical cycle, because determining the guilt of a person in a crime and assigning punishment for this act is a very complicated and contradictory assignment of reason. For the correct application of the sanction against the guilty person, one must have all the information about the identity of the offender and the circumstances of the crime. Therefore, criminal law has developed the concept of sentencing.

Punishment - a measure of state coercion, shall be imposed by a court verdict, which applies to a person found guilty of a crime, and consists in the deprivations and restrictions of the rights and freedoms of that person provided for by the Criminal Code of the Kyrgyz Republic.

Sentencing is a criminal law institution that governs the rules for choosing a specific punishment applicable to the person who committed the crime, giving instructions on the size and terms of the punishment being chosen [1]. Sentencing is a special

stage that is central to the administration of justice. Indeed, in imposing a sentence, the court decides what measure of state coercion and on what scale corresponds to the circumstances of the case, whether it is sufficient to achieve the goals of punishment enshrined in the law. It is through criminal punishment that the assessment of the deed by the person found guilty of an offense is expressed, which is expressed in the necessary and sufficient restriction of the legal status of the guilty.

Therefore, the law establishes the general principles of sentencing, that is, certain criteria (requirements) by which the court should be guided in deciding whether to apply the appropriate state coercive measure. Undoubtedly, each criminal law institution contains categories and concepts, without a deep and comprehensive study of which it is impossible to comprehend it. In relation to the institution of sentencing, these are the ambiguously understood general principles of sentencing.

The definition of punishment shows that it can only be imposed by a court sentence. That is, the

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legislator imposes an obligation on the court to choose a measure of punishment that would correspond to the nature and degree of public danger of the crime committed and the identity of the perpetrator.

The application of criminal legal means to persons found guilty of committing crimes does not have the goal of excluding them from society, but rather their re-socialization, their correction and re-education, the formation of a useful member of the society that takes an active part in building a legal civil society.

The criminal policy of the state proceeds from the fact that the perpetrators of crimes can, despite the severity of the crime committed, return to an active public life and become the builders of a new society, as well as the fact that there are no incorrigible criminals, but there are not recovered criminals. The issues of criminal punishment for many years remain in the focus of attention not only of representatives of science and practitioners of the investigation, court and the penitentiary system, but also of society as a whole. Punishment, both potential and real, is one of the leading means of state criminal policy, a powerful legal tool in the fight against crime, and in many ways ensures the fulfillment of the objectives of the criminal law. It is the punishment that recognizes the role of the primary means of implementing criminal responsibility. The practice of sentencing is of the greatest importance for all types of law enforcement.

The Criminal Code of the Kyrgyz Republic has a special 12-chapter for sentencing. Article 72 of the Criminal Code of the Kyrgyz Republic enshrines the general principles of criminal punishment, which, when imposing a sentence, the court must take into account that the punishment is adequate to the degree of guilt and the degree of harm caused by the act, taking into account the warning purposes of the punishment. These are legal principles enshrined in criminal law that determine the decision-making mechanism of a court when choosing a specific type and amount of punishment imposed on a person who has committed a crime. Following these principles allows a person to be sentenced to just punishment and ensures that the goals of punishment are achieved [2].

In most countries of the world, the following general principles of sentencing are used [3]:

The principle of the lawfulness of punishment: the punishment imposed should be within the limits of the sanction of the article of criminal law establishing responsibility for the crime committed, and when choosing a specific punishment measure, the provisions of the general part of criminal law should be taken into account.

The principle of individualization of punishment: the appointment of punishment, the maximum appropriate severity of the specific crime committed, the identity of the offender who committed it (including from the position of possible

correction), other mitigating and aggravating circumstances.

The principle of saving criminal repression: the court selects the least severe punishment sufficient to achieve the goals of bringing a person to criminal liability.

Aggravating circumstances are legal facts and conditions that require a stricter sentence to be imposed on the perpetrator because they negatively characterize his personality or increase the degree of public danger of the act [4]. Aggravating circumstances may be specific to a specific act (qualifying features of a crime) or be fixed in the general part of the criminal law and apply to all crimes. The imposition of punishment, taking into account aggravating circumstances, makes it possible to individualize it and thereby is one of the guarantees for imposing a fair punishment. Such circumstances usually include, for example, the repeated commission of a crime by a person who has previously committed a crime, the group method of committing a crime, etc. [5].

According to Article 83 of the Criminal Code of the Kyrgyz Republic, when sentencing, circumstances aggravating the punishment recognize:

- 1) commission of a crime by a group of persons or a group of persons by prior conspiracy;
- 2) the commission of a crime motivated by racial, ethnic, national, religious or interregional hostility (hatred);
- 3) infliction of grievous harm by a crime;
- 4) the commission of a crime against a knowingly minor, minor, obviously disabled person, an elderly person or a person in a helpless state;
- 5) the commission of a crime against a woman, obviously known to the perpetrator in a state of pregnancy;
- 6) the commission of a crime against a person who is in material, official or other dependence on the perpetrator;
- 7) the incitement to commit a crime of a person who could not be aware of his action (inaction) or lead it due to mental illness, temporary mental disorder, dementia or other painful state of the psyche, as well as the use of such a person to commit a crime;
- 8) commission of a crime with particular cruelty over the victim;
- 9) the commission of a crime in a state of emergency or martial law or in conditions of public disaster;
- 10) commission of a crime in a generally dangerous way;
- 11) commission of a crime by a person who is intoxicated. The court has the right, depending on the nature of the crime, not to recognize this circumstance as an aggravating punishment.

