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MITIGATING FACTORS AND CRIMINAL DEFENCES IN CRIMINAL LEGISLATION OF THE SLOVAK REPUBLIC (COMPARATIVE ANALYSIS)

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Abstract. This paper provides a comparative analysis of the criminal legislation of the Slovak Republic in the area of consideration of the mitigating factors and criminal defences. Existing research provides an overall exploration of mitigation of sentence institution in accordance with the existing edition of the Criminal Code of the Slovak Republic, announced on 20 May 2005 and entered into force on 1 January 2006 and the Criminal Code of the Republic of Uzbekistan, enacted on 22 September 1994 and entered into force from 1 April 1995, including the issues on determining the punishment for the criminal offences committed in a state of mental disorder as well as insanity and diminished sanity, for uncomplete offences and the criminal complicity, including criminal defences, institutions on the voluntary refusal from the commission of an offence. Pursuant to the results of the conducted comparative analysis, similar and different sides of existing criminal laws have been clarified, and decisions on the concluded analysis and final conclusion on the implementation of Slovak Republic's criminal law norms to the criminal law of the Republic of Uzbekistan have been provided.

Keywords: mitigation of punishment, criminal offence, insanity, diminished sanity, self-defence, extreme necessity, preparation for committing a crime, attempted criminal offence, minor, complicity.

SLOVAKIYA RESPUBLIKASI JINOYAT QONUNCHILIGIDA JAZONI YENGILLASHTIRUVCHI VA QILMISHNING JINOIYLIGINI ISTISNO ETUVCHI HOLATLAR (QIYOSIY TAHLIL)

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Annotatsiya. Ushbu maqolada Slovakiya Respublikasi jinoyat qonunchiligida jazoni yengillashtiruvchi va qilmishning jinoiyligini istisno etuvchi holatlarni hisobga olish masalalari qiyosiy tahlil qilingan. Bu borada Slovakiyaning 2005-yil 20-mayda qabul qilinib, 2006-yil 1-yanvar sanasidan kuchga kirgan Jinoyat kodeksi hamda O'zbekiston Respublikasining 1994-yil 22-sentabrda qabul qilinib, 1995-yil 1-aprel sanasidan kuchga kirgan Jinoyat kodeksining amaldagi tahriri bo'yicha jazoni yengillashtirish instituti umumlashtirilgan holda, xususan, ruhiy holatning buzilishi holatida, shu jumladan, aqli norasolik va cheklangan aqli rasolik holatida sodir etilgan jinoyatlar, tamom bo'lmagan jinoyatlar va ishtirokchilikda sodir etilgan jinoyatlar uchun jazo tayinlash masalalari, shuningdek, qilmishning jinoiyligini istisno etuvchi holatlar hamda jinoyat sodir etishdan ixtiyoriy qaytish instituti o'rganilgan. Har ikkala mamlakat jinoyat qonunlarining qiyosiy tahlili yuzasidan mazkur jinoyat

qonunlarining o'xshash va farqli jihatlari aniqlangan. Amalga oshirilgan qiyosiy tahlil yuzasidan xulosalar keltirilib, yakuniy fikr sifatida Slovakiyaning ayrim jinoyat-huquqiy me'yorlarini O'zbekiston Respublikasi jinoyat qonuniga tatbiq qilishga doir takliflar ishlab chiqilgan.

Kalit so'zlar: jazoni yengillashtirish, jinoiy qilmish, aqli norasolik, cheklangan aqli rasolik, zaruriy mudofaa, oxirgi zarurat, jinoyatga tayyorgarlik ko'rish, jinoyat sodir etishga suiqasd qilish, voyaga yetmagan shaxs, jinoyatda ishtirokchilik.

