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THE IMPOSITION OF A MORE LENIENT PUNISHMENT THAN THAT PROVIDED FOR THIS CRIMINAL OFFENSE AND ITS ROLE IN THE LENIENCY SYSTEM UNDER THE CRIMINAL CODE OF THE REPUBLIC OF KAZAKHSTAN

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Abstract. *The issues of combating crime are always the focus of legal science. The fairness of court decisions not only contributes to the prevention of crime and also can be a guarantee of human rights protection.*

In our country for 2020-2030, as well as in the past 2010-2020 the Concepts of Legal Policy specified a number of measures to humanize the criminal law.

Accordingly, the criminal law establishes several forms of mitigation of punishment, one of which is the imposition of a lighter sentence than the prescribed one. The current criminal code of the country provides for the use of penalties with alternative sanctions, which individualize the punishment. However, the provision of Article 55 of the Criminal Code of the Republic of Kazakhstan allows to minimize the danger of criminal activity to society. Therefore, one of the purposes of punishment is to ensure the achievement of social justice.

The legislator specifies the rules of the current Article 55 of the Criminal Code of the Republic of Kazakhstan, which determine the limits of mitigating circumstances and the procedure for imposing a lighter sentence. Only mitigating circumstances do not distinguish the effect of the penalty from the effect of exceptional circumstances.

Contradictions to the notion of imposing a lighter sentence than those provided for a specific criminal offense lead to significant difficulties in law enforcement practice.

In judicial practice, when imposing a punishment under Article 55 of the Criminal Code of the Republic of Kazakhstan, the grounds for special mitigation of punishment are not correctly identified, or the method of mitigation is not chosen correctly. In any case, this leads to unfounded judgments. Errors in the imposition of criminal penalties, among other factors, weaken the fight against crime.

The author deals with the application of the provisions of the Criminal Code of the Republic of Kazakhstan, which provides for the possibility of imposing a lenient sentence than provided for a specific criminal offense. Attempts are made to determine the extent to which mitigating circumstances and exceptional circumstances contribute to the mitigation of punishment.

Key words: *punishment, mitigation of punishment, imposition of punishment, lighter punishment than provided, exceptional circumstances, mitigating circumstances.*

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БІР ҚЫЛМЫСТЫҚ ҚҰҚЫҚ БҰЗУШЫЛЫҚ ҮШІН КӨЗДЕЛГЕН ЖАЗАДАН ГӨРІ НЕГҰРЛЫМ ЖЕҢІЛ ЖАЗА ТАҒАЙЫНДАУ ЖӘНЕ ОНЫҢ ҚР ҚК-ГІ ЖАЗАНЫ ЖЕҢІЛДЕТУ ЖҮЙЕСІНДЕГІ ОРНЫ

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Аннотация. Қылмыстылыққа қарсы тұру мәселелері үнемі құқықтық ғылымның басты назарында. Сот шешімінің әділдігі қылмыстылықтың алдын алуға ықпал етіп қана қоймай, адам құқықтарын қорғаудың кепілі бола алады.

Мемлекетіміздегі 2020-2030 жылдарға арналған, сондай-ақ өткен 2010-2020 ж.ж. құқықтық саясат туралы Концепциялар қылмыстық заңнаманы ізгілендіру бағытында бірнеше іс-шараларды нақтылап берген болатын.

Сәйкесінше қылмыстық заңнамада жазаны жеңілдетудің бірнеше нысандары белгіленген, солардың бірі - көзделген жазадан гөрі негұрлым жеңіл жаза тағайындау. Еліміздің қолданыстағы қылмыстық кодексінде жазаны дараландыратын, баламалы санкциясы бар жазаларды қолдану туралы нормалар көзделген. Бірақ ҚР ҚК-нің 55-бабымен қарастырылған ереже қылмыстық іс-әрекеттің қоғамға қауіптілігін мейлінше төмендетуге мүмкіндік береді. Сондықтан да жаза мақсатының бірі әлеуметтік әділеттілікке қол жеткізуді қамтамасыз етуде жасалған қылмыстық құқық бұзушылық әрекеті үшін қылмыстық заңның тиісінше баптарында белгіленген жазадан негұрлым жеңіл жаза тағайындау барысын заңнамалық тұрғыдан реттеу маңызды рольге ие.

