

Issues of conditional verdict in criminal law of foreign countries

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Abstract: In the article, theoretical foundations of conditional verdict and Article 72 of the Criminal Code of the Republic of Uzbekistan are discussed. The author has given scientific theoretical conclusions basing on scientifically substantiated examples analyzing some types of the conditional verdict of foreign countries

Keywords: Crime, conditional verdict, punishment, law, moral correction, criminal liability, limitation of freedom, deprivation of liberty, probation period, prison inmate, court, commitment, offender.

Introduction: The conditional verdict fixed in Article 72 of the Republic of Uzbekistan is a separate form of charge from punishment, which indicates humanitarianism, penalization and its invade.

At the current stage of the development of the statehood of the Republic of Uzbekistan, characterized by increasing attention to human rights and freedoms, the institutions of impunity are of particular importance. At present, their legal regulation reflects changes in the criminal and criminal-executive policy of the Republic of Uzbekistan, aimed at preventing the unjustified application of sanctions to individuals.

At the beginning of the twentieth century, the legislation of Belgium, France, Switzerland and many other countries provided for the possibility of abolition of punishment. In this case, a person sentenced to short-term imprisonment shall not serve his verdict, provided that no new criminal offenses have been committed within the period established by law. In case of a new crime, the convict will have to serve both the previously imposed sentence and the new one.

The institution of conditional verdict is a means of combating crime and will only be effective if it provides a reasonable combination of coercive and persuasive methods. The existence of this norm in criminal law, which is necessary to encourage the process of moral correction of the offender, is associated with the purposes of individualization and differentiation of criminal liability and probation. Conditional verdict for a person who has committed a crime implies such an impact that he or she should be encouraged rather than forced to achieve a socially beneficial outcome.

Improving the norms of conditional verdict has been widespread since the late nineteenth century. This institution is also included in the list of punishments in the criminal legislation of foreign countries, which regulates certain types of probation. In particular, in some states of the United States, probation is one of the main types of punishment, which is carried out in conjunction with probation [1]. While probation

is similar to punishment, it is, in its legal nature, a form of release from punishment [2]. In most countries, the institution of conditional verdict is not included in the list of types of punishment (Italian Criminal Code of 1925, Japanese Criminal Code of 1947, German Criminal Code of 1871, Spanish Criminal Code of 1995, French Criminal Code of 1992).

According to Article 73 of the Criminal Code of the Russian Federation, if a court imposes a sentence of correctional labor, restriction on service, deprivation of liberty, detention in a disciplinary military unit or imprisonment for up to eight years, the convict's conduct may be corrected without serving the verdict.

The probation period may not be less than six months and more than three years in the case of imprisonment or a lighter punishment, and in the case of imprisonment for more than one year – not less than six months and not more than five years.

If, before the end of the probation period, the probationer has proved that his conduct has improved his morals, the court may, on the recommendation of the probation authority, revoke the probation and remove the conviction from the convict. In this case, the conditional verdict may be revoked after at least half of the established probationary period.

Article 71 of the Criminal Code of Azerbaijan sets out the procedure for revoking a conditional verdict and extending the probation period [3]. In particular, if, after at least half of the probation period, the probationer has proved that his conduct has improved his morals, the court may, on the recommendation of the state body supervising the convict's conduct, revoke the conditional verdict and remove the conviction from the convict.

If a probationer refuses to perform the duties imposed on him by the court or violates public order and for which he is subject to administrative penalties, the court may extend the probation period up to one year upon the recommendation of the public authority.

If a conditionally convicted person chronically or aggressively fails to fulfill the obligations imposed on him by the court during the probationary period, the court may, on the recommendation of the state body, revoke the conditional verdict and execute the sentence imposed by the court.

The issue of revoking or upholding a suspended verdict shall be decided by the court if the probationer has committed a negligent or less serious crime during the probation period.

If a conditionally convicted person intentionally commits a moderately serious, grievous, or very grievous crime during the probationary period, the court shall overturn the probation and impose a sentence on him.

Article 64 of the Criminal Code of Georgia sets a period of conditional verdict[4]. The probation period may not be less than one year and more than three years in the case of imprisonment or a lighter punishment, and not less than one year and not more than six years in the case of imprisonment up to five years.