ОБСТОЯТЕЛЬСТВА, СМЯГЧАЮЩИЕ НАКАЗАНИЕ И ИСКЛЮЧАЮЩИЕ ПРЕСТУПНОСТЬ ДЕЯНИЯ ПО УГОЛОВНОМУ ЗАКОНОДАТЕЛЬСТВУ СЛОВАЦКОЙ РЕСПУБЛИКИ (СРАВНИТЕЛЬНЫЙ АНАЛИЗ)

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Аннотация. В данной статье проведен сравнительный анализ уголовного законодательства Словацкой Республики в аспекте учета обстоятельств, смягчающих наказание, и обстоятельств, исключающих преступность деяния. По данному направлению изучен институт смягчения наказания в целом по действующей редакции Уголовного кодекса Словакии, принятого 20 мая 2005 года и вступившего в силу 1 января 2006 года, и Уголовного кодекса Республики Узбекистан, принятого 22 сентября 1994 года и вступившего в силу 1 апреля 1995 года, включая вопросы назначения наказания за преступления, совершенные в состоянии психического расстройства, в том числе состоянии невменяемости и ограниченной вменяемости, за неоконченные преступления и преступления, совершенные в соучастии, в том числе обстоятельства, исключающие преступность деяния, и институт добровольного отказа от преступления. По итогам сравнительного анализа уголовного законодательства обеих стран выявлены схожие и различные стороны настоящих уголовных законов, изложены выводы по проведенному сравнительному анализу и в качестве заключения представлены предложения по имплементации некоторых уголовно-правовых норм Словакии в уголовный закон Республики Узбекистан.

Ключевые слова: смягчение наказания, преступное деяние, невменяемость, ограниченная вменяемость, необходимая оборона, крайняя необходимость, приготовление к преступлению, покушение на преступление, несовершеннолетний, соучастие в преступлении.

Introduction

The legal system in Slovakia is part of the Romano-German legal family [1, 2] as well as the Republic of Uzbekistan [3, p. 389-416; 4]. The Slovak legal system is a civil law system. Historically, it had been influenced by the Austrian and German legal orders and can thus be grouped within the Roman-Germanic continental legal culture. During the Communist period ranging from 1948 until 1989, it has been influenced by Socialist legal thinking. As of the 1990s, it has been also largely shaped by the reception and

implementation of European Union law [5]. In the legal system of the Slovak Republic as a whole, there is a dualistic concept of the correlation between international and domestic law [6, p. 106].

The history of the Slovak Republic, which has been under pressure from stronger states for a long time, has also left its imprint on its legislation: the current Criminal Code of Slovakia dd 2005 shows the influence of Austrian, Hungarian (by virtue of joining the Austro-Hungarian Empire before 1918), socialist (by virtue of joining

the Czechoslovak Socialist Republic before 1989), European (by virtue of joining in 2004 of the European Union) of criminal law ideas, which undoubtedly makes the study of Slovak criminal legislation interesting [7, p. 68]. The entry of Slovakia into the European Union on May 1, 2004, which is a generator of general European norms, accelerated the process of adopting legislation: in 2005, the Criminal Code of the Slovak Republic was adopted (Law 300/2005) [8, 9]. In the process of creating a new Criminal Code, the cultural and legal traditions of the Slovak Republic were taken into account and the progressive criminal law institutions of the period of Czechoslovakia were preserved [10, p. 909; 11, p. 92].

Presently, the Slovak Republic has a medium rate of crime but it remained low compared to many other post-communist counties [12].

It should be noted that most Slovak lawyers point to the multiplicity of sources of the current Slovak criminal law, which are heterogeneous in nature and have legal significance. However, the main, formal source of criminal law is the Criminal Code of the Slovak Republic, since only it establishes the grounds for criminal liability, types of punishments, types of protective measures, their application and the composition of crimes [13, p. 79].

The Criminal Code of Slovakia (Trestný Zákon) contains 3 parts:

1. Part one. General Part (Chapters 1-5, sections 1-143) prescribes the scope of the act, foundations of criminal liability, types of sanctions, extinction of punishability and penalty, special provisions on the prosecution of young offenders, and interpretation of concepts.

1. Part two. Special Part (Chapters 6-12, sections 144-435) stipulates the types of offences.

3. Part three (sections 436-440) sets out common, interim and final provisions.

The Criminal Code of Slovakia prescribes 2 types of criminal offences (Trestných činov) as minor offences (Prečin) and crime (Zločin) (section 9-11) [14]. Moreover, criminal offences may be divided into several categories [15, p. 121].

Furthermore, punishments may be divided into punishments that can be imposed on natural persons and punishments that can be imposed on legal persons [16, p. 101; 17, p. 120].

Materials and methods

General scientific methods such as historical, comparative legal, and logical (analysis and synthesis) were used in the framework of the paper.

Research results and discussion

Thus, we will perform the succeeding comparative analysis of the Criminal Code of the Slovak Republic in terms of mitigation of punishment, as well as considering the criminal defences.