Заң шығарушы қолданыстағы ҚР ҚК-нің 55-бабында жеңілдететін мән-жайлардың жазаға ықпал ету шегі мен көзделген жазадан негұрлым жеңіл жаза тағайындау тәртібін анықтайтын ережелерді көрсетеді. Тек жеңілдететін мән-жайлардың жазаға ықпалын (шегін) ерекше мән-жайлардың әсерінен (шегінен) ажыратпайды.

Белгілі бір қылмыстық құқық бұзушылық үшін көзделгеннен гөрі негұрлым жеңіл жаза тағайындау ұғымына қатысты қарама-қайшылықтар құқық қолдану тәжірибесінде едәуір қиындықтарға алып келеді. Сот тәжірибесінде ҚР ҚК-нің 55-бабын қолданып жаза тағайындағанда жазаны ерекше жеңілдетудің негізі дұрыс анықталмай, не жеңілдету тәсілі дұрыс таңдалмай жатады. Қалай болғанда да, бұл негізсіз үкім шығаруға әкеледі. Ал, қылмыстық жазаны тағайындаудағы қателіктер басқа факторлармен қатар қылмыстылыққа қарсы күресті әлсіретеді.

Автор мақалада белгілі бір қылмыстық құқық бұзушылық үшін көзделгеннен гөрі негұрлым жеңіл жаза тағайындау мүмкіндігін көздейтін ҚР ҚК заң ережелерін қолдану проблемасын қарастырады. Жеңілдететін мән-жайлар мен ерекше мән-жайлардың жазаны жеңілдетуге ықпалы ету дәрежесі айқындауға тырысады.

Түйін сөздер: жаза, жазаны жеңілдету, жаза тағайындау, көзделген жазадан гөрі негұрлым жеңіл жаза, ерекше мән-жайлар, жеңілдететін мән-жайлар.

НАЗНАЧЕНИЕ БОЛЕЕ МЯГКОГО НАКАЗАНИЯ, ЧЕМ ПРЕДУСМОТРЕНО ЗА ДАННОЕ УГОЛОВНОЕ ПРАВОНАРУШЕНИЕ И ЕГО МЕСТО В СИСТЕМЕ СМЯГЧЕНИЯ НАКАЗАНИЙ ПО УК РК

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Аннотация. Вопросы противодействия преступности постоянно находятся в центре внимания правовой науки. Справедливость судебного решения может не только способствовать предупреждению преступности, но и служить гарантией защиты прав человека.

И Концепцией правовой политики государства на 2020-2030 годы, а также на 2010-2020 гг. были конкретизированы ряд мероприятий, направленных на гуманизацию уголовного законодательства. И тут смягчение наказания может действовать как способ гуманизации уголовного законодательства.

В теории известно несколько форм смягчения уголовного наказания, одной из которых является назначение более мягкого наказания, чем предусмотренное. В санкциях норм действующего Уголовного кодекса имеются альтернативные виды наказания. Но положение, предусмотренное статьей 55 УК РК, позволяет максимально снизить общественную опасность преступной деятельности.

В статье 55 УК РК указывается положения, определяющие пределы влияния смягчающих обстоятельств на наказание и порядок назначения более мягкого наказания, чем предусмотрено. Но законодателем пределы влияние смягчающих обстоятельств на наказание не отделяется от предел воздействия особых обстоятельств.

К тому же противоречия в отношении понятия назначения более мягкого наказания, чем предусмотрено за конкретное уголовное правонарушение, приводят к значительным трудностям в правоприменительной практике. И в судебной практике при применении ст.55 УК РК нередко неверно определяют основания для исключительного смягчения наказания либо неверно выбирают способ такого смягчения. В любом случае это приводит к вынесению необоснованного приговора, что в итоге наряду с другими факторами ослабляет борьбу с преступностью.

Автор рассматривает в статье проблему применения положений закона УК РК, предусматривающих возможность назначения более мягкого наказания, чем предусмотрено за то или иное уголовное правонарушение. Пытается определить степень влияния смягчающих обстоятельств и особых обстоятельств на смягчение наказания.

Ключевые слова: наказание, смягчение наказания, назначение наказания, более мягкого наказания, чем предусмотрено законом, исключительные обстоятельства, смягчающие обстоятельства.

