

Some Matters of Imposition of Punishment for Preparation for Premeditated Murder

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Annotation: *This article analysis some aspects of assignment of punishment for preparation for premeditated murder on the basis of the theory of criminal law, draws the corresponding conclusions and develops recommendations in the criminal legislation of the Republic of Uzbekistan.*

Key words: punishment, premeditated murder, preparation for crime, limit, justice.

Crime and punishment – traditionally two fundamental concepts of criminal law. Punishment – a logical consequence of violation by the person of the criminal and legal ban generating the conflict relation and need of its permission society, the state. In this plan punishment appears as a legal consequence of commission by the person of criminal encroachment and at the same time – one of means of restoration of the public relations broken by the subject.

Purpose of fair punishment is important means in fight against crime, promotes effective achievement of the goals of correction of convicts, hindrances of implementation of

criminal activity, the general and special prevention by them. Besides, purpose of reasonable punishment is the most important component of law enforcement in the republic, safety and judicial protection of constitutional rights of citizens¹, and equally serves as a reliable guarantee of development of democratic institutes in the field of human rights.

Premeditated murder is recognized as the most serious crime the criminal legislation of the Republic of Uzbekistan, therefore, purpose of fair punishment for a similar type of crime is the most important task of court by means of which not only achievement of the goals of punishment, but also prevention and prevention of crimes is provided.

One of the difficult questions arising in jurisprudence is assignment of punishment for unfinished premeditated murder, in particular for preparation for premeditated murder. In relation to preparation for crime now Criminal code of the Republic of

¹ Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan from February 3, 2006 No. 1 «On practice of appointment of punishments at commission of crimes». point 1.1. Collection. – P. 167-168.

Uzbekistan contains the provision on obligatory mitigation of punishment. According to article 58 of Criminal code of the Republic of Uzbekistan at assignment of punishment for preparation for crime, in particular to premeditated murder four rules have to be considered:

1) at assignment of punishment for preparation for premeditated murder court, being guided by the general beginnings of assignment of punishment, considers also weight of crime, extent of implementation of criminal intention and the reason owing to which crime was not ended;

2) punishment for preparation for simple premeditated murder should not exceed three quarters of the maximum punishment prescribed by the relevant article of the Special part of Criminal code of the Republic of Uzbekistan;

3) the rule about the maximum punishment (three quarters of the maximum punishment prescribed by the relevant article of the Special part of Criminal code of the Republic of Uzbekistan) is not applied at assignment of punishment for preparation for premeditated murder under the aggravating circumstances;

4) for preparation for premeditated murder sentence in the form of lifelong imprisonment cannot be imposed.

As we can see from the analysis of article the legislator establishes very strict requirements to assignment of punishment for preparation for

premeditated murder, applying privileges only to simple premeditated murder. The minimum border of punishment for preparation for crime in general is not regulated by articles of the General part of Criminal code of the Republic of Uzbekistan therefore actually lower limit of punishment for preparation remains equal to the lower limit of the sanction of article providing responsibility for the ended crime. Taking into account that in the sanction of part one of article 97 of Criminal code of the Republic of Uzbekistan the maximum punishment in the form of imprisonment up to fifteen years is prescribed, for preparation for premeditated murder (without the aggravating circumstances) punishment cannot exceed eleven years and three months. Thereby, the court can appoint to the person who made preparation for premeditated murder punishment in a look imprisonment for a period of ten up to eleven years and three months. There is a natural question – whether there correspond such limits of punishment of degree of public danger of preparation for premeditated murder? Whether it is worth limiting application of article 58 of Criminal code of the Republic of Uzbekistan for preparation for premeditated murder under the aggravating circumstances?

In the scientific literature devoted to a research of questions of criminal law, the problem of limits of punishment for preparation for crime in

general is not ignored. First, practically all researchers (in particular, M.Kh. Rustambayev, K.R. Abdurasulova, U.Sh. Kholikulov, M.V. Feoktistov, S.V. Chernokozinskaya, etc.) positively estimate formalization of decrease in the maximum limit of punishment for unfinished premeditated murder.

