

General Basis for Sentencing

*Huseynov Tofiq*¹

*Khalilov Yunis*²

*Abishov Sefiyar*³

*Aliyev Hikmet*⁴

Abstract

Respect for fundamental human rights and freedoms is considered important in every society not only for the well-being of that society, but also for ensuring universal peace and security. As a result of the measures taken to establish a legal state and civil society in the Republic of Azerbaijan, which became independent on October 18, 1991, and to reflect the progressive achievements of Europe and the world as a whole, based on national values, radical reforms have been implemented in all spheres of the country's life.

Keywords: differentiation, defendant, guilty, objective, recidivist, cumulative.

¹ Lecturer of the chair "General Law", Nakhchivan State University, Azerbaijan

² Lecturer at the "General Law" Department, Nakhchivan State University, Azerbaijan

^{3,4} Lecturer at the "Special Law" Department, Nakhchivan State University, Azerbaijan

According to the Criminal Code of the Republic of Azerbaijan, "Punishment is a state coercion expressed in deprivations provided for by law, imposed on a person found guilty of committing a crime by a court verdict on behalf of the state, or in the restriction of the rights and freedoms of the convicted person. In other words, punishment is applied to a person found guilty of committing a crime. It should be noted that the committed crime is the basis for the person's responsibility and the applied punishment and exists as a legal fact. In this case, the person is guilty of committing an act that is considered a crime by law, and such an act is committed either intentionally or recklessly. It should be noted that the scope of acts that are considered crimes is determined by law by the supreme state authorities. Thus, by imposing punishment, the state tries to regulate the behavior of a certain part of the members of society within the desired limits. It should also be noted that when a crime is committed, the punishment determined by criminal law is applied only by the judicial authorities on behalf of the state.

Also, the act of the convict is judged on behalf of the state. Also, the bodies and institutions implementing the execution of the sentence should approach the punishment imposed by the court from

the position that it is aimed at restoring social justice, at reforming the convict and creating the necessary conditions for preventing the commission of new crimes by both convicts and other persons. It should be noted that the Plenum of the Supreme Court of the Republic of Azerbaijan “On the practice of applying the general principles of sentencing by courts” No. 3 dated December 30, 1997. Constitution of Azerbaijan states that every person accused of committing a crime shall be presumed innocent unless his guilt is proven in accordance with the law and unless there is a final and binding judgment of a court to that effect. [1, p. 20] Thus, this provision of the Constitution has entrusted the responsibility for the application of a fair punishment measure to the person found guilty of committing a crime to the court that passed the sentence [9]. The imposition of a justified legal and fair punishment is an important means of combating crime and strengthening legal rules, creating the necessary punitive effect and at the same time contributing to the correction and re-education of the convicted person. For this reason, the general principle of determining punishment is based on the correct individualization of punishment and its effectiveness. In each case, the correct individualization of punishment depends on the correct description of the criminal act. This occurs in accordance with the requirements of the principle of legality. An incorrect description leads to the holding of an innocent person accountable or the exclusion of a person who is guilty of committing a crime. It also leads to the unjustified selection of the limit of the type of punishment, the application or non-application of many other legal restrictions, as well as the application of exemption from criminal liability and punishment, the settlement of the term of execution of the indictment, the payment of the conviction, and other cases. Therefore, courts must strictly and irrevocably adhere to the principles of criminal law, and must not use the incorrect description of the act as a basis for sentencing persons whose actions do not constitute a crime, nor should they use the incorrect description of the act as a basis for determining punishment without taking into account the circumstances of the case and the identity of the perpetrator. According to the law, a crime committed must be clearly defined by the article determining liability for this act, and there should be no absolute grounds for departing from this requirement. Article 58 of the Criminal Code of the Republic of Azerbaijan currently in force determines the general provisions of sentencing [2, p. 70].

That is, a person found guilty of committing a crime should be sentenced to a fair punishment within the limits provided for in the relevant articles of the special part, taking into account the provisions of the general part of the Criminal Code. It should be noted that when determining the punishment, the nature of the committed crime and the degree of public danger, the identity of the offender, as well as the circumstances mitigating and aggravating the punishment, the impact of the imposed punishment on the person's reformation and the living conditions of his family should be taken into account. Article 58 of the Criminal Code of the Republic of Azerbaijan sets out certain requirements that courts should be guided by when determining punishment in a specific case.

In short, the punishment imposed must be in accordance with the following requirements.

- 1) The punishment imposed must be fair;
- 2) The provisions of the general part are the basis when imposing punishment.
- 3) The punishment must be determined taking into account the nature and degree of danger of the crime committed
- 4) The personality of the offender is also taken into account when imposing punishment.
- 5) Circumstances that mitigate and aggravate the punishment are also the basis when imposing punishment
- 6) The impact of the punishment on the personal reformation of the offender and the living conditions of his family is considered the basis when imposing punishment.