Firstly, the Criminal Code of Slovakia as well as the Criminal Code of the Republic of Uzbekistan enacted on 22 September 1994 and entered into force on 01 of April 1995 (hereinafter the "Criminal Code of Uzbekistan") stipulates provisions on the retroactive effect of criminal law. When several new laws have taken effect between the time of the commission of the act and the delivery of judgement, the criminal liability for an act shall be determined and the punishment shall be imposed according to the law, which is more favourable for the offender (par. 1). Where it is more favourable for the offender, he may receive a penalty provided for in the law which is in force at the time of the proceedings on the criminal offence (par. 2), section 2 of the Criminal Code of Slovakia says. In addition, the punishability of an act that at the time of its commission met the elements of any criminal offence referred to under the Special Part of the Act herein shall become extinguished if the Act that takes effect at a later stage

sets out that this act shall not be considered criminal (section 84).

Detailed provisions on the application of criminal law in time also provide the Criminal Code of Uzbekistan, which states that a law decriminalizing an act, mitigating a penalty, or otherwise improving the position of a person, shall be retroactive, that is, shall be applied to persons, who had committed the appropriate action before this law came into effect, as well as to persons, who are serving their penalty or have served it with non-cancelled conviction. A law criminalizing an act, severing a penalty, or otherwise worsening the position of a person, shall not be retroactive (article 13 par. 2 and 3).

Secondly, article 54 of the Criminal Code of Uzbekistan stipulates General Principles of imposition of punishment regarding that, a person shall be subjected to criminality, if he, according to the procedure established by law, is found guilty in the commission of an offence. A court shall impose a punishment within the limits established by an article of the Special Part envisaging liability for an offence committed, in accordance with provisions of the General Part of this Code. Whereas imposing a punishment, a court shall take into account the nature and degree of social danger of a committed offence, motives thereof, nature and degree of harm caused, the personality of a guilty person, and mitigating and aggravating factors.

Analogical provisions are stipulated in the Criminal Code of Slovakia, where the sanctions (Sankcií) consist of penalties (Trest) and protective measures (Ochranné opatrenie) (section 31). So in accordance with section 34 par. 4, a court determines the type and the degree of penalty in particular on the basis of the mode of the commission of a crime and its consequence, culpability, motive, aggravating circumstances (Priťažujúce okolnosti), mitigating

circumstances (Pol'ahčujúce okolnosti), the person of the offender, his personal situation and rehabilitation potential.

Third, both the Criminal Codes of Slovakia and Uzbekistan stipulate the list of mitigating factors called "circumstances mitigating the punishment" in the Criminal Code of Uzbekistan and "mitigating circumstances" in the Criminal Code of Slovakia.

Pursuant to section 36 of the Criminal Code of Slovakia, mitigating circumstances shall be as follows:

a) the offender has committed the criminal offence in a state of justified emotional distress;

b) the offender has committed the criminal offence because of the lack of knowledge or experience;

c) the offender has committed the criminal offence due to the consequences of an illness;

d) the offender has committed the criminal offence at an age close to that of juveniles or as an elderly person if this fact had an influence on his mental or volitional ability;

e) the offender has committed the criminal offence under the pressure of dependency or subordination;

f) the offender has committed the criminal offence under threat or duress;

g) the offender has committed the criminal offence due to an emergency that he did not bring about himself;

h) the offender has committed the criminal offence under the influence of a stressful personal or family situation, which he did not cause himself;

i) the offender has committed the criminal offence trying to avert an attack or other danger or acting under the circumstances which, subject to the fulfillment of other conditions, exclude criminal liability without, however, fully meeting the requirements of necessary self-defence, extreme necessity, exercising the rights or performing the

duties or the consent of the injured party, authorized use of a weapon, permissible risk, or acting as an agent;

j) the offender had led a regular life before he committed the criminal offence;

k) the offender contributed to the elimination of adverse effects of the criminal offence or voluntarily offered compensation for inflicted damage;

l) the offender confessed to having committed the criminal offence, and showed signs of effective repentance;

m) the offender reported his criminal offence to the competent authorities;

n) the offender co-operated with the competent bodies in the investigation of his criminal activities; or

o) the offender contributed to identifying or convicting an organized group, a criminal group, or a terrorist group.