It is known that the rule about obligatory decrease in the greatest possible punishment for preparation was not provided in Criminal code UzSSR, it is not enshrined now and in the legislation of a number of foreign countries (for example, Estonia², Georgia³, Belarus⁴, etc.).

Secondly, experts point to imperfection of provisions of the law on assignment of punishment for the preparation which is that these provisions are not agreed with sanctions of articles of the Special part of Criminal code of the Republic of Uzbekistan. Owing to application of rules of article 58 of Criminal code of the Republic of Uzbekistan to different types of crimes problems when determining three quarters of the maximum punishment (arithmetic calculations) result or the minimum punishment as the specified article does not provide decrease in the minimum size. Insufficient accounting of degree

of public danger of preparation at establishment of limits of punishment for it leads to the fact that in the theory of criminal law the offers contradicting each other are made. So, from S.V. Chernokozinskaya's recommendations about improvement of the legislation regarding assignment of punishment for preparation follows that this punishment always does not have to be lower than the sanction of article of the Special part of Criminal code providing responsibility for the ended crime that is or to equally minimum limit of the sanction, or above it⁵. At M.V. Feoktistov application of the first way of a solution, on the contrary, excludes a possibility of assignment of punishment for preparation in a bigger size, than it can be appointed for the ended crime. The second option offered them acts as absolute antithesis of it: sentence for preparation has to be imposed in the range from the lower limit of the sanction of article of the Special part of Criminal code to its median⁶. As we see, the specified offers are directed to the solution of the technical moments, without pressing in essence of the purposes of the punishment. Their

⁵ Chernokozinskaya S.V. Assignment of punishment for preparation for crime: legislation gaps. – M.: 2006. – P. 124-126.

⁶ Feoktistov M.V. Preparation for crime and questions of criminal liability // Criminal law in the XXI century: materials of the International scientific conference at law department of Lomonosov Moscow State University on May 31 – on June 1, 2001. – M.: 2002. – P. 220.

² Criminal code of the Republic of Estonia (www.wipo.int/wipolex/).

³ Criminal code of Georgia (<https://matsne.gov.ge/>).

⁴ Criminal code of the Republic of Belarus (mvd.gov.by).

authors discuss means of achievement of uniformity in assignment of punishment for preparation, without having given the answer to essentially important question: whether punishment for preparation for crime can in general be above the lower limit of the sanction of article providing responsibility for the ended crime, or standard public danger of preparation such is that the top limit of punishment for it cannot exceed the lower limit of punishment for the ended crime? According to the theory of criminal law it is necessary to understand as limits minimum (lower) and maximum (top) the punishment borders established by the law within which the court has the right to choose concrete punishment for a certain crime.

Told allows to mark out two features of limits: their definiteness and dependence on a type of crime. It agrees the second of them primary, important step of identification by court of legislative limits the appropriate criminal legal treatment (qualification) of deeds is a guilty person. Having qualified crime under this or that article of the Special part of Criminal code, the court thereby stands apart in the sanction as a component of article and a core of legislative limits. The current version of article 58 of Criminal code of the Republic of Uzbekistan demands application of identical approaches to assignment of punishment for

preparation and attempt for premeditated murder.

It should be noted that in scientific literature also such offer on change of legislative approach to assignment of punishment for preparation which essence consists in establishment in the law of the rule about obligatory decrease when determining a measure of punishment not only the maximum limit of the sanction of article of the Special part, but also its minimum limit is stated. In particular, A.V. Vasilyevsky notes: «Decrease in the greatest possible punishment half for preparation is justified, but it is not enough as the lower bound at the same time does not change. Such situation can theoretically entail absolutely certain sanction (when the lower bound makes a half of top) or it is essential to lower possibilities of individualization of punishment without use of rules of purpose of more lenient punishment, than it is provided for this crime. Therefore it would be fair to lower multiply at unfinished crime and the lower bound of possible punishment together with top. It will allow to keep a reasonable framework of a discretion of court at assignment of punishment»⁷. M.Radjabova⁸, V.M.Stepashin⁹ and

⁷ Kruglikov L.L., Vasilyevsky A.V. Punishment in the criminal legislation of the Russian Federation. – SPb., 2009. – P. 122.

