

## **The imposition of a more lenient punishment than that provided for the offense as a form of account assistance to investigation**

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**Abstract.** The article refers to the legislative regulation, mechanism of action and the degree of influence of mitigating circumstances on the process of sentencing. The author analyzes articles of the Criminal Code of the Russian Federation, containing rules on the imposition of a more lenient sentence than provided for the offense. The article studies objectives of the punishment, and opinions of experts in the field. The author estimates positive and negative aspects of this provision of law.

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### **Introduction**

Article 43 of the Criminal Code of the Russian Federation (hereinafter – CC of RF) defines punishment as a measure of state coercion to be imposed by a court to a person convicted of a crime, and it includes deprivation or restriction of the rights and freedoms of a person under the Criminal Code. Punishment shall be imposed in order to restore social justice, correct identity of the offender and prevent new crimes [1].

Determination of punishments for a crime depends upon various factors. Criminal Law basically uses two opposite types of these factors known as aggravating and mitigating factors[2]. While aggravating factors make a punishment more severe than it would be without taking them into account, mitigating factors may provide reasons why the defendant should not receive a maximum punishment[3].

In the USA, states vary in the specific circumstances they define as aggravating factors, but generally include murders committed during the commission of another crime, murders committed for monetary gain, murders of police officers, multiple murders, or other murders considered to be particularly aggravated[4]. Mitigating factors frequently address the defendant's background, including a history of mental illness or intellectual disability, previous trauma suffered by the defendant, or the absence of a prior criminal record[5].

In Russia, the institute of imposition of punishment provides for achieving the goals of punishment under article 61 of the Criminal Code (hereinafter - art.). Criminal law provides three ways to mitigate punishment:

1) The imposition of a less maximum limit of a more severe punishment than the sanction points

(article 62, point 1 of art. 65, art. 66 of the Criminal Code);

2) The imposition of punishment by a court below the minimum limit or a more lenient punishment than it is prescribed by the sanction (article 64 of the Criminal Code);

3) Not using the additional punishment provided as a mandatory (article 64 of the Criminal Code).

The mitigation of punishment under article 62 of the Criminal Code "The imposition of punishment under mitigating circumstances " was considered above. This institute is of course not unique and is also presented in other legal systems, for example, in Australia. [6] In this section we analyze the imposition of a lenient punishment than that provided for the offense, according to article 64 of the Criminal Code.

The institute of the imposition of a lenient punishment than that provided for the offense provides individualization of punishment, taking into account the identity of the perpetrator, the nature and degree of social danger of the crime, as well as its consequences. This institution represents one of the main directions of the state policy in criminal sentencing: providing just punishment, reasonable mitigation of criminal penalty, the diversity of life situations, exceptional circumstances of the case which may lead to the conclusion that even the imposition of a penalty equal to the minimum sanctions or most lenient sentence in an alternative sanction is too harsh and inconsistent with the purposes of punishment [7].

Under point 1 of article 64 of the Criminal Code in exceptional circumstances relating to the purposes and motives of the crime, the role of the perpetrator, his behavior during or after the

commission of the offense, and other circumstances, significantly reduce the degree of social danger of the crime, as well, with the active assistance of the members of the criminal group to solve the crime punishment may be imposed below the minimum limit prescribed by the relevant article of the Criminal Code, or the court may impose a more lenient punishment than that provided by this article, or the court will not apply an additional form of punishment provided as a mandatory.

At the heart of the institute of the imposition of a more lenient punishment than provided for the offense is a certain contradiction between abstract legal norms and the specific nature of acts of regulated by them [7]. This is due to the fact that there are only the most basic and common characteristic of this type of crime in constituent elements of crime. Individual features of the crime remain out of the constituent elements of crime because it is impossible to consider all of them when constructing the elements of offence [8].

According to the general principles of sentencing under article 60 of the Criminal Code the punishment should be imposed under the sanction of an article providing the liability for the crime. Going beyond the maximum and minimum limits of sanctions is strictly regulated by law. In particular the imposition of a more lenient punishment than that provided for the offense is possible only in exceptional circumstances.

Criminal law does not provide a specific list of circumstances in which it is possible to impose a more lenient punishment than that provided for the offense, the court shall independently establish the exceptional nature of the circumstances in assessing the merits of the case. The court imposing a more lenient penalty under article 64 of the Criminal Code and justifying its decision in the description and motivation part of the sentence must indicate what circumstances mitigating punishment or their combination are recognized exclusive and significantly reduces the degree of social danger of the crime. Thus, this legal provision is estimated.

Article 64 of the Criminal Code provides guidelines for making decisions about the exclusivity of the specific circumstances of the case establishes criteria for their evaluation. In particular the exceptional circumstances are individual circumstances mitigating punishment, and their combination, as well as other unspecified circumstances in the list of Article 61 of the Criminal Code. The court should evaluate the objectives and motives for the crime, the role of the perpetrator, his behavior during and after the crime, data on identity of the perpetrator the nature and degree of social danger of the crime, etc. [10].

In our opinion, the exclusivity of circumstances is that they are in this particular case reduce social danger of the identity of a perpetrator or his act that the imposition of punishment under article for the offense is too harsh and therefore unfair.