However, unlike the Criminal Code of Slovakia, the Criminal Code of Uzbekistan establishes a rule that during determining a punishment, a court may recognize a mitigating factor not envisaged by the foregoing list (article 55 par. 2).

According to the foregoing provisions on that the list of mitigating factors is not exhaustive, we can come to a conclusion that the judges in Uzbekistan are provided with the right to wider judicial discretion.

Furthermore, a mitigating factor envisaged by an article of the Special Part of this Code as an element of offence composition shall not be taken into account throughout determining a punishment (article 55 par. 3). Analogical rule is prescribed by section 38 par. 1 the of the Criminal Code of Slovakia.

Along with the mitigating factors, the Criminal Code of Uzbekistan also stipulates “circumstances considerably decreasing a degree of social danger of a committed offence” and “exceptional cases”. So that pursuant to Article 57 (imposition of lighter punishment):

A court, taking into account circumstances considerably decreasing the degree of social danger of a committed offence, may, in exceptional cases, impose a punishment below the lower limit of severity envisaged by an article of the Special Part of this Code for an offence in question, or another, more lenient punishment not envisaged by an appropriate Article (par. 1).

On the same grounds, a court may abstain from imposing a mandatory additional punishment envisaged by an article of the Special Part of this Code (par. 2).

As circumstances considerably decrease a degree of social danger of a committed offence may be recognized circumstances characterizing in the aggregate an act, personality of a guilty person, degree and form of his guilt, his behavior before and after the offence, grounds for and contributing circumstances of the offence (par. 3).

Moreover, The Criminal Code of Slovakia prescribes “exceptional cases” (section 50 par. 4, section 52 par. 1) as well as the Criminal Code of Uzbekistan (article 57 par. 1) which have different legal content.

The Criminal Code of Slovakia as well as the Criminal Code of Uzbekistan doesn't provide legal definitions for the terms “mitigating circumstances” and “exceptional cases”.

Fourth, the Criminal Code of Uzbekistan establishes the special provisions on mitigation of punishment, stipulated in articles 57 (imposition of lighter punishment), 57-1 (imposition of punishment in case of active repentance of the perpetrator of the deed) and 57-2 (imposition of punishment for offences for which a plea agreement has been concluded), and some of them have analogical reflection by legal content in the Criminal Code of Slovakia.

In its turn, section 38 of the Criminal Code of Slovakia prescribes an original following

institution on accounting for the relative weight and importance of mitigating and aggravating circumstances:

(1) The circumstance that constitutes the statutory element of a criminal offence may not be considered a mitigating circumstance, an aggravating circumstance, the circumstance warranting a lower than a minimum statutory penalty, or the circumstance warranting a higher penalty.

(2) When determining the type and degree of penalty, the court shall have to take into account the relative weight and importance of mitigating and aggravating circumstances;

(3) If the weight of mitigating circumstances prevails, the maximum statutory penalty shall be reduced by one-third;

(4) If the weight of aggravating circumstances prevails, the minimum statutory penalty shall be increased by one-third;

(5) In case of a repeated felony, the statutory minimum penalty shall be increased by one-half; and the provision of paragraph 4 shall not apply;

(6) In case of repeated commission of a particularly serious felony, the minimum statutory penalty shall be increased by two-thirds; and the provisions of paragraphs 4 and 5 shall not apply;

(7) The provisions of paragraphs 4 through 6 shall not apply in case of concurrent sentences or cumulative sentences pursuant to Section 41 par. 2 or Section 42 if the parallel application of these provisions were inappropriately harsh on the offender;

(8) Maximum penalty shall be reduced or minimum penalty shall be increased in cases defined in paragraphs 3 through 6 only within the applicable statutory penalty range; the basis for reducing or increasing the penalty shall be the difference between the maximum and the minimum statutory

penalty. Maximum statutory penalty may not be reduced, nor may minimum statutory penalty be increased in case of criminal offences which, according to the Special Part of this Act, carry a custodial penalty of twenty-five years or life imprisonment.

Moreover, section 39 of the Criminal Code of Slovakia prescribes the following institution for "Exceptional Reduction of a Custodial Penalty":

(1) If given the circumstances of the case or the personal situation of the offender, the court believes that the imposition of a custodial penalty pursuant to this Act would be inappropriately harsh and that a shorter-term punishment would be sufficient to protect society, it may reduce the term of imprisonment below the minimum rate set out in this Act.