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Introduction

In accordance with the general rules of sentencing, the court determines the measures of criminal influence, taking into account the degree and danger nature of the criminal act to society, as well as the perpetrator's individual

age. However, the purpose of punishment established by law is not always achieved in practice.

The possibility of choosing a sentence less severe than the one provided for the convicted person and its special procedure

shall be implemented within the law. Here, the legislator also considered the possibility of exceeding the lower limit of criminal law sanctions. However, the formula of special circumstances is not specified in the criminal law, and even the possibility of using lists of mitigating circumstances not specified by law, as well as the fact that these mitigating circumstances significantly reduce the degree of public danger action in that particular case. Lack of explanation of the reasons for the application of Article 55 of the Criminal Code of the Republic of Kazakhstan often causes difficulties in judicial practice.

All this confirms the relevance to the research question.

Methods and materials

1) historical method - a historical study of legislative practice on the issue of criminal punishment mitigation in exceptional cases;

2) formal-logical method - a comprehensive, in-depth study of the content norms, which specify the features of such punishments provided by the Criminal Code of the Republic of Kazakhstan in connection with the topic under consideration;

3) the comparative method - the connection of norms concerning simplification of punishment provided by the current criminal code of the country with the foreign experience comparison

Discussion

As in other countries, the criminal legislation of Kazakhstan provides for punishment mitigation in accordance with the principles of humanity. The Criminal Code contains a number of mitigation provisions.

Before we start the discussion, let's talk about "lenient punishment" and "more lenient punishment". Mild punishment is usually understood as a reduction in the penalty and a lighter sentence.

As a rule, lenient punishment is defined as lowering the punishment threshold and changing the type of punishment to light, and V.M. Stepashin says that the easiest part of his work is criminal law:

- Reduction of the term (amount) specified in any sanction, including lighter or more severe, as well as the simultaneous change of the limits

of this penalty in different vectors (in different directions);

- Introduction of a lighter alternative to sanctions;

- Removal of the most severe punishment or additional punishment from the sanction;

- Replacement with a lighter sentence or removal of the mandatory additional penalty;

- Approval of the rules for the imposition of preferential sentences in exceptional circumstances, introduction of sentencing rules mitigating circumstances [1, p.6].

Article 53 of the Criminal Code of the Republic of Kazakhstan is the legal basis for mitigating circumstances. Facilitating are the following circumstances: 1) does not contribute to the analysis of the action taken; 2) reduce the level of danger to society from criminal acts and the perpetrator's identity.

Special or several circumstances are the basis for punishment mitigation. In some countries, the legislator distinguishes between criminal punishment and mitigation of punishment in accordance with the law. For example, the Japanese Criminal Code provides for mitigation of punishment for mitigating circumstances (Chapters 12, 13) and strengthening and mitigation of punishment in accordance with the law².

There are several forms of mitigation in domestic criminal law. Some provisions of mitigation of punishment are established by the criminal norm (law) of the General and Special Parts of the Criminal Code, while others are left to the court.

The imposition of a lighter sentence than the one provided for a specific criminal offense is one of the forms of mitigation of that punishment.

Part 1 of Article 53, in 1997 the Criminal Code is devoted to the list of mitigating circumstances, parts 2-6 are devoted to the issue of the impact of mitigating circumstances on sentencing³. Parts the norm of Sections 2-6 was established in 2014 by Article 55 of the Criminal Code. In other words, the rules for imposing a sentence on mitigating circumstances in the current Criminal Code in 2014 will be considered in parts 1, 2, and 3 of Article 55 of the Criminal Code of the Republic of Kazakhstan, entitled "Imposition of a more lenient sentence than the one provided for a single criminal offense."

² Уголовный кодекс Японии.-СПб.: Издательство «Юридический центр Пресс», 2002. - 226с.//https://www.studmed.ru/ugolovnyy-kodeks-yaonii_9c6db600f87.html/// Дата обращения: 20.10.2021

³ Уголовный кодекс Республики Казахстан от 16 июля 1997 года № 167-І (с изменениями и дополнениями от 06.10.2014). Утратил силу Кодексом Республики Казахстан от 3 июля 2014 года № 226-V. - [Электронный ресурс]. - Режим доступа: http://adilet.zan.kz/kaz/docs/K970000167_

For example, the Criminal Code of Belarus, provides for the imposition of a sentence on mitigating circumstances (Article 69 of the Criminal Code) and a lesser sentence for this crime (Article 70 of the Criminal Code)⁴. Recognition of mitigation of punishment at the expense of premises as separate forms of mitigation of punishment, considering the rules of mitigation of punishment with the help of special circumstances.

