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Some Issues of Improving the Criminal Responsibility for Repeated Crimes

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Abstract:

The general legal principle "Non bis in idem" ("No one can be held twice responsible for the same crime") is reflected in the Criminal Code of the Republic of Uzbekistan, but it is not used professionally enough, since the interpretation of this principle in the norms of the criminal law is different. The regulation in the law of such signs of the commission of a crime as "repeated crimes", "commission of a crime again", "dangerous recidivist", "especially dangerous recidivist", in our opinion, somewhat narrows the content of this principle, which, of course, affects the guarantees of ensuring the rights and freedoms of citizens.

The objectives of the study in this article are to analyze the criminal law norm relating to repetition in the commission of a crime, to compare the requirements of Article 32 of the Criminal Code of the Republic of Uzbekistan with the generally recognized principle of "Non bis in idem", the legal assessment of the plurality of crimes from the position of the criminal law doctrine, the development of some proposals concerning amendments to the current criminal legislation.

The author of the article used a comparative legal, historical, analytical method of scientific research, used specific practical materials of judicial practice, on the basis of which an analysis of the operation of the named principle was carried out.

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In the decree of the President of the Republic of Uzbekistan Sh.M.Mirziyoyev "On measures to

radically improve the system of criminal and criminal procedure legislation", one of the priority areas is the improvement of the system of criminal responsibility and punishment. As part of the implementation of these tasks, which were certainly set by the country's leadership in a timely manner, I would like to introduce the following issues for discussion.

In investigative and judicial practice, there are cases when several (two or more) criminal acts are committed by one person. In the current Criminal Code of the Republic of Uzbekistan (hereinafter the Criminal Code), the concept of "multiplicity of crimes" is not independently fixed, however, chapter V of the Code contains articles that disclose certain norms characterizing the signs of repetition (Article 32), totality (Article 33), recidivism (Article 34) of crimes and their legal significance.

At the same time, the Plenum of the Supreme Court of the Republic of Uzbekistan in its resolution "On the issues of qualification of acts with multiple crimes" indicated that "under the multiplicity of crimes, the law presupposes the commission by a person of two or more acts, each of which contains the composition of a separate crime."

Commenting on this chapter, Professor Rustambayev M.H. explained that "the multiplicity of crimes consists in the commission by a person simultaneously or sequentially of two or more criminal acts, each of which forms signs of an independent corpus delicti, regardless of whether they were completed or unfinished, committed alone or in complicity, subject to the presence of criminal consequences the commission of two crimes."

According to the Criminal Code, the types of multiplicity of crimes are repetition, totality and recidivism of crimes.

As judicial practice shows, there is no particular difficulty in determining the totality or recidivism of crimes when qualifying the actions of the perpetrator, but when applying article 32 of the Criminal Code, disputes arise in some cases, which indicate a different interpretation of the characteristic features of this norm.

Thus, according to the law, "repetition is recognized as the simultaneous commission of two or more crimes provided for by the same part, article, and in cases specifically specified in the Criminal Code, and by different articles of the Special Part, for none of which the person was convicted." The characteristic features of repetition are: the commission of crimes at different times; the commission of several independent crimes, which are provided for in the same part of the article of the Criminal Code; a person should not be convicted of any of the crimes committed.

Let's consider the effect of this criminal law norm on a concrete example.

K., being the chairman of the admissions committee of the university, during the months of July-August, received a bribe from six parents of applicants for assistance in their admission to the institute. By the preliminary investigation bodies and the court, K.'s criminal actions were correctly qualified under paragraph "a" of part two of Article 210 of the Criminal Code as receiving a bribe repeatedly. This is evidenced by the explanation set out in the Resolution of the Plenum of the Supreme Court that "the qualification of receiving a bribe on the basis of repetition implies the commission of the same crime at least twice, if the statute of limitations for criminal prosecution has not expired. Simultaneous receipt by an official of a bribe from several persons, if a separate action is committed in the interests of each bribe-giver, should be qualified as a crime committed repeatedly."