(2) The court may also reduce the term of imprisonment below the minimum rate set out in this Act also when sentencing an offender:

a) for preparing a felony or for an attempted criminal offence if it believes that, considering the nature and gravity of preparation or attempt, a custodial sentence pursuant to this Act would be inappropriately harsh, and that a shorter term punishment would be sufficient to protect the society;

b) who has significantly contributed to clarifying a criminal offence committed for the benefit of a criminal group or a terrorist group, or who helped to prevent the commission of a criminal offence prepared or attempted by another person for the benefit of a criminal group or a terrorist group by reporting those other persons' actions to the authorities with competence for criminal proceedings, and providing them with the information they would be otherwise unable to obtain, thus enabling them to prevent or mitigate the consequences of the criminal offence, identify or convict its offenders, and secure the evidence of the criminal offence

with a view to the conviction of a criminal group or a terrorist group;

c) who has committed a criminal offence in a state of diminished sanity, and the court is of the opinion that, considering the offender's health condition, the purpose of protecting society can be achieved also by a reduced penalty and protective treatment; the court shall impose a reduced penalty and concurrent protective treatment without being bound by the restrictions set out in paragraph 3;

d) in plea bargain proceedings; or

e) who has made a particularly significant contribution to clarifying the criminal offence of corruption pursuant to the relevant Sections of Chapter VIII Title Three of this Act, the criminal offence of establishing, masterminding, or supporting a criminal group pursuant to Section 296, the criminal offence of establishing, masterminding or supporting a terrorist group pursuant to Section 297, or a particularly serious felony committed by an organized group, a criminal group or a terrorist group, or to identifying or convicting offenders of such criminal offences by providing evidence thereof in criminal proceedings, if the court believes that, considering the nature and degree of the crime committed, the purpose of punishment can be achieved also by a reduced penalty; a custodial penalty may not be reduced below the minimum rate for a person who organized, instigated or commissioned a crime, of which he has submitted evidence in criminal proceedings.

(3) However, when considering less than a statutory penalty, the court may not impose:

a) a custodial penalty of fewer than twenty years if the offender is convicted of a criminal offence of first-degree murder pursuant to Section 144 par. 3, genocide pursuant to Section 418 par. 3, terrorism and some forms of participation in terrorism pursuant to Section 419 par. 3 and 4, acts

against humanity pursuant to Section 425 par. 2, or war atrocity pursuant to Section 433 par. 2;

b) a custodial penalty of fewer than eight years if the Special Part of this Act sets out an imprisonment sentence of at least fifteen years;

c) a custodial penalty of fewer than five years if the Special Part of this Act sets out an imprisonment sentence of at least ten years;

d) a custodial penalty of fewer than two years if the Special Part of this Act sets out an imprisonment sentence of at least five years;

e) a custodial penalty of fewer than six months if the Special Part of this Act sets out an imprisonment sentence of fewer than five years;

f) prohibition to undertake certain activities, prohibition of residence, or expulsion for a period of fewer than six months.

(4) In plea bargaining proceedings, the court may impose a custodial sentence that is one-third lower than a minimum statutory penalty or, in the case of criminal offences referred to in paragraph 3 (a), a custodial penalty of at least twenty years.

No less original institution on "Waiver of Punishment" (Upustenie od potrestania) (section 40) as well as on mitigation of sentence by President (section 89 par. 2) stipulates in the Criminal Code of Slovakia.

Fifth, the Criminal Code of Uzbekistan pays separate attention to the issues of responsibility of minors, allocating separate chapters to these issues (Section Six of the General Part, Chapters XV-XVI). In addition, by the Law of the Republic of Uzbekistan dated 7 of December 2021 No. LRU-735 "On amendments and supplements to certain legislative acts of the Republic of Uzbekistan in connection with further improvement of the system of ensuring guarantees of the rights of the child", the age of criminal responsibility of minors was raised from 13

to 14 years (article 17 par. 2). In accordance with the article 17, natural persons may be involved as subjects of criminal liability from the age fourteen, sixteen and eighteen years accordingly for the relevant compositions of offences. Section Six of the Criminal Code of Uzbekistan is called "Criminal liability of minors" and sets the system of Penalty for natural persons who committed an offence under eighteen years of age. Besides, the Criminal Code of Uzbekistan provides enough privileges for minors as:

1. When considering an issue of recognition of a person as a special dangerous recidivist, convictions by courts for offences committed by the person under the age of eighteen, as well as withdrawn or cancelled convictions in the procedure established by law, shall not be taken into consideration (article 34 par. 6).