As you can see, Article 55 of the Criminal Code combines two different provisions by their legal nature: rules specifying the force (magnitude) of mitigating circumstances (Article 55, paragraphs 1, 2 and 3 of the Criminal Code); provisions approving the procedure for imposing a lighter sentence than provided for in the sanction (Article 55, paragraphs 4 and 6 of the Criminal Code of the RK) [2, p. 97].

Although the legislature states in the norm that special circumstances may provide for special mitigation of punishment, it does not distinguish between mitigating circumstances in determining the limits of the effect of punishment.

In practice, when applying criminal law, frequently asked questions: what do we mean by “a penalty below the prescribed penalty” and to what extent can it be reduced, at the level specified in the sanction, or below the threshold specified in the sanction? These two cases fall under Article 55 CC and are linked to the above-mentioned update of Article 53.55 CC.

Part 1 of Article 55 of the Criminal Code of the RK considers the issue of imposing a sentence on mitigating circumstances. In this case, non-deprivation of liberty will be a prerequisite if the voluntary compensation of property damage and moral damages are mitigating circumstances⁵, and the main type of punishment is less severe than imprisonment.

There is no legal definition for mitigating circumstances in domestic law. There is no legal definition of mitigating circumstances in domestic legislation. In judicial practice, special circumstances are understood as circumstances that significantly reduce the danger of a crime to society. In Article 55 of the Criminal Code, the legislator clarifies the understanding of these circumstances in connection with the purpose and intent of the crime, the place of the

perpetrator in the crime, his behavior during and after the crime, active involvement in the detection of organized crime [3, p. 360].

Cites that Circumstances mitigating criminal liability and punishment are not part of the crime, which characterizes the public danger of the crime and the identity of the offender, and when deciding whether to release the perpetrator from criminal liability or bring him to justice, as well as the circumstances that are taken into account by the authorities authorized to combat crime when choosing a specific type, term and amount of punishment for the offender in accordance with the general rules of sentencing [4, p. 7].

«In the presence of exceptional circumstances and other circumstances that minimize the degree of danger to society, as well as actively assist in the identification and disclosure of the actions of participants in criminal offenses committed by the group, the court may take one of the following measures:

- the imposition of punishment below the specified minimum threshold;
- Assign a lighter version than provided for in the article;
- non-application of additional punishment, provided as a mandatory punishment⁶.

These measures specify the limits, amount, and type of punishment. Now let's recap individually.

Imposing penalty for below the minimum threshold

According to Article 55 of the Criminal Code of the Republic of Kazakhstan, the penalty below the minimum threshold is imposed in 2 cases:

In the presence of special circumstances related to the goals and reasons for the action, the role of the guilty person, his behavior during or after the commission of a criminal offense, and other circumstances that significantly reduce the degree of danger to society; As well as actively assisting in the disclosure of the actions of a group involved in a group criminal offense;

In the presence of circumstances specified in parts 2 and 3 of Article 55 of the Criminal Code of the RK. Here, in part 2 of the Criminal Code - in the absence of mitigating and aggravating circumstances that are not provided as a sign of a

⁴ Уголовный кодекс Республики Беларусь от 9 июля 1999 года №275-З. - [Электронный ресурс]. - Режим доступа: https://base.spinform.ru/show_doc.fwx?rgn=1977

⁵ Уголовный кодекс Республики Казахстан от 3 июля 2014 года №226-VЗРК (С изменениями и дополнениями от 16.12.2020 г.). - [Электронный ресурс]. - Режим доступа: <http://adilet.zan.kz/kaz/docs/K1400000226>.

⁶ Уголовный кодекс Республики Казахстан от 3 июля 2014 года №226-VЗРК (С изменениями и дополнениями от 16.12.2020 г.). - [Электронный ресурс]. - Режим доступа: <http://adilet.zan.kz/kaz/docs/K1400000226>

crime; Part 3 of the Criminal Code - for criminal offenses committed in cases of accelerated pre-trial investigation, as well as in cases where all the conditions of the plea bargain have been fulfilled (Article 55 of the Criminal Code).