The law emphasizes the exclusivity of the circumstances as an active promoting of participator of criminal to solve the crime [11]. Assessing this fact we should take into account that not only a recognition of guilt and no acknowledgment of guilt, but the promotion of disclosure of a group crime – exposure of other partners in the crime, facilitation to the criminal investigation, search and seizure of stolen property, instrument of crime and etc. Consequently, in terms of promotion to law enforcement agencies article 64 of the Criminal Code can be applied only to the participant of group crimes that just described in the text.

Penalty imposed under article 64 of the Criminal Code can not be less the minimum penalty defined for the respective kinds of penalties in articles of the General Part of the Criminal Code of the Russian Federation. Thus, the court can not mitigate the punishment below the minimum for a particular type of punishment:

2. Deprivation of the right to hold certain positions or engage in certain activities for at least one year in the appointment as the main form of punishment and less than six months as an extra ;
3. compulsory work for at least sixty hours ;
4. corrective labor for less than two months ;
5. restriction of military service less than three months;
6. restriction of the freedom of less than two months in the appointment as the main form of punishment and less than six months as an extra ;
7. arrest - less than one month ;
8. military detention less than three months ;
9. imprisonment for a fixed term of less than two months [12].

The imposition of minimum penalty under the sanctions of the Criminal Code of the Russian Federation does not preclude the existence of lenient and alternative forms of punishment in the sanction of the same article [13]. Imposing a more lenient sentence the court is guided by the system of penalties defined in article 44 of the Criminal Code and based on the principle of its construction from less severe to more severe punishment. Law enforcer saving criminal repression can make the punishment fit the crime and social danger of the identity of offender.

A more lenient punishment can be imposed according to the rules of the Criminal Code of the Russian Federation including fine, deprivation of the right to hold certain positions or engage in certain activities and corrective work but the imposition can not be below the minimum limit or terms specified in the relevant articles of the Special Part of the Criminal Code in relation to each type of punishment. At the same time a more lenient kind of punishment can be imposed in its maximum limits.

The court may release the perpetrator from further punishment provided as a mandatory in the sanction of articles of the Special Part of the Criminal Code. Imposing the minimum or lenient penalty the court may impose probation, if he comes to the conclusion that a real punishment is inexpedient.

According to article 45 of the Criminal Code all punishments are divided into primary and additional. The main types of punishment include mandatory work, correctional work, restrictions on military service, arrest, military detention, imprisonment for a fixed term to life imprisonment, the death penalty (point 1 of article 45 of the Criminal Code). Fine, deprivation of the right to occupy certain positions or engage in certain activities and restriction of freedom are used as both core and additional penalties (point 2 of article 45 of the Criminal Code). Deprivation of a special military or honorary title, class rank and state awards is used only as an additional penalty (Part 3 of Article 45 of the Criminal Code).

Common types of penalties are penalties that can be imposed to any person. They include: a fine, community service, corrective labor and restriction of liberty, arrest, imprisonment for a fixed term or life imprisonment [14].

Special penalties are imposed only to a specific group of individuals. Can be considered a special restriction on military service, military detention and deprivation of the right to occupy certain positions or engage in certain activities, deprivation of a special military or honorary title, class rank and state awards.

Availability of specific forms of punishment imposes certain limitations on the imposition of a lenient punishment than that provided for the offense.

Look at an example of this form of punishment as deprivation of the right to hold certain offices or engage in certain activities, which according to Article 45 of the Criminal Code can be both a primary and additional penalty. According to point 1 of Article 47 of the Criminal Code the nature of this type of punishment is prohibition to hold positions in the civil service, local authorities, or engage in certain professional or other activities. This penalty is imposed in cases when the court finds it

impossible to maintain the right to hold certain positions or engage in certain activities for the guilty person. Consequently, the use of this form of punishment in the appointment of a lenient kind of punishment is only possible provided that the offense is committed by a person holding a position or engages in certain activities with the use of his official position or profession. The imposition of this punishment without these features contraries to the main objective of this kind of punishment - prevent further offenses by the convicted person who previously used his position or activity to commit a crime [15].

Thus articles 45, 46-57 of the Criminal Code impose restrictions on the imposition of a lenient punishment provided for the crime under article 64 which define the grounds and conditions of infliction of a certain type of punishment.

In general, consideration of article 64 of the Criminal Code allows making the following conclusions:

- Exceptional circumstances under article 64 of the Criminal Code are in this particular case reduce public danger of the identity of an offender or the wrongful act that the imposition of punishment under sanction of this article for the offense is too harsh and therefore unfair;

- In connection with the amended Federal Law of 07.03.2011 the meaning of article 64 of the Criminal Code is changed. With the exclusion of the lower limits of sanctions on 117 elements of crimes, and the introduction of alternative kinds of penalties on 23 elements of crimes, Article 64 of the Criminal Code allows mitigating punishment commute in terms of the observed total mitigation of criminal law. At the same time the reduction of cases of possible impositions increases its exclusivity;

- The provisions of Article 64 of the Criminal Code compete with the provisions of article 61 of the Criminal Code, uncertainty and lack of selection criteria in these conditions implies a refusal of enforcer from using less regulated norms;

- In connection with the need to stimulate those who have committed a crime to promote law enforcement, seems necessary to establish a criterion of application of Article 64 of the Criminal Code depending on the significance of the crimes;

- We consider possible to impose a primary punishment below the minimum limit or more lenient punishment than the sanction points not using additional punishment provided as a mandatory.

- We offer read point 1 of article 64 of the Criminal Code as follows... " or the court may impose a lenient punishment than it is provided in this article, and (or) does not impose an additional form of punishment provided as a mandatory ".

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