2. A long term of imprisonment, as well as life imprisonment, may not be imposed on a person who has committed an offence under the age of eighteen (article 50 par. 4, article 51 par. 3), etc.

As well as Criminal Code of Slovakia sets out separate Chapter four on Special provisions for the prosecution of young offenders (Mladistvého) (sections 94-121). As per of Criminal Code of Slovakia the natural person who was over 14 years old at the moment of offence commission is criminally liable (section 94 par. 1). During the imposition of punishment, the court shall consider mitigating circumstances also the way of fulfillment by the offender of the imposed re-educational obligations and restrictions referred to under Section 107 (section 110).

Sixth, the rules on imposition of punishment for an uncompleted offence under the Criminal Code of Slovakia are provided for preparation for committing a crime (Príprava na zločin) (section 13) and attempted criminal offence (Pokus trestného činu) (section 14).

Section 13 of the Criminal Code of Slovakia sets out that preparation for committing a felony shall carry the same punishment as the crime, for which it has been intended (par. 2). In turn the attempted criminal offence shall carry the same punishment as the completed criminal offence (section 14 par. 2). However, section 39 par. 2 provides a rule on reducing a punishment when sentencing an offender for preparing a felony or for an attempted criminal offence (section 39 par. 2 subpar. "a").

In its turn, the Criminal Code of Uzbekistan provides much more detailed rules of criminal liability to preparation for offence and criminal attempt (article 25) as well as the subsequent mitigation of punishment provisions:

I. When imposing punishment for an uncompleted offence, the court, governed by the general principles of sentencing, also takes into account the severity of the offence, the degree of implementation of the criminal intent and the reasons why the offence was not completed (article 58 par. 1).

II. The term or amount of punishment for preparation for an offence and attempted offence may not exceed three-quarters of the maximum punishment provided for by the relevant article of the Special Part of this Code. This rule does not apply when imposing punishments:

a) to particularly dangerous repeat offenders, members of an organized group or criminal community;

b) for uncompleted offences against peace and security, as well as offences related to:

- premeditated murder under aggravating circumstances;

- rape or forcible satisfaction of sexual needs in an unnatural form in relation to the victim, obviously for the perpetrator who has not reached the age of fourteen;

- smuggling of nuclear, chemical, biological and other types of weapons of mass destruction, materials and equipment,

and radioactive materials that can obviously be used in its creation (article 58 par. 2).

III. A sentence of life imprisonment cannot be imposed for an uncompleted offence (article 58 par. 3).

Seventh, the Criminal Code of Slovakia (section 20) sets out a single rule regarding the imposition of punishment against accomplice (*Spolupáchateľ*), saying that each accomplice has the same criminal liability as the single person who would commit such a criminal offence.

And in accordance with article 58 par. 4 of the Criminal Code of Uzbekistan, on imposition of a penalty for complicity, a court shall take into account the nature and degree of participation therein of each of the guilty persons. Mitigating and aggravating circumstances relating to the personality of each accomplice shall be taken into account by a court when inflicting a penalty on that accomplice. Furthermore, the Criminal Code of Uzbekistan provides more clarified provisions on the participant's criminal liability in articles 27-31. Section 34 par. 5 of the Criminal Code of Slovakia stipulates that, in determining the type and amount of punishment (*Trestu*), the court shall consider: a) in the case of accomplices, also the extent, to which the actions performed by each of them have contributed to the commission of the criminal offence; b) in the case of an organiser, a person who commissioned the criminal offence, an instigator, and an abettor, also the importance and character of their participation in the commission of the criminal offence; c) with regard to the preparation for a felony and the attempted criminal offence, also the extent, to which the actions performed by the offender have brought the criminal offence nearer to its completion as well as the circumstances and reasons for its non-completion.