According to Article 190 of the CPC of the RK, “accelerated pre-trial investigation cases reveal the fact of the crime and the perpetrator, fully admit his guilt, fully agree with the amount (amount) of damages, informing the victim about this decision legal consequences are explained, less serious and moderate crimes, as well as serious crimes”⁷.

That is, the court may impose a sentence below the minimum threshold in exceptional circumstances and in the case of mitigating circumstances without aggravating circumstances. This gives the court the right to impose a sentence below the minimum threshold in the absence of special circumstances in the case [2, p. 97].

The notion of exceptional circumstances is not defined in the previous Normative Resolution of the Supreme Court of the Republic of Kazakhstan⁸ but is found only in the 2015 edition⁹.

The normative resolution states: “The parts 2, 3 of Article 55 of the CC that in one case - some individual mitigating circumstances have the opportunity to mitigate the punishment within the sanction of the Special Part of the CC, and in another case, the same circumstances “special” and maybe the basis for the imposition of a lighter sentence than the one provided for a particular criminal offense. So, in the latter case, the mitigating circumstances were so effective that they led to the court’s excessive apology. The question of how true such an emotional, psychological situation is in practice.

The nature of mitigating circumstances, as well as their combination, allows the court to consider them as exceptional circumstances and to impose a mitigating penalty on the offender provided for in the sanction [5, p. 109]. In order to be recognized as a special circumstance, it is important that the act committed reduces the degree of danger to society and can testify to a positive socio-moral image of the convict.

In addition to these circumstances, the

Regulation stipulates that special circumstances must be taken into account when imposing the death penalty or life imprisonment, the sentencing of a juvenile for preparing or attempting to commit a crime.

The search for a set of circumstances for the application of such a rule should not be considered in the first list of circumstances permitted by law (either individually or collectively or not provided for in criminal law). In fact, this is an issue that always needs to be addressed on a case-by-case basis, taking into account the requirements of the article and the danger to the individual or society. In this case, it should be evaluated not separately from all the evidence in the case, but together with them [6, pp. 120-124].

The special circumstances of the case should include the purpose of the offender in the commission of the crime, the cause, as well as the additional role of the offender, his behavior before and after the commission of the crime. It is about voluntary compensation for the damage caused by the crime, genuine repentance, confession, and other circumstances.

The fact that after the commission of a criminal offense, the perpetrator himself confessed to the crime or reported it, does not rule out the fact that this is one of the mitigating circumstances. Of course, in this case, if the law enforcement agencies knew about the crime or the perpetrator, helped to expose other persons involved in the crime, then such cases must be taken into account because it is not a voluntary confession, but the punishment mitigating.

Each individual circumstance in Article 53 of the Criminal Code, together with other mitigating circumstances, can constitute a full-fledged “special circumstance”. As a rule, in court practice, assistance to the victim is not always realistic. If the court considers the provision of such assistance to the victim after the commission of a criminal offense as a special circumstance, it will help to reduce the danger of the act due to genuine remorse, as well as the possibility of voluntary compensation for property damage caused by the act. However, the fact that he tried to compensate for the moral or other damage, and that he pleaded guilty,

⁷ Уголовно-процессуальный кодекс Республики Казахстан от 4 июля 2014 года № 231-V ЗПК.- [Электронный ресурс]. - Режим доступа: <https://adilet.zan.kz/kaz/docs/K1400000231>

⁸ Нормативное постановление Верховного Суда Республики Казахстан от 30 апреля 1999 года №1» о соблюдении судами законности при назначении уголовного наказания”. Утратило силу нормативным постановлением Верховного Суда Республики Казахстан от 25 июня 2015 года № 4. - [Электронный ресурс]. - Режим доступа: https://adilet.zan.kz/kaz/docs/P99000001S_history / Дата обращения: 05.05.2022.

⁹ Нормативное постановление Верховного Суда Республики Казахстан от 25 июня 2015 года № 4” О некоторых вопросах уголовного судопроизводства”.- [Электронный ресурс]. - Режим доступа: /<https://adilet.zan.kz/kaz/docs/P150000004S/> Дата обращения: 25.04.2022.

justifies the imposition of a lighter sentence.

From scientific research, it is possible to find suggestions that the punishment should appoint a sentence under Article 55 of the Criminal Code of the Republic of Kazakhstan only taking into account these circumstances [7, p. 91].