Analyzing this case and other repeated crimes from the point of view of improving criminal responsibility, it should be recognized that in each of the committed several acts there is an

independent corpus delicti, in this example - taking a bribe from one of the parents is a separate completed crime, for which the Criminal Code provides for liability provided for in part one of Article 210 of the Criminal Code.

In our opinion, several criminal acts, responsibility for which is provided for in the same article, and committed at different times, indicate an increased public danger of the actions of the perpetrator.

According to V.P.Malkov, "repetition has a different meaning in criminal legislation - broad and narrow. In a broad sense, repetition is referred to as an aggravating circumstance, in a narrow sense - as a qualifying sign of a specific crime. The scientist believed that the repetition of the crime is a derivative of the repetition.

A similar point of view was held by other scientists who argued that there is a single difference between repetition and repetition - the number of committed acts.

At the same time, following the generally recognized legal principle "Non bis in idem" (no one should be punished twice for one crime), as well as the principle of justice enshrined in Article 8 of the Criminal Code, according to which "No one can be held responsible twice for the same crime," I think it would be more correct to believe that a person who has repeatedly committed several criminal acts, for each of which criminal liability is provided for in the same part, articles of the Criminal Code, in fact, already in the first of all repeated acts committed a completed crime, for which he is subject to criminal liability under the relevant article, in this case, bringing him to responsibility for subsequent crimes, on the basis of repetition, undoubtedly aggravates the situation of the perpetrator. At the same time, as follows from the basic provisions of the theory of criminal law, the objective side of the crime in the form of taking a bribe covers both the initial actions of the perpetrator in the form of taking a bribe, and subsequent similar criminal actions. In other words, the culprit committed a public illegal act, expressed in the repeated receipt of a bribe from several persons, and the objective side of this crime is the same – receiving a bribe by an official using his official position.

This gives reason to believe that the qualification of the actions of the culprit in repeatedly receiving a bribe (in the above example) according to the point of repetition, it not only aggravates the situation of the guilty, but actually generates repeated criminal liability for the same offense - taking a bribe. In this example, the actions of the perpetrator, who received a bribe in several episodes, are qualified under paragraph "a" of part two of Article 210 of the Criminal Code and he is sentenced from five to ten years. Whereas a single case of a person receiving a bribe, as well as subsequent similar criminal acts, is a completed crime, subject to punishment only under the first part of Article 210 of the Criminal Code and bringing him back to responsibility for subsequent acts by imputing a qualifying sign of "repetition" and aggravating his situation, violates the principle of fairness of punishment (Article 8 of the Criminal Code), which excludes repeated responsibility for the same crime.

Another thing is when some of the repeated criminal acts increase the amount of damage caused by the crime, which naturally increases the degree of public danger of all criminal actions of the perpetrator and entails more severe penalties. According to the law, such actions should be qualified according to the relevant part of the article of the Criminal Code, which provides for a more severe punishment for committing a crime on a significant, large or especially large scale.

Based on the legislative regulation of the feature of repetition, it is possible to note the acute problem of this criminal law norm affecting the qualification of crimes and arising:

- 1) in case of repeated commission of a crime of the same type, if each of them is provided for by different parts of one article of the Special Part of the Criminal Code (for example, theft of a purse with money from a pocket, qualified under paragraph "a" of part 2 of Article 169 of the Criminal Code, and subsequent theft with penetration into a dwelling, qualified under paragraph "d" part 2 of Article 169 of the Criminal Code). In Article 169 of the Criminal Code, in addition to the qualifying features mentioned above, there is another qualifying feature – theft committed repeatedly (paragraph "a" of part 3 of Article 169 of the Criminal Code). However, the judicial and investigative practice in this case is limited to the qualification of repeated criminal acts only according to paragraphs "a, d" of the second part of Article 169 of the Criminal Code, despite the fact that in this case there is a sign of repetition, which may entail a more severe punishment.
- 2) when committing a completed crime in one episode and an unfinished similar crime in another (for example, an attempt at premeditated murder (Articles 25,97 of the Criminal Code) and a completed murder (Part 1 of Article 97 of the Criminal Code).
- 3) when, in one episode, the perpetrator is the perpetrator of the crime, and in another -another participant crimes under article 28 of the Criminal Code.