Eighth, voluntary refusal from preparation for committing an offence and

attempted criminal offence shall become extinguished in accordance with the Criminal Code of Slovakia (sections 13-14) as well as the Criminal Code of Uzbekistan (article 26). However, in accordance with both Criminal Codes, a foregoing person shall be liable in case the actual act committed by him contains all elements of another offence. Furthermore, paragraph 5 of article 30 of the Criminal Code of Uzbekistan provides a direct indication that the voluntary refusal of an organizer, abettor, or perpetrator, if he took all timely measures, which he was in a position to take, for the prevention of the commission of an offence excludes criminal liability for complicity.

Ninth, effective repentance (*Úprimne oľutova*) is considered as mitigating factor in both of Criminal Codes of Slovakia (section 36 subpar. "l") and Uzbekistan (article 55 par. 1 subpar. "a"). However, subject to certain conditions, effective repentance may be a basis for a waiver of punishment pursuant to the Criminal Code of Slovakia (section 40 par. 1) as well as a basis for released from criminal liability (article 66) and punishment (article 71) in accordance with Criminal Code of Uzbekistan.

Tenth, General Part (Part I) of the Criminal Code of Slovakia as well as the same Part of the Criminal Code of Uzbekistan provides a number of criminal defences (*Okolnosti vylučujúce trestnú zodpovednosť*). In particular, the Criminal Code of Slovakia divides criminal defences into two groups:

I. Circumstances excluding criminal liability:

1. Age (*Vek*) - the person who has not reached the age of fourteen at the time of the commission of the criminal offence may not be held criminally liable (section 22).

2. Insanity (*Nepříčetnosť*) (section 23).

II. Circumstances excluding unlawfulness of an act (*Okolnosti vylučujúce protiprávnosť činu*) [18]:

1. Extreme necessity (Krajná núdza) (section 24).

2. Necessary Self-defence (Nutná obrana) (section 25).

3. Authorized Use of a Weapon (Oprávnené použitie zbrane) (section 26).

4. Permissible Risk (Dovolené riziko) (section 27).

5. Exercising Rights and Performing Duties (Výkon práv a povinnosti) (section 28).

6. Consent of the Injured Party (Súhlas poškodeného) (section 29).

7. Acting as an Agent (Plnenie úlohy agenta) (section 30).

In turn, the Criminal Code of Uzbekistan provides for such criminal defences, excluding the criminality of the act as the minor nature of an act; self-defence; extreme necessity; causing harm during the detention of a person who committed a socially dangerous act; execution of an order or other duty; justified professional or economic risk; commission of an act as a result of physical or mental coercion or threat (article 35), most of those are provided in the Criminal Code of Slovakia.

Moreover, if the Criminal Code of Uzbekistan provides the mitigating factors connected with criminal defences such as commission of an offence in excess of necessary self-defence, extreme necessity, infliction of injury when apprehending a person having committed a socially dangerous act, justifiable professional or economic risk (article 55 par. 1 subpar. "e") which may mitigate the punishment only, then Criminal Code of Slovakia sets that exceeding the limits of act of necessity, self-defence and self-enforcement may be a ground for imposition of punishment below the minimum Penalty or a less severe type of punishment (section 80) as well as for exemption from punishment (section 81).

Although, the Criminal Code of Slovakia stipulates the mitigating factor when the

offender has committed the criminal offence trying to avert an attack or other danger, or acting under the circumstances which, subject to the fulfillment of other conditions, exclude criminal liability without, however, fully meeting the requirements of necessary self-defence, extreme necessity, exercising the rights or performing the duties or the consent of the injured party, authorized use of a weapon, permissible risk, or acting as an agent (section 36 subpar. "i"). This is close to mitigating factors for a commission of a crime in excess of necessary self-defence, extreme necessity, infliction of injury when apprehending a person having committed a socially dangerous act, and justifiable professional or economic risk, set out by the Criminal Code of Uzbekistan (article 55 par. 1 subpar. "f").

Eleventh, the Criminal Code of Slovakia (section 23), as well as the Criminal Code of Uzbekistan (article 18), considers the state of "mental incapacity" as a criminal defence excluding criminal liability, and additionally, the Criminal Code of Uzbekistan implies the possibility of applying compulsory medical measures. It should be noted that the Criminal Code of Slovakia also provides a procedure for determining Protective Medical Treatment (Ochranné liečenie) (section 73 par. 1).