The Criminal Code of the country provides for such cases in connection with the conduct of the perpetrator before and after the commission of the offense. However, there are views that suggest that mitigating circumstances, which characterize the perpetrator before the crime was committed, should be included in the list of special circumstances. The reason for the recognition of some mitigating circumstances as special circumstances is A.E. Kukovyakin explained: a) there is no alternative to less severe punishment in the sanction; b) the law prohibits the use of non-severe alternatives to certain categories of convicts; c) if the judge's imposition of a lenient sentence specified in the sanction of the applicable article seems unfair [8, p. 115,]

The specifics of the circumstances shall be determined by the court. It should be mitigating in nature, significantly reduce the danger of the act, as well as the active participation of the corrupt participant in the discovery of a criminal act committed by a group [9, p. 366].

The doctrines of criminal law have formed views on the concept of *special circumstances* in the following areas. There are several views on the number of circumstances that constitute special circumstances in the doctrines of criminal law. Researchers of the first group believed that the list of exceptional circumstances may not be provided by criminal law [10, p. 75]. Here, among the mitigating circumstances not provided by criminal law in judicial practice, the commission of a criminal act at an early age; positive characteristics of the workplace and study; satisfactory characteristics of the former university; absence of serious consequences; the presence of mental illness; the presence of insignificant damage; Presence of group III disability; death of relatives; opinions of the victim, the labor collective, who asked to choose a punishment not related to non-isolation from society; the mental state of the accused by an expert psychiatrist [11]. The next one is called special because of the broad understanding of the circumstances [12, p. 227]. In the third group, the circumstances provided for and not provided for by the criminal law, but found to be mitigating by the court, are referred to as exceptional circumstances [13, p. 131]. The last

direction is in the current criminal law.

Special circumstances are two or more mitigating circumstances provided by the Criminal Code, which are related to the behavior of the offender during and after the crime and significantly reduce the degree of public danger of this crime.

The next element of the mitigation system is the penalty limit. The limit of the penalty may be the lower limit of the penalty provided by law, or the term or amount established by law. Also, when identifying signs of mitigation in the imposition of a penalty within the minimum limit - only the quantitative limit is understood.

If we allow for a broader discussion, it combines the option of applying a lighter punishment, "the punishment imposed as a minimum, rather than specified within the sanction of the articles of the special section." In particular, on the one hand, it is not a terminological difference, but on the other hand, the essence of the solution of the problem and the expansion of the powers of the court, which gives the right to change the category of criminal offenses [14, pp. 398-399]. Indeed, if the court itself is given the opportunity to substantiate the action for the imposition of a lighter sentence than the specified one, the opinion should be to clarify, not to change the views of the legislator.

This problem is solved differently in foreign practice. For example, the possibility of sentencing beyond the lower limits of sanctions (CIS, Baltic States, former Yugoslavia, Austria, Albania, Bulgaria, Vietnam, China, Cuba, Poland) and the application of a lighter form of punishment or the refusal of a court to impose additional sanctions (in CIS countries) and in Latvia).

As another way out of the lower limit of sanctions, the law recognizes only the highest sanctions for a specific crime (England, Andorra, Denmark, India, Iraq, the Netherlands, Norway, the Republic of Korea, France) "[15, pp. 359-361].

Parts 2 and 3 of Article 55 of the Criminal Code provide for measures to determine the minimum penalty.

It is important that the court determines the type of sanction when imposing a sentence (only the upper limit is indicated; the lower and upper limits are indicated). According to Article 55 of the CC, when a court imposes a sentence below the minimum threshold provided for in the relevant article of the Special Part of the CC, in all cases the amount of the penalty cannot be less than the minimum of this type of punishment

established by law (General Part of the CC), the minimum term of imprisonment is six months). If the sanction itself states imprisonment for up to 2 years, then the limit established by the sanction is already 6 months, it is impossible to impose a penalty below the limit (amount) established by the sanction. This means that the lighter form provided in the article can only be used for sanctions with lower and upper limits.

It is also stated in the General Part of the Criminal Code that the amount of certain types of punishment is below the established minimum. For example, Articles 41, 42, 43, 44 of the Criminal Code stipulate that “the imposition of a lighter sentence than provided for this criminal offense, the imposition of a fine for an uncompleted crime, the amount of correctional work, community service, restriction of liberty can be below the established minimum threshold. In accordance with Part 5 of Article 55 of the Criminal Code of the Republic of Kazakhstan, the term of detention may be lower than the minimum threshold established by this Article when changing the sentence. Also life imprisonment can be replaced to a term of imprisonment with a pardon (Article 46 of the CC)”¹⁰.

