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FEATURES OF TERMINATION OF A CRIMINAL CASE IN CONNECTION WITH RECONCILIATION

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ANNOTATION

This article analyzed the relationship of reconciliation, the concept of termination of a criminal case, and its specificity through the norms of substantive and procedural law based on the norms of criminal and criminal procedural law in the course of judicial reform.

The article explores the scope of this institution through the scientific and theoretical views put forward by scientists on the termination of a criminal case by reconciliation. Based on the views and ideas of scientists, the issue of terminating a criminal case by releasing a person from criminal liability based on reconciliation was analyzed based on scientific, theoretical, practical, and legislative norms.

This article analyzes the procedural procedure for terminating a criminal case in connection with reconciliation using a comparative analysis of scientists' statements about the termination of a criminal case. Based on the results of the analysis, scientific and theoretical conclusions were developed on the termination of a criminal case in connection with reconciliation, as well as proposals and recommendations aimed at improving legislative acts.

Keywords: reconciliation, termination of the criminal case, rehabilitation, guilt, responsibility, harm done, guilty plea, victim, victim's complaint.

Introduction

We all know that today, in the process of consistent implementation of judicial reforms, one of the priority tasks is to liberalize and improve the norms of criminal and criminal-procedural legislation based on the principles of justice and humanity. To put this task into practice and to develop new priorities for the liberalization and improvement of the norms of criminal and criminal-procedural legislation, the Concept of Improving the Criminal and Criminal-Procedural Legislation of the Republic of Uzbekistan, approved by the decision of the President of the Republic of Uzbekistan No. PD-3723 of May 14, 2018 [1] accepted. In this Concept, to improve the guarantee of reliable protection of the rights freedoms, and legal interests of a

person in the criminal process, some institutions, including those conducting the case before the court (pre-investigation and investigation of the criminal case) and expanding the scope of the application of the conciliation institution in the consideration of cases at the court stages, are defined as one of the important directions.

After all, creating an effective system of criminal and criminal-procedural legislation is one of the priority tasks of the state to ensure legality, human rights and freedoms, the interests of society and the state, and reliable protection of peace and security.

Accordingly, it is important to research the issue of "termination of the criminal case with the release of the person from criminal responsibility due to reconciliation" in the criminal process and to create new methodological bases for the improvement of this institution, taking into account its specific features.

Material and Methods

Although the issue of closing the criminal case is defined in the legislation, due to the concept of this institution and problems arising in practice, this research mainly used the method of comparative legal analysis. At the same time, observation, generalization, induction, and deduction methods were used.

Research Results

According to the Law of the Republic of Uzbekistan No. 254-II dated August 29, 2001 “On Amendments and Additions to the Criminal, Criminal Procedure Codes and Code of Administrative Responsibility of the Republic of Uzbekistan in connection with the liberalization of criminal punishments” [2], the institution of reconciliation is a special basis for releasing a person from criminal responsibility as included in our current legislation.

Pan Gi Moon, who was the Secretary General of the UN from 2007-2016, explained the nature of the institution of reconciliation and expressed the opinion that “reconciliation is one of the most correct ways to prevent, regulate and resolve conflicts” [3].

As a result of the introduction of the Reconciliation Institute, the majority of citizens were freed from the label of “imprisoned”, and the interests of the individual were reliably and effectively protected.

D.Khakhorov rightly noted, that today’s work on the liberalization and democratization of the judiciary, especially the liberalization of criminal punishments and the introduction of the institution of reconciliation, fully

demonstrated the character of justice, humanity, and forgiveness of our people [4, P.75].

The issue of the institution of reconciliation and its application is closely related to the norms of substantive and procedural law. Because procedural law represents the norms that strengthen the forms and procedure of material law implementation, the conditions of its protection [5, P.47]. In this case, the procedural law determines the procedure for applying the institution of conciliation (at what stage of the process it is used, by whom, the right to apply for conciliation and the procedure for its implementation, the conditions for making a final decision on the case).

Exoneration of a person from criminal liability due to reconciliation is called termination of the criminal case based on non-rehabilitation (not exonerating the person). In this situation, there will be no legal grounds for bringing a person to criminal responsibility by certain circumstances: the expiration of the term of criminal responsibility, the guilty person regretting his act, the guilty person's illness, the act or the person losing the social danger, reconciliation, etc. [6, B.586].