It should be noted that the imposition of a just punishment is, first of all, a key step in achieving the goal of punishment, namely the restoration of social justice, the reformation of the convict, and the prevention of new crimes by both convicts and other persons [12]. Similarly, the fairness of punishment means that

the punishment should be appropriate to the nature and degree of public danger of the committed crime, the circumstances of its commission, and the personality of the person found guilty of committing the crime. The criminal legislation of the Republic of Azerbaijan, which imposes serious penalties on persons who have committed serious crimes and have been previously convicted, also provides great opportunities for courts to implement a differential approach to sentencing in order to correct those who have committed a less dangerous crime for the first time and are not isolated from society. It should also be noted that when assessing the degree of social danger of a crime, the court must fully, comprehensively and objectively investigate the circumstances of the commission of a specific criminal act, and at the same time, the form of guilt, the motive and method, the circumstances and stage of the commission of the crime, the fact that it caused a serious consequence, the degree and nature of the participation of each of the participants in the crime, etc. should be taken into account in a comprehensive manner [13]. A thorough investigation of the defendant's personality is one of the necessary and important factors for determining a fair sentence [5]. The defendant's life path, attitude to public office, labor, and behavior in the family, convictions, etc. should be sufficiently investigated. In accordance with the Criminal Code of the Republic of Azerbaijan, a more serious type of punishment than the punishments provided for the committed crime is imposed only in cases where it is impossible to ensure the goals of a less serious punishment. Therefore, the court must indicate in the verdict the reasons for imposing a more serious punishment, not a less serious punishment, for the committed crime.

It should be noted that the punishment imposed is fair if all the provisions on the imposition of punishment are taken into account when imposing a penalty in a specific case. The provisions of the General Part of the Criminal Code are taken into account when imposing a penalty. Accordingly, the grounds for criminal liability, whether the person's actions constitute a crime, and for which act he will be sentenced are investigated. Similarly, where and when the act occurred, whether the act belongs to the category of socially non-dangerous acts due to its minor importance, what category the crime belongs to, whether it is a general recidivism crime, whether the crime was committed alone or with participation, and whether there are any circumstances that exclude the social danger of the act are investigated. In cases where the subject of the crime in the case is determined to be a minor, when determining the punishment, the court shall base its decision on the provisions of Articles 84-92 of the Criminal Code on the criminal liability of minors. When the court imposes a sentence of imprisonment on minors for a crime committed by them, the term of imprisonment specified in the sanction of the applicable article shall not exceed ten years. One of the circumstances taken into account by the court when determining the punishment is the nature of the crime.

The degree of social danger of a specific act committed in comparison with other specific crimes of the same type is the degree of social danger of the crime. Crimes that differ in their danger are assessed differently by the criminal law and are reflected in the sanctions of separate articles that provide for liability for specific types of crimes. It should also be noted that the signs indicated in the composition of the crime, as well as the signs used by the law as criteria for dividing the composition of crimes into types, do not indicate the degree of danger of a specific act, but of acts included in a certain class. At the same time, specific acts belonging to the same class have different degrees of danger [10]. Otherwise, the law does not indicate in the composition of the crime the result of the crime, the intensity of the act, the type of intent or recklessness, as well as the signs characterizing the motive and purpose of the crime. In this case, a criminal act of the same type committed in different ways, with different motives and purposes can be considered socially dangerous to different degrees [8]. Thus, the degree of social danger of a crime, as a rule, is based on the objective aspect of the crime, and the nature of the crime is based on the objective and subjective aspects of the crime. When determining the nature and degree of danger of the crime committed during sentencing, all circumstances related to specific crimes are taken into account in an aggregate manner [4].

Many authors take a different position on the inclusion of aggravating and mitigating circumstances in the composition of the crime. At the same time, this circumstance is necessarily provided for in the general principles of sentencing. As stated in the decision of the Plenum of the Republic of Azerbaijan, in

accordance with the Criminal Procedure Code, the part of the sentence should indicate the aggravating and mitigating circumstances, the reasons for the defendant's release from punishment, the decision of the judge regarding the postponement of execution, the application of conditional sentencing, the imposition of a lighter punishment than provided for by law, and, if necessary, the motive for the type and extent of this or that punishment chosen by the court [7]. It should also be noted that the types of punishment are divided into main and additional types of punishment in accordance with the procedure for their application.

Long-term work on the problem of punishment allows us to understand that no knowledge of any field of science can be fully comprehensive. Man is not able to study any reality of the socio-natural, material and spiritual world to the end. However, he always tries to comprehend the truth. And this, as is known, is possible as a result of deep and long-term study of this or that problem [11].