⁸ Radjabova M. Liberalization of criminal penalties: scientific and practical analysis. – Tashkent: Adolat, 2005. – P. 24.

N.P.Pechnikov¹⁰ also hold the similar opinion.

In modern scientific literature need of closer attention to a humanization of criminal penalties in respect of realization of the principles of differentiation and individualization of criminal liability is emphasized¹¹. In practice courts actually correct the sanction for preparation for premeditated murder following from the law, bringing closer it to real public danger of preparation. According to statistical data of the Supreme Court of the Russian Federation average punishment for preparation for premeditated murder made about six years seven months of imprisonment whereas the median of the sanction makes nine years of imprisonment¹². Thus, the average actually imposed sentence for preparation for the qualified murder was 1,37 times less than the average amount of the punishment established for this crime by the law that demonstrates discrepancy to the sanction for preparation for the qualified murder of its real public danger following from the law.

In our opinion, from theoretical positions the most correct is the following option: public danger of preparation for crime such is that punishment for it by the general rule cannot exceed the minimum limit of punishment for the ended crime. As it was already noted, at preparation, in particular at preparation for premeditated murder the public relation protected by criminal law is not violated, harm is done only to an object blanket – the protecting public relation. As the done harm is the major criterion considered at criminalization of premeditated murder (as material corpus delicti) and definition of limits of punishment for it, restriction of punishment for preparation with the lower bound of punishment for the ended crime is represented optimum. In that case punishment for preparation for simple murder will not exceed ten years of imprisonment, and for preparation for the murder provided by a part of the second article 97 of Criminal code of the Republic of Uzbekistan – fifteen imprisonment. In turn, it is necessary to discuss an issue of decrease in the lower limit of punishment for preparation at premeditated murder.

Examples of a similar ratio of the punishment prescribed by the law for the ended murder and for preparation for murder can be found in the foreign legislation. So, according to article 199 of Criminal code of Japan murder is

⁹ Stepashin V.M. Assignment of punishment for unfinished crime // Bulletin of the Omsk university. Series «Law». 2007. № 2 (11). – P. 88-95.

¹⁰ Pechnikov N.P. Stages of commission of crime: course of lectures. Tambov, 2008. – P. 9.

¹¹ Tukhtasheva U. Liberalization of criminal punishments. // Bulletin of the Supreme Court of the Republic of Uzbekistan. - №1. - 2007. – P. 40.

¹² www.supcourt.ru/.

punished by the death penalty or imprisonment with forced physical work without term or for the term of not lower than three years; the qualified murder (article 200) to which murder of the person consisting in relationship on the direct ascending line with the guilty person or with his spouse is recognized involves the death penalty or termless imprisonment with forced physical work. However preparation for murder as it is specified in article 201 of Criminal code of Japan, is punishable in much smaller limits: imprisonment with forced physical work for a period of up to two years. Moreover, depending on the facts of the case the person in general can be exempted from punishment¹³. Similar approach is used in Criminal code of Spain¹⁴ and Belgium¹⁵.

Proceeding from the above, it is possible to formulate the following conclusions:

1. Taking into account degree of public danger of premeditated murder and specifics of establishment of responsibility for preparation for crime, we consider necessary to fix the rule about restriction of punishment for preparation by the lower bound of punishment for the ended crime.

2. It is necessary to fix the rule about decrease in the lower limit of

punishment by court for attempt to crime, in particular for attempt to premeditated murder.

3. In article 58 of Criminal code of the Republic of Uzbekistan it is necessary to exclude the rule about non-use of rules about reduction of term of the maximum punishment for attempt to some crimes, having provided a possibility of application of the specified rule for attempt to crime, in particular for attempt to premeditated murder under the aggravating circumstances taking into account the concrete facts of the case.

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