Analysis of Research Results

Article 84 of the Criminal Procedure Code provides 13 reasons for closing a criminal case without resolving the issue of guilt (on non-rehabilitative grounds) [7, P.110], and one of these grounds is closing a criminal case based on reconciliation. Today, in the practice of judicial investigation, different opinions are put forward regarding the release of a person from criminal responsibility by ending the criminal case based on reconciliation.

Reconciliation as a basis for release from criminal responsibility is a mutual agreement between the guilty person and the victim. Reconciliation is carried out at the parties' free will and without coercion. This is manifested in the reluctance of the victim to forgive the guilty person and to hold the person criminally responsible for what he committed. In this case, the guilty person is required to admit his guilt and compensate for the damage caused [8, P. 616].

D. Bazarova and B. Shamsutdinov noted legal norms allow the suspect, the accused, and the defendant to be released from criminal responsibility due to the reconciliation of the parties. Conciliation cases are sent to the court and there are several conditions for its formalization [9, P.61].

E.V. Smakhtin also believes that the following conditions should be fulfilled when closing a criminal case based on reconciliation:

– the presence of the victim's statement that he reconciled with the suspect (accused) on the termination of the criminal case and that the suspect (accused) reconciled with the victim and is not opposed to the termination of the criminal case;
– verification by the investigator of the voluntariness of the application for reconciliation submitted by the victim (for example, by questioning or by studying the identity of the victim and the suspect (accused), the nature of their interaction);
– the existence of the fact that the damage has been covered is confirmed by relevant documents (receipt, receipt) [10, pp. 205-205].

In agreement with these opinions of E.V. Smakhtin, it can be said that compensation for the damage caused to the victim as a result of the crime and its voluntary implementation is the main essence of reconciliation, and the above conditions for reconciliation must be fulfilled.

The current legislation also stipulates several conditions for the use of the institution of conciliation. We will discuss these conditions below.

First, the range of criminal acts covered by reconciliation is limited. In this case, it is allowed to close the criminal case based on the conciliation of criminal acts provided for in Article 66[1] of the Criminal Code. In the case of crimes not specified in this article (currently there are about 50 crimes per day), it is not allowed to terminate the criminal case by exempting a person from criminal liability.

Secondly, the person who committed the crime can be released from criminal responsibility if he confesses his guilt, reconciles with the victim, and eliminates the damage caused. The suspect, the accused, and the defendant must confess to the crime and such confession must be voluntary. According to the seventh part of Article 585 of the Code of Criminal Procedure, if the court finds that the confession of committing a crime was not voluntary, but obtained under pressure, then reconciliation is rejected.

Reconciliation is practically similar in its content to repentance and has the same characteristics. In practice, unlike remorse, reconciliation requires reparation or renunciation by the victim.

In practice, this role belongs to the investigating or preliminary investigation authorities and the court. From a formal point of view, the conditions of practical remorse are clearly stated, and the absence of even one of them does not allow the application of this basis. Compensation for damages consists of compensation for property damage caused to health during an attack on human life and health, as well as compensation for moral damage [11, P.617].

Thirdly, the victim, civil claimant, and his legal representative have the right to initiate the issue of reconciliation proceedings by the law. In this case, it is not

allowed to terminate the criminal case based on the application for reconciliation of the victim (civil claimant) or his legal representative, including the person who committed the crime.

Different opinions are expressed about the persons who have the right to initiate a conciliation case. In this case, there is the question of whether the legal representative can also be the subject of reconciliation.

Some authors have noted in their scientific works that the legal representative is also subject to termination of the criminal case by reconciliation [12, P.854, 13, P.545].

Based on the content of Article 582 of the Criminal Procedure Code, we support the view that the legal representative can be the subject of termination of the criminal case based on reconciliation, in agreement with the opinions of the above scholars.

Fourth, filing or withdrawing the application for reconciliation is limited by a certain period. The application can be submitted during the consideration of the case by the competent authorities (officials), that is, at any stage of the inquiry and preliminary investigation, the trial, but before the court enters the consultation room. It is not possible to apply for conciliation at the stage of consideration of a criminal case in a higher court (appeal or cassation).

It should also be noted that in the Decree No. PF–6041 dated August 10, 2020, of the President of the Republic of Uzbekistan "On measures to further strengthen guarantees for the protection of individual rights and freedoms in judicial and investigative activities", the charge announced against the person, the criminal case is considered in which instance of the court regardless, it is envisaged to introduce the procedure for applying the institution of reconciliation. Therefore, based on this Decree, it is planned to remove the restrictions on the stage of the process and the time limits for the application for conciliation.