When sentencing, mitigating circumstances shall recognize:

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1) sincere repentance or active assistance in solving the crime;

2) voluntary compensation for damage caused or elimination of the damage caused;

3) the commission of a crime due to a combination of difficult personal, family, economic or other circumstances;

4) the commission of a crime by virtue of material, official or other dependence;

5) commission of a crime by minors;

6) the commission of a crime by a woman in a state of pregnancy.

The court also takes into account all extenuating circumstances when sentencing. Mitigating circumstances are legal facts and conditions that make it possible to impose a less severe punishment on the perpetrator because they positively characterize his personality or reduce the degree of public danger of the act [6]. Mitigating circumstances may be specific to a particular act (privileging signs of corpus delicti) or be fixed in the general part of the criminal law and apply to all crimes. The imposition of punishment, taking into account extenuating circumstances, allows it to be individualized, and thus is one of the guarantees for the imposition of a fair punishment. Mitigating circumstances usually include, for example, the commission of a crime for the first time due to a combination of difficult life circumstances, the juvenile age of the offender, confession and assistance to the investigation, etc. [7]

According to Article 83 of the Criminal Code of the Kyrgyz Republic, when sentencing, circumstances mitigating the punishment recognize:

1) sincere repentance or active assistance in solving the crime;

2) voluntary compensation for damage caused or elimination of the damage caused;

3) the commission of a crime due to a combination of difficult personal, family, economic or other circumstances;

4) the commission of a crime by virtue of material, official or other dependence;

5) commission of a crime by minors;

6) the commission of a crime by a woman in a state of pregnancy [8].

Special rules for sentencing Criminal law may provide for special situations when a sentence is imposed subject to special rules. These are the rules that apply only if there are circumstances enshrined in the criminal law. Special rules develop or specify the general principles of sentencing and apply along with them. So, articles 76-81 of the Criminal Code of the Kyrgyz Republic provide for all the special rules for sentencing.

For example, special addition rules can be punishments when a person consecutively commits several crimes (sentencing in the aggregate of sentences) [9].

In the aggregate of crimes, punishment is assigned for each article separately, and then for the aggregate. At the same time, additional penalties are imposed on each article, which may be added up or absorbed. In aggregate, no additional punishment may be imposed that is not applied under any article included in the aggregate. The primary and secondary punishment are independent and are executed independently. When imposing a sentence of imprisonment, the term of the sentence shall be indicated for each article. The type of correctional facility (prison, colony) and the type of regime of the colony are indicated only when sentencing is taken in aggregate. When assigning correctional labor, their term and percentage of deductions are indicated for each article separately and then for the aggregate.

There are two principles of sentencing in the aggregate: the principle of absorption and the principle of partial or complete addition of sentences. The principle of absorption means that more severe punishment absorbs less severe; in aggregate, a more severe punishment is imposed, while a less severe one is not actually taken into account and does not exert an effect on the total sentence. The principle of partial addition of punishments means that part of a less severe punishment joins a more severe punishment; as a result, the aggregate punishment is assigned in a larger amount than strict punishment, but in less than the amount of punishment. The principle of complete addition of sentences means the summation of all punishments included in the totality.

The principle of complete addition of sentences cannot be applied if the amount of sentences exceeds the maximum amount that can be assigned in accordance with the instructions of the General Part of the Criminal Code.

Partial addition of punishments is allowed even when the term of accumulated punishments allows their complete addition to be applied. When assigning punishment for the aggregate of crimes, additional punishments may be added to the main punishments. In case of complete or partial addition of sentences, the final additional punishment may not exceed the maximum term or amount provided for this type of punishment in the corresponding article of the General Part of the Criminal Code. If, after passing a sentence, it is established that the person committed another crime before being sentenced, then the sentence shall be imposed according to the same rules [10].

At the same time, the moment of sentencing is important, and not its entry into legal force. In this case, the punishment shall be imposed according to the rules set forth above, but the punishment served by the first sentence shall be set off in the final punishment. In the situation under consideration, the sentence imposed for the aggregate of crimes cannot be lower than the sentence imposed for the first sentence. The sentence must indicate that the part of

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the sentence served on the previous sentence shall be counted in the term of serving the sentence.

If in a similar situation the person was sentenced conditionally on the first sentence, and on the second sentence to a real sentence, the real sentence should absorb the suspended sentence; addition of these measures is not allowed, because the convicted person conditionally did not violate the condition of not applying real punishment.

If after conviction it is established that the perpetrator also committed other crimes, some before the sentence and others after, then the punishment is assigned separately for crimes committed before the previous sentence, then for the totality of crimes, taking into account the punishment imposed by the previous sentence.

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