In addition, Article 67 of the Criminal Code of Georgia provides for the revocation of the conditional verdict and extension of the probation period. If the probationer proves that his conduct has improved morally after at least half of the

probation period, the court may revoke the probation and remove the convict from the convict upon the recommendation of the body supervising and assisting the probationer. If a conditionally convicted person refuses to perform the duties imposed on him or violates public order and for which an administrative penalty is imposed, the court may extend the probation period up to one year on the recommendation of the above-mentioned body.

According to Article 90 of the Criminal Code of Moldova, if at the time of sentencing to 5 years for intentional crimes and up to 7 years for negligent offenses or sentencing to a disciplinary military unit, the court shall take into account the circumstances of the case and if the offender concludes that it is not expedient to serve the sentence imposed, he may have probation, in which case the reasons for probation and the probation period must be indicated in the court verdict.

If the probationer is distinguished by exemplary conduct for at least half of the probation period, the court may, on the recommendation of the probation authority, revoke the probation and terminate the conviction.

According to Article 59 of the German Criminal Code [5], if a person is sentenced to a fine of up to one hundred and eighty days, the court may simply warn him at the time of sentencing and state that he may apply the sentence if:

if it is possible to expect that the person who committed the act will no longer commit acts worthy of punishment, even if the sentence is not executed in the future;

if the general assessment of the act and the person who committed it indicate special circumstances that indicate that he may be released from punishment;

unless the maintenance of law and order requires that he be punished. According to the rule enshrined in paragraph 59a of the German Criminal Code, the court determines the probation period. This period may not exceed three years and not less than one year. The court may order the person who received the warning to take certain actions.

According to Article 55 of the Latvian Criminal Code [6], if the court takes into account the nature of the crime committed during imprisonment, compulsory labor, imprisonment or fines and the damage caused, the identity of the offender and other circumstances in the case, he may impose a conditional verdict if he concludes that he will not. In this case, the court decides not to execute the sentence, provided that the convict does not commit a new crime, violate public order and fulfill the obligations imposed by the court during the prescribed probation period.

In the case of a conditional verdict, the court sets a probation period of six months to three years. Additional penalties may be imposed, as well as certain obligations. The court may cancel in full or in part the obligations imposed on the convict during the probation period. If the probationer fails to fulfill the obligations imposed by the court without good reason or commits administrative offenses, the court may decide to serve the sentence or extend the probation period by one year at the request of the institution in charge of supervising the convict's behavior.

Paragraph 43 of the Austrian Criminal Code stipulates conditional verdict issues [7]. If the offender is sentenced to up to two years' imprisonment or a fine, the court may impose a probation period of one to three years, provided that the threat of execution or other measures are sufficient to prevent the convicted person may be

released from punishment. This requires taking into account the type of act, the offender's personality, his level of guilt, previous life and post-act behavior. Paragraph 44 of the Criminal Code reinforces parole when multiple penalties are added. If deprivation of liberty and a fine are imposed at the same time, the person may be released on parole from both punishments, if there are grounds for it.

According to Article 66 of the Criminal Code of Poland [8], the court shall determine the identity of the accused, his living conditions, as well as previous marital status, if the social harm of the offense and the act is not significant, and the circumstances of the crime are not in doubt, the type may terminate the criminal prosecution conditionally if it allows the presumption that it will adhere to the legal order, in particular, that the offense will not be committed, even if the criminal prosecution has ceased. Conditional verdict shall not be applied to an offender who has committed an offense punishable by imprisonment for a term exceeding three years. According to Article 67 of the Criminal Code, conditional termination is carried out by setting a probationary period of one to two years. In this case, the court may place the accused under the supervision of a curator or trustee, a public organization, association or institution engaged in the upbringing or assistance to prisoners during the probation period.

If the defendant committed an intentional crime during the probation period, the court will reinstate the criminal prosecution. If the defendant grossly violates the law during the probation period, refuses to be in control, fulfills the obligations imposed on him or undergoes the prescribed criminal procedure, or fails to comply with the agreement reached with the victim, the court may reinstate the criminal prosecution. Conditionally terminated follow-up cannot be resumed six months after the end of the probationary period.

At present, the study, analysis and improvement of criminal law governing the institution of conditional verdict is of particular importance. Proper use of this institution will allow to achieve great success in the work of moral correction of less dangerous people.