Fifth, reconciliation with all victims of crime is required. In this case, the fact of reconciliation is confirmed by receiving a written application for reconciliation from each of the victims. In some cases, there may be several (two or more) victims in the case. In such cases, reconciliation is allowed. All that is required is reconciliation with all victims. It is not possible to proceed with conciliation even if no relevant application is received from any of the victims. In such cases, proceedings are conducted on general grounds.

Sixth, the application for reconciliation is always submitted in writing. In it, it should be indicated that the damage caused by the crime has been eliminated (the victim has renounced the damage) and the request to close the criminal case due to reconciliation.

Seventhly, the competent bodies for conciliation cases must explain to the victim (civil claimant) the legal consequences that will arise after the conciliation is approved by the court. That is, if the case is reconciled, it is not possible to file a motion to resume proceedings later.

Eighth, at the time of mediation, the suspect, accused or defendant is required to have no prior felony or felony convictions. This provision somewhat limits the application of the termination of the criminal case, using conciliation. However, this provision is related to the purpose of punishment, and it means that a person should conclude the act he committed.

An expunged or expired conviction for a previously committed crime is not an obstacle to closing the case using the legally binding institution of victim reconciliation.

It is worth noting that this condition established in the implementation of reconciliation, in some sense, limits the implementation of reconciliation. Based on this, it is necessary to implement some reforms aimed at removing the limitation in the above norm. In this case, it is necessary to limit the application of the above rule to certain categories of persons (minors, persons with disabilities of the first and second groups, women, and men over sixty years of age), taking into account the gravity of the crime, the identity of the guilty party, age, health, family status, and other circumstances.

D.Payziev, [14, P.28] Q.Abdurasulova, [15, O.75], Sh.Ruzinazarov [16, pp. 4-25], and L.Ochilov [17] experts such as analyzing some issues of application of the institution of reconciliation in their scientific works, these scientists noted that reconciliation can be applied only to persons who have committed a crime for the first time.

However, one cannot fully agree with the opinions of these scientists. Because the norms regarding the application of the institution of conciliation defined in the current legislation do not provide for the provision of conciliation in the case of a person committing a crime for the first time. It should also be noted that until 2004, the requirement that reconciliation be applied only to first-time offenders was in place. This requirement was removed to further expand the scope of reconciliation and conduct criminal cases in a simplified manner.

If we dwell on the procedural procedure for the termination of a criminal case based on conciliation, the application of conciliation by the rules of the Code of Criminal Procedure includes 4 stages: application by the victim (civil plaintiff), decision-making by the investigator and investigator, obtaining the consent of the prosecutor and trial.

Also, in the reconciliation, cases are considered in a simplified manner, the terms are short, and the parties do not have a specific claim requirement (requirement to eliminate the damage), which allows the case to be considered in a short period.

The above circumstances hurt legal, reasonable, and fair decision-making as a result of the case review, the rights of the victim (civil claimant) are not ensured and various corruption factors increase. Because today most of the crimes are considered based on reconciliation.

One of the main reasons for the termination of the criminal case due to the reconciliation of the parties is that the victim (civil plaintiff) is not interested in criminal prosecution against the suspect (accused, defendant).

Conclusions

Based on the results of the analysis, the following are proposed for the termination of the criminal case using the institution of reconciliation:

1) to certain categories of persons, taking into account the severity of the crime, the identity of the guilty person, age, health, family situation, and other circumstances, the rule on the non-exemption of criminal liability of persons whose conviction for committing serious or extremely serious crimes has not been completed or the conviction has not been removed (minors, persons with disabilities of the first and second groups, women, men over the age of sixty) canceling the rule of inapplicability;

2) to introduce the practice of applying the institution of conciliation in the courts of higher instance (appeal or cassation), regardless of which instance of the court the criminal case is being tried. In this case, in cases where the charge announced against a person is changed in the article or part of the Special Part of the Criminal Code of the Republic of Uzbekistan, which falls within the scope of reconciliation, the introduction of the procedure for applying the institution of reconciliation by the high court.

In conclusion, it can be said that the termination of a criminal case through the use of the institution of conciliation, in addition to several positive aspects for both the victim and the person who committed the crime, shortening the hearing of the case in the judicial authorities, saving organizational and material costs for the law enforcement agencies, the state, and significantly reducing distractions. reduction, at the same time, allowed the prevention of moral and psychological stress in the participants of the process.

Giving the victim the right to reconcile with the guilty person helps to expand dispositive changes in the criminal process because the parties have the opportunity to freely dispose of their right to reconciliation.

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