Sometimes it is difficult to apply the norm of appointment below the minimum threshold provided in practice. For example, in accordance with Part 2 of Article 136 of the Criminal Code of the RK (sanction provides for a sentence of 3 to 7 years, etc.) cannot impose a penalty. This is because, according to Part 2 of Article 55 of the Criminal Code, a criminal offense must not exceed half of the maximum penalty for a less serious or moderate crime.

Assigning a lighter version than provided in the article

In the domestic practice, the normative decision of the Supreme Court of the Republic of Kazakhstan “On some issues of criminal punishment” answers the question of how to determine a lighter form than provided by the alternative sanction: “6. In view of the second part of Article 52 of the CC, the courts should consider the possibility of imposing a lighter form of punishment, taking into account that a more severe form of punishment is applied only if the lighter form of punishment fails to achieve

the purpose of punishment. And if according to the General Part of the Criminal Code of the Republic of Kazakhstan it is impossible to apply one of the types of punishment provided by the norm, based on part 4 of Article 55 of the Criminal Code, a lighter type of punishment is established under Article 40 or 81 of the Criminal Code. The court decision will have to be motivated by the sentence “¹¹. Here, the legislature specifies in the individual rules which punishment is replaced by what type of punishment. For example, Article 46 and 47 of the Criminal Code.

In the Bulgarian Criminal Code, the issue of changing the actual type of punishment to another type of punishment is covered by one norm. This simplifies law enforcement (compact and compact). According to Article 55 of the Bulgarian Criminal Code: If there are special or several mitigating circumstances, as well as a less severe punishment provided by law, the court:

2. ...

“Life imprisonment - from fifteen to twenty years of imprisonment;

deprivation of liberty, the lower limit of which is not specified by law - for correctional work or a fine in the amount of fifty to one thousand monthly calculation indices, and for minors - public prosecution;

Correctional work and forced eviction - a fine of fifty to five hundred leva” [16].

Not applying the additional type of punishment provided for as a mandatory punishment

Conditions for imposing a lighter sentence than the one provided for in Part 4 of Article 55 of the Criminal Code of the Republic of Kazakhstan are the same as not applying the additional type of punishment provided for as a mandatory punishment in addition to the two ways considered above. “In the presence of special circumstances related to the goals and causes of the action, the role of the perpetrator, his behavior during or after the commission of a criminal offense, and other circumstances that significantly reduce the degree of danger to society, as well as when actively assisting in the disclosure of the actions of a group participating in a group criminal offense “¹².

¹⁰ Уголовный кодекс Республики Казахстан от 3 июля 2014 года №226-V ЗРК (С изменениями и дополнениями от 16.12.2020 г.). - [Электронный ресурс]. - Режим доступа: <http://adilet.zan.kz/kaz/docs/K1400000226>

¹¹ Нормативное постановление Верховного Суда Республики Казахстан от 25 июня 2015 года № 4” О некоторых вопросах уголовного судопроизводства”. - [Электронный ресурс]. - Кто: <https://adilet.zan.kz/kaz/docs/P150000004S> /Дата обращения: 25.04.2022.

¹² Уголовный кодекс Республики Казахстан от 3 июля 2014 года №226-V ЗРК (С изменениями и дополнениями от 16.12.2020 г.). - [Электронный ресурс]. - Режим доступа: <http://adilet.zan.kz/kaz/docs/K1400000226>

Results

Based on the understanding of constitutional, i.e. general and sectoral principles that combine scientific solutions and various special rules with the court, general rules for the application of special important rules of mitigation and aggravation of liability in favor of the accused are formed: "The purpose of punishment should be achieved through the least possible means of criminal law, minimizing the cost of criminal law measures" [5, p. 150]:

According to the current criminal law, the court may impose the following lesser types of punishment within the sanction (types of penalties specified in the sanction, amount of punishment) and non-sanctioned (according to the rules of the General Part of the Criminal Code, types of punishment not specified in the sanction).

- In compliance with the conditions of parts 4 and 6 of Article 55 of the Criminal Code - a penalty below the minimum threshold.