Despite the fact that the legislation of different countries has different approaches to the institute under this study, the following remains unchanged:

- for the application of the institution of conditional verdict, information of the identity of the offender, which may indicate that he has ceased criminal activity and is determined to enter the path of moral correction without the application of a real punishment, is of paramount importance;
- the probation period is set and during which the convict cannot commit a crime or other socially harmful acts;
- fulfillment of obligations imposed by the court during the probationary period;
- The system of bodies controlling the behavior of the convict.

A study of criminal law in foreign countries has shown that there are differences in the order of appointment of probation in some countries. For example, in the Russian Federation, the probation period may not be less than six months and more than three years in the case of imprisonment or a lighter punishment, and in the

case of imprisonment for more than one year – less than six months and not more than five years.

Therefore, it is necessary to further clarify the procedure for assigning a probationary period in our criminal law, in particular, to take measures to differentiate the established probationary period.

To this end, based on the experience of foreign countries analyzed in this chapter, it is proposed to make the following changes and additions to Article 72 of the Criminal Code of the Republic of Uzbekistan:

The second part of Article 72 of the Criminal Code of the Republic of Uzbekistan shall be statde in the following edition:

“The probationary period is set at six months to five years. In the case of imprisonment for a term of up to three years and lighter punishment, the probation period may be from six months to three years, and in the case of a sentence of more than three years, the probation period may be from three to five years. The probation period is calculated from the date of sentencing. Even if the conditional verdict is decided by a higher court, the calculation of the probationary period shall begin from that date”.

By studying the control and practical aspects of the norms pertaining to probation, this institution is of great importance in correcting the conduct of the institution through supervision, even without serving the sentence imposed. In addition, while acknowledging the importance of probation for offenders, this institution fully complies with the requirements of liberalization of criminal law.

If the sentence imposed by the court is actually executed:

- firstly, it is necessary for governmental bodies to spend a lot of money, a lot of effort and money to control the execution of the sentence and the person serving the sentence, to ensure their quality of life,

- secondly, that the convict himself has to have direct contact with persons whose morals have deteriorated during the period of serving his sentence,

- thirdly, it may have an impact on the further deterioration of the behavior of the convict,

- fourthly, in the case of probation, the state should be relieved of the material costs and expenses incurred by the supervisors as described above;

- fifthly, the widespread use of public forces in the education of people on parole for crimes;

- sixthly, due to the fact that probationers are not separated from the ordinary way of life, such persons continue to fulfill their family obligations and business activities and financial obligations to the state.

Despite a number of effective reforms related to the institution of conditional verdict over the past years, today the rapid development of social relations, changes in society show that there is a need to reconsider this area, to reform it.

The following suggestions and recommendations can be made as a result of the analysis of the current legislation, theoretical conclusions of social and legal content, as well as judicial practice in this area on the theoretical and practical issues of conditional verdict:

1. As a result of the analysis conducted in the study, a definition of the following concepts was developed:

Conditional verdict is a verdict of imprisonment, transfer to a disciplinary unit, restriction of service, correctional labor or compulsory community service that can be used to correct the offender's behavior without serving a sentence. is one of the institutions of impunity in the form of a court decision (verdict) on non-execution of a sentence, which requires proof of transition;

Probation period is a period established by law, during which the verification of the guilt of the offender and the validity of the application of the conditional verdict is carried out by imposing certain obligations on the probationer and monitoring their performance.

2. It is expedient to amend the first part of Article 72 of the Criminal Code of the Republic of Uzbekistan as follows:

“If the court at the time of imposition of a sentence of imprisonment, transfer to a disciplinary unit, restriction of service or correctional labor” should be replaced with the words “If the court at the time of imposition of a sentence of imprisonment, transfer to a disciplinary unit, restriction on service, correctional work or compulsory community service”.

3. It is advisable to include one of the following two proposals in the first part of Article 72 of the Criminal Code as an amendment:

1) The words “taking into account the nature and degree of social danger of the crime, personal and other circumstances of the offender”, should be replaced with the words “taking into account the nature and degree of social danger of the crime, the cause of the act, the nature and amount of damage, personal and aggravating circumstances”; or

2) The words “taking into account the nature of the crime and the degree of social danger, the identity of the offender and other circumstances of the case” should be replaced by the words “taking into account the circumstances specified in the second part of Article 54 of this Code”.