In all these cases, with the repeated commission of homogeneous crimes, the perpetrator, we believe, encroaches on the same object of the crime and commits a single objective side. In practice, these actions form either a set of crimes, or prosecution under a stricter article (Article 33 of the Criminal Code), which naturally aggravates the situation of the perpetrator. At the same time, it seems to us that the legislator and the judicial and investigative practice still adhere to the position that recognizes the repeated commission of crimes as an indicator of an increased degree of public danger of a person committing criminal acts and, therefore, requires strengthening the application of measures of influence to him.

More problematic in our opinion is the presence in the national criminal legislation of the institution of criminal record, the legal consequences of which are reflected in the sentencing of a person for a subsequent committed identical crime. We believe that the opinion of M.Kuleshov and A.Shvyркин is justified, who believe that "with the full completion of the sentence, criminal legal relations exhaust themselves, and beyond these limits there are no rights, obligations and restrictions generated by the conviction." The legal consequences of a criminal record should not affect a new criminal offense, since the person has already been legally responsible for the act for which he was convicted.

However, the current criminal legislation recognizes the state of an outstanding criminal record of a person who has committed a new crime as an element of increased public danger, which causes him to be held accountable under the stricter part of the same article. It turns out that the state, having already punished the perpetrator for a crime once, when he commits a new crime identical to the first act, appoints a "double" punishment, both for a new crime and for a previous crime, since his actions are qualified according to the stricter part of the article due to the fact that the person is a dangerous recidivist.

Thus, the issue of repetition in the commission of a crime is still problematic and requires resolution both at the legislative and practical level. How to establish responsibility for repeated criminal acts, if they are covered by one objective party, or committed after conviction for an identical act, without violating the principle of justice? It would be reasonable to believe that the qualifying signs of "repetition" and "commission of a crime by a dangerous recidivist" in the Criminal Code are subject to careful analysis through the prism of its criminal law necessity both from the standpoint of the

inevitability of punishment and ensuring the rights and legitimate interests of citizens.

References

1. Karaev T.E. Repetition of crimes. M. 2012. pp.33-37
2. Malkov V.P. Institute of multiple crimes in the doctrine and criminal legislation of Russia// Actual problems of economics and law. 2008. No.4.P.186
3. Rustambayev M.H. Commentary on the Criminal Code of the Republic
4. D.Zh.Suyunova. Issues of improving the Institute of advocacy – today's realities and necessary changes. Modern Russian Law, 2000. No. 6. pp.10-13
5. The Criminal Code of the Republic of Uzbekistan.Toshkent."Adolat".2019.General part/ p. 87.
6. Brockhaus and Efron Encyclopedic Dictionary: in 86 t. (82 t. and 4 add.). — St. Petersburg, 1890-1907.
7. DJ Suyunova. Genesis of Criminal Liability Formation for Crimes Against Women in Uzbekistan. Journal of Siberian Federal University. Humanities & Social Sciences 2022 15(8): 1118–1125. <https://elib.sfu-kras.ru/handle/2311/147464>
8. D.J. Suyunova Issues of improving criminal law measures to prevent violence against women.- Eurasian Law Journal, 2021. Quoted: 1 Related articles
9. <https://www.lex.uz/acts/1599999>
10. <https://www.lex.uz/acts/1599854>
11. M.Kuleshov, A.Shvyркиn. Implementation of the principle of "Non bis in idem" in modern criminal legislation. Bulletin of the Volgograd Academy of the Ministry of Internal Affairs of Russia. 2019. 4 (51). pp.60-70