Twelfth, committing a crime in the state of diminished sanity in accordance with the Criminal Code of Slovakia (section 39 par. 2 subpar. "c") will be imposed a reduced penalty and concurrent protective treatment (section 73 par. 2 subpar. "a"). Moreover, the court may also waive the punishment of a young offender for a minor offence committed in the state of diminished sanity (section 99 subpar. "a"). Furthermore, the punishment of the perpetrator of a minor offence that did not result in death or grievous bodily injury may be waived if the offender committed the minor offence in a state of diminished sanity, and the

court believes that protective treatment will guarantee the protection of the society and rehabilitation of the offender more effectively than a penalty; this shall not apply if the offender has induced the state of diminished sanity himself under the influence of an addictive substance (section 40 par. 1 subpar. “c”).

And article 18-1 of the Criminal Code of Uzbekistan explicitly stipulates that persons in a state of diminished sanity are liable, and compulsory medical measures may be applied to such persons by a judge simultaneously with criminal punishment.

Conclusions

Having analysed the institute of mitigation of punishment and criminal defences as well, it can be argued that, the Criminal Code of Slovakia and the Criminal Code of Uzbekistan have more similar sides such as stipulating the list of mitigating factors and criminal defences, special provisions on mitigation of punishment etc. than different sides. Nevertheless, we may suppose that on the basis of a rule provided in paragraph 2 of article 55 of the Criminal Code, the judges in Uzbekistan have a right to wider judicial discretion.

As per of results of the comparative analysis, *we propose to adopt some of the provisions on mitigation of punishment from the Criminal Code of Slovakia and implement to Criminal Code of Uzbekistan*, which, from our point of view, will certainly contribute to the improvement of the criminal law norms of the national criminal law:

I. To implement the provisions of the subparagraphs “b”, “c” and “g” of section 36 of the Criminal Code of Slovakia to article 55 (circumstances mitigating the punishment) of the Criminal Code of Uzbekistan by supplementing paragraph 1 by the subparagraphs “k”, “l” and “m” in the ensuing edition:

Article 55. Circumstances Mitigating the Punishment

Mitigating circumstances shall be:

...“ **k) the offender has committed the criminal offence because of the lack of knowledge or experience;**

l) the offender has committed the criminal offence due to the consequences of an illness”;

m) the offender has committed the criminal offence due to an emergency that he did not bring about himself”.

II. To implement the provisions of sections 29-30 of the Criminal Code of Slovakia on criminal defences to the Criminal Code of Uzbekistan by amending paragraph 2 of article 35 and supplementing articles 41-2 and 41-3 in the succeeding edition, what will contribute to the subsequent relief of the offender’s state:

“Article 35. Definition of the Criminal Defences

...“Criminal Defences shall be: minor nature of an act; necessary defence; extreme necessity; infliction of damage when apprehending a person having committed a socially dangerous act; execution of an order or another duty; justifiable professional or economic risk; commission of an act as a result of physical or mental coercion or threat; **consent of the injured party; acting as an agent”.**

“Article 41-2. Consent of the Injured Party

An act, which otherwise gives rise to criminal liability, shall not be considered as a criminal offence if it was performed with the consent of the injured party and is not prejudicial to the latter’s life or limb.

The injured party shall not be deemed as having consented to the act if he has not given his consent prior to the act, if the consent was not serious and voluntary, or if another criminal offence has been committed in connection with the act concerned.

Provision of paragraph 1 shall not apply if, in compliance with the body of a criminal offence, the act shall be considered as a

criminal offence even if it has been consented by the injured party pursuant to paragraph 1.

Article 41-3. Acting as an Agent

An act, which otherwise gives rise to criminal liability, whereby an agent appointed in compliance with the special regulation endangers or infringes an interest protected under this Act in the course of disclosing a criminal offence or identifying its offender, shall not constitute a criminal offence if he has been forced to do so by the criminal group or the terrorist group, in which he operates, or he committed such an act because of reasonable concerns about the life or limb of himself or of a close person”.

Furthermore, taking into account the process relevance of drafting of Criminal Code in a new edition in the framework of the development of criminal, criminal procedure and criminal enforcement legislation to fulfill Goal 14 of the Decree of the President of the Republic of Uzbekistan, dated 28 of January 2022 No. PD-60 “On the development strategy of new Uzbekistan for 2022-2026 years”, it is recommended for the legislative body of Uzbekistan to learn and adopt the provisions on the criminal liability of legal persons [19] from the Criminal Code of Slovakia, whichever in our view provides complete conditions regarding foregoing institutions.

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