It should be noted that when we delve deeply into the essence of the problem of punishment, we can conclude that the understanding of this complex phenomenon is limited only by the legal approach, which reveals the need to go beyond the criminal law and criminological framework in the research process. It is also necessary to understand that it is very difficult to understand punishment and its essence without a philosophical understanding of crime and its causes.

The reason is that it is considered possible to call human behavior and the resulting reaction punishment by knowing only what crime is. Based on these provisions, let us consider the concept of punishment together with crime and its causes. Thus, in this direction, the problem should be approached not only from a legal, but also from a philosophical perspective. As a result, some of the previously expressed ideas on the mentioned problems arise in contradiction. Let us refer to the idea expressed by the American philosopher, poet and publicist James Russell Lowell: "Only fools and the dead never change their minds."

Let us note that according to Hegel: "Courage in the search for truth and faith in the power of reason are among the first conditions for engaging in philosophy. He notes that a person must respect himself and consider himself worthy of the highest, most valuable things. Therefore, no matter how high we think about the power and mystery of the spirit, these are still not enough. There is no power in the hidden essence of the universe that can resist understanding. Humanity must open up to man the depths and riches of its nature and create opportunities for man to enjoy them. In a philosophical sense, punishment is a sanction, punishment is applied in case of violation of law and order, it is aimed at "degrading" the social status of the offender and limiting certain opportunities [6]. At the same time, punishment is considered a moral, philosophical and legal category. The main thing is that the offender understands the "fruits of what he has earned" for his actions. His understanding is very important and allows the offender to return to society as a healthy individual.

In general, when imposing a penalty on a person, all characteristics are taken into account. Because, first of all, isolating a person from society does not mean reforming a person. All reform measures specified in the current Penal Code of the Republic of Azerbaijan must be implemented in accordance with the law on the spot. Finally, when imposing a penalty, the main goal in choosing the types of penalty is not its severity, but the principle of inevitability of responsibility should be taken as the basis. However, the work to be done on the humanization of the penalty policy should not reduce the importance of measures taken in the field of combating crime, and necessary work should be done in this area in order to achieve possible results.

References

1. Azərbaycan Respublikasının Konstitusiyası. Bakı. 2020
2. Azərbaycan Respublikasının Cinayət Məcəlləsi. Bakı. 2020
3. Abbasov, E., Aliyev, E., & Aliyev, H. THE CATEGORY OF INITIAL LETTERS WHICH ARE THE SPECIAL SIGNS OF LINES. Deutsche internationale Zeitschrift für zeitgenössische

Wissenschaft ♦ ♦ ♦ № 73 2024 VOL., 12.

4. Aliyev, E. (2024). Forensic Handwriting Analysis to Determine the Psychophysiological Traits. *International Journal of Religion*, 5(6), 511-530.
5. Алиев, Э. (2016). Криминалистическое исследование психофизиологических качеств исполнителя рукописного текста и медицинская наука. *Науковий вісник Національної академії внутрішніх справ*, (2), 338-354.
6. Farman, Y. K., & Yusif, E. J. (2025). Abortion: In the Context of the Legislation of Foreign Countries and the Republic of Azerbaijan. *Acta Globalis Humanitatis et Linguarum*, 2(1), 4-9.
7. Garibli, I. (2025). Claims in Civil Cases Considered by the Courts. *Global Spectrum of Research and Humanities*, 2(2), 113-122.
8. Khalilov, Y., & Mirzazade, Y. (2025). The Presumption of Innocence in the Context of International Legal Instruments on Human Rights. *Acta Globalis Humanitatis et Linguarum*, 2(2), 259-264.
9. Yunis, K. (2024). CONCEPTS ABOUT THE SOURCE OF THE WORD “CONSTITUTION” AND ITS MODERN MEANING. *Scientific Research and Experimental Development*, (6).
10. Ozturk, A., Behbudov, G., Huseynov, T., & Ismayilov, N. (2024). THE PLACE AND ROLE OF THE HURUFISM MOVEMENT IN GLOBAL IDEAS. *BBC*, 22.
11. Öztürk, A., & Garibli, I. (2025). The Characteristics of Monarchy as a Form of Government. *Acta Globalis Humanitatis et Linguarum*, 2(2), 117-125.
12. Tofig, H., & Nurlan, I. (2024). THE IMPORTANCE OF INVOLVEMENT OF PRISONERS IN LABOR IN JAILS. *German International Journal of Modern Science/Deutsche Internationale Zeitschrift für Zeitgenössische Wissenschaft*, (74).
13. Huseynov, T. (2025). Legal bases for the organization of clerical work. *Acta Globalis Humanitatis et Linguarum*, 2(1), 229-234.