4. The current legislation allows the application of probation to 4 types of the main punishments listed in the first part of Article 72 of the Criminal Code of the Republic of Uzbekistan, but the level of social risk of persons sentenced to these punishments is not the same. Consequently, the test periods that can be assigned to them may not be the same. For example, the upper limit of the probationary period for serious offenses is three years, while the probation period of more than one year is not appropriate if the probation period is conditionally assigned to six months. It should also be borne in mind that the appointment of a continuous probation period can have a positive effect and serve as an incentive to prove that the offender is morally correct in order to be exempt from the legal consequences of probation. Based on this problem in the practice of law enforcement, national experience in the field of legislation and the experience of analyzed foreign countries, it is proposed to make the following changes and additions to Part 2 of Article 72 of the Criminal Code:

“The probationary period is set at six months to five years.

In the case of imprisonment for a term of up to three years and lighter sentences, the probation period may be from six months to three years, and in the case of a sentence of more than three years, the probation period may be from three to five years. The probation period is calculated from the date of sentencing. Even if the conditional verdict is decided by a higher court, the calculation of the probationary period shall begin from this day”.

5. it is advised to add the third part of Article 72 of the Criminal Code of the Republic of Uzbekistan with the following content:

After the words “from time to time to register with these bodies”, to add the words “to live in a certain place”.

6. It is expedient to make the following additions and amendments to Article 72 of the Criminal Code of the Republic of Uzbekistan:

1) to add with the sixth part of the following content:

“At the request of the probation officer, the court may reduce the probation period. An application for reduction of the probationary period may be submitted after at least half of the prescribed probationary period has expired”;

2) the sixth-eighth parts shall be considered as the seventh-ninth parts.

7. It is expedient to make changes in the wording of Article 72 of the Criminal Code of the Republic of Uzbekistan as follows:

Replace the words “determination of conditional verdict” with the words “conditional verdicting”.

This is because a sentence is actually imposed on a conditionally convicted person, not on a conditional basis. But the sentence is not conditional. If he fully fulfills the obligations imposed on him by the court on parole, the court shall release him from serving the sentence. Although the term probation does not fully reflect the name of the norm provided for in Article 72 of the Criminal Code, the term “conditional verdicting” has been used in the law since the establishment of this institution.

8. It is expedient to amend the seventh part of Article 72 of the Criminal Code of the Republic of Uzbekistan with the following content:

Replace the words “persons under the age of eighteen” with the words “persons under the age of eighteen at the time of the crime”.

9. In the Criminal Code, it is advisable to reduce the probation period for juveniles to one or one and a half years, rather than three years.

10. Courts are using conditional verdict more widely in practice. However, it should be noted that in many cases, the courts are limited to deciding on a conditional verdict and setting a probation period. Such a rule was in accordance with the requirements of Article 43 of the Criminal Code, adopted in 1959. Pursuant to the requirements of Article 72 § 3 of the Criminal Code, adopted on 22 September 1994, the court shall set a probation period for a conditionally convicted person and impose on him a possible obligation to control his conduct. But in some courts, when we examined 20 criminal cases with conditional verdicts, the court was limited to promote almost all of them. The explanation of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 1 of February 3, 2006 “On the practice of sentencing by courts” on the application of a conditional verdict also did

not provide any explanation. In our opinion, if the explanations on the conditional verdict were given in this Plenum decision, the shortcomings allowed by the courts in this regard would have been prevented.

11. Although the sixth section of the General Part of the Criminal Code describes the specifics of juvenile liability, this section specifies the penalties imposed on minors and their types, the imposition of penalties on minors, exemption from liability or punishment, and their types. However, the grounds and procedure for the imposition of a conditional verdict on a juvenile are set out in Article 72 of the Criminal Code together with the grounds and procedure for the imposition of a conditional verdict on a juvenile. In our opinion, it would be expedient to provide for the conditional sentencing of juveniles separately and in the sixth, juvenile liability section of the Criminal Code This is because Article 72, paragraph 4, stipulates that only the police may exercise control over the conduct of probationers. A conditionally sentenced juvenile is completely out of the control of the juvenile commissions. Based on this, it would be expedient to provide for the conditional sentencing of juveniles in the sixth section of the Criminal Code. Such additions and amendments to the provisions of the law on probation would have prevented the further development of this institution and the mistakes made by the courts in the practical application of this institution.

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