- In accordance with the Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated June 25, 2015, №4, in case of impossibility to apply one of the types of punishment in accordance with the provisions of the general part of the Criminal Code of the Republic of Kazakhstan.

- The additional type of punishment provided for as a mandatory punishment is not applied. To do this, the sanction must include an additional penalty, which must be mandatory. Therefore, this measure cannot be applied unless the sanction provides for additional penalties.

- If the sanction provides for the main form of punishment less severe than imprisonment, if the guilty person voluntarily compensates property damage and moral and other damage, then imprisonment should not be imposed (according to Part 1 of Article 55 of the Criminal Code).

As we have seen, the legislator treats mitigating circumstances and special circumstances as separate concepts in the criminal norm and tries to reveal the significance of the latter, but as a result evaluates them equally (parts 2, 3, 6 of Article 55 of the CC), it allows the court to impose a sentence below the lower limit.

Article 55 of the Criminal Code of the Republic of Kazakhstan in 2014 has undergone significant changes compared to the 1997 model. It contains rules specifying the limits of mitigation of punishment and rules establishing the procedure for imposing a lighter sentence than provided for in the sanction. However, under the influence of mitigating circumstances

and exceptional circumstances, there are no distinctions within the limits of mitigating punishment.

When imposing a lighter sentence than the one provided for a specific criminal offense, benefits within the sanction and outside the sanction may be allowed. In accordance with the provisions of the current domestic criminal law, the grounds for the imposition of mitigating circumstances or a set of exceptional circumstances are the basis for the imposition of a lighter sentence than the one provided for a particular criminal offense. The definition of "exceptional circumstances" does not correspond in content to "mitigating circumstances". Exceptional circumstances can significantly reduce the degree of public danger of a criminal act committed by the perpetrator. Therefore, special circumstances are more likely to influence punishment than mitigating circumstances.

Conclusion

1. The mitigating circumstances and special circumstances provided for in Article 53 of the Criminal Code or (provided that the court considers it a mitigating circumstance) are not the basis for imposing a less severe type of punishment than provided for in Article 55 of the Criminal Code.

Article 55 of the Criminal Code of the RK provides for two types of less severe punishment: 1) types of punishment, amount of punishment, specified in the sanction; 2) non-sanctioned, and mitigation in the number of penalties not specified in the sanction (in accordance with the rules of the General Part of the Criminal Code).

First: Not applying the additional type of punishment provided for as a mandatory punishment may mitigate the punishment only at the level of the types and amount of punishment provided for in the sanction. In addition, the circumstances provided for in part 1 of Article 55 of the Criminal Code of the Republic of Kazakhstan may mitigate the punishment within the sanction.

Secondly - Punishment is also mitigated in two ways outside the sanction: 1) the punishment is lower than the limit established by the sanction, but not less than the minimum type of punishment in the General Part of the Criminal Code; 2) or the establishment of a lighter sentence (replacement) under Article 40 or 81 of the Criminal Code, which is not specified in the sanction.

2. According to Part 2 of Article 55 of the Criminal Code, a criminal offense must not

exceed half of the maximum penalty for a less serious or moderate crime. Accordingly, in law enforcement practice, it is not possible to impose a penalty below the lower limit if the lower limit of the penalty (imprisonment) provided for in the sanction of some provisions of the Special Part of the Criminal Code is less than half of the upper limit. This rule needs to be completely reconsidered, as it does not provide for the imposition of a penalty below the minimum threshold.

3. In the event of exceptional circumstances in a criminal case, one of the 3 options for the imposition of a lighter sentence than

the provided punishment shall be applied: imposition of a sentence below the specified minimum threshold; assign a lighter type than provided for in the article; non-application of additional punishment, provided as a mandatory punishment¹³. The existence of non-specific, mitigating circumstances does not significantly reduce the danger of criminal activity to society, but allows you to apply the equivalent of the main penalty specified in the sanction, or to set lower limits of the sanction specified in the sanction. It also applies if an additional penalty is mandatory in the sanction, and may be waived if an alternative is proposed.

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¹³ Уголовный кодекс Республики Казахстан от 3 июля 2014 года №226-V ЗРК (С изменениями и дополнениями от 16.12.2020 г.). - [Электронный ресурс]. - Режим доступа: <http://adilet.zan.kz/kaz/docs/K1400000226>

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