

UZBEK EXPERIENCE IN MATTERS OF CRIMINAL AND LEGAL REGULATION OF EXEMPTION FROM LIABILITY FOR UNLAWFUL TREATMENT OF WEAPONS

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***Аннотация:** The article points out that the social need is not only the establishment of a criminal law prohibition, but the establishment of an incentive norm that determines the conditions for the release of a person from criminal liability in the fight against illegal handling of weapons as well. Since the concept of voluntary surrender of weapons is not legally defined in the norm provided for by part four of the Article 248 of the Criminal Code of the Republic of Uzbekistan, opinions about this concept are still the cause of controversy in the legal literature and based on the presence of problems that arise when applying the rule under study in the practice of judicial investigation, each of the signs related to the concept of voluntary surrender of weapons is analyzed on the basis of the Criminal and Criminal Procedure legislation, the corresponding decision of the Plenum of the Supreme Court of the Republic of Uzbekistan, in the future, scientifically based proposals and recommendations were developed that are important for the legal solution of this issue for criminal legislation to improve the criminal law norm on the release of a person who handed over a weapon voluntarily and for judicial investigative practice.*

Key words: criminal law, weapons, social danger, voluntariness, criminal responsibility, acts of condo nation.

At first glance, the illegal handling of weapons is a social danger for the individual, society, and the state. It is evident from the disposition of Article 248. In addition, it is known from judicial investigation practice that many violent crimes are committed with the use of weapons. Because a number of crimes in the Criminal Code are committed with the use of a weapon as an aggravating or particularly aggravating circumstance in the qualification of the crime, which indicates the nature of the act and the high level of social danger.

For this reason, the law-making is aimed at increasing the effectiveness of the fight against the illegal handling of weapons by establishing criminal liability and thereby preventing any (real) damage to important objects protected by the Criminal Code, not by establishing a single criminal-legal prohibition in the criminal legislation, but found it necessary to include in it the incentive norm defining the conditions for the release of a person from criminal responsibility.

After all, as stated in the legal literature, "The Special Part of the Criminal Code of the Republic of Uzbekistan consists not of a set of norms that define socially dangerous acts as crimes and the types and amounts of punishment for them", but in the rules of conduct that carry out positive actions after criminal acts, the individual is exempt from criminal responsibility it is possible to witness the existence of norms that determine special grounds and conditions for release.

As one of them, it is possible to point out the provision in the fourth part of Article 248 of the Civil Code: "A person who voluntarily hands over the items provided for in this article shall be released from liability." In our opinion, in the criminal legislation, such cases take into account the optimization (optimization) of protection of relevant social relations from criminal aggression in the future.

In our opinion, the regulation of such measures in the Special Part of the Criminal Code is based on the second part of Article 66 of the Criminal Code, that is, "in the cases specified in the relevant article of the Special Part of this Code, the person who committed the crime should be released from responsibility if he actually regrets his act."

However, it should be said that such special grounds for exemption from liability are fundamentally different from the general grounds for exemption from liability provided for in the first part of Article 66 of the Civil Code. These are manifested in:

firstly, such special grounds for exemption from criminal responsibility, due to the fact that the guilty person actually regrets his act, the scope of his criminal-legal agreement (compromise) is somewhat wider than the general grounds for exemption from responsibility. Because, in contrast to the general grounds for exemption from liability, as defined in the first part of Article 66 of the Criminal Code, that is, when the guilty party actually regrets his act, these special conditions include the degree of social danger of the crime, the fact that it was committed for the first time, the fact that the guilty party sincerely regrets it, it is not affected by conditions such as the fact that he actively helped to solve the crime and eliminated the damage, that is, the law does not limit the scope of its application;

secondly, due to the fact that the guilty person actually regrets his act, the general grounds of exemption from responsibility do not impose the obligation of the subject exercising the right to exempt the person from responsibility, but allow him to exercise such a right, because in the first part of Article 66 of the Criminal Code, "a person ... is exempted from responsibility if it is possible". In special conditions different from these general principles (Part 4 of Article 248 of the Criminal Code), the legislator imposes an obligation to release from criminal responsibility a person who voluntarily hands over weapons to law enforcers. Such a requirement can be seen in the second part of Article 66 of the Civil Code, which clearly stipulates that "... should be exempted from liability".

Although it is clear that the special grounds for exemption from responsibility specified in the fourth part of Article 248 of the Criminal Code are clear and do not cause any difficulties in its practical application, that is, if a person voluntarily hands over weapons, he should be exempted from responsibility. However, the concept of "voluntarily handing over weapons" is not defined in the criminal law. This deficiency is in accordance with paragraph 12 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 3 of February 27, 1996, "person Criminal Code

If he decides to hand over the items mentioned in Article 248 of his own free will, and he himself applies to the relevant authorities in writing or verbally about the handover of these items, he is considered to have handed over the items of his own free will. If a person comes to a conclusion to surrender a weapon during the search process or as a result of evidence that he has a weapon, he is not considered to have surrendered the weapon voluntarily.

However, in spite of this, when the materials of the judicial investigation practice are analyzed, the investigation, prosecutor's office and judicial authorities of the JK

As a result of different interpretations of the concept of voluntary handing over of weapons in the implementation of the norm provided for in the fourth part of Article 248, it is possible to witness that a number of mistakes are made in the cases of releasing or not releasing a person from liability without complying with the conditions of release from responsibility or without taking them into account. In particular, it is considered that a person surrenders a weapon at the request of his close relatives, it is considered that it was not surrendered on his own initiative, or the fact that he surrendered the illegal weapon that he had at the time of his arrest as a voluntary surrender, or surrendering the weapon because he committed a crime of violence with this weapon and later regretted his act. It is possible to cite as an example the cases where the status is deemed to have been voluntarily handed over.

In turn, such errors prevent the application of norms that define legal incentives for the positive behavior of the guilty after the criminal act as one of the means of combating the illegal trafficking of weapons.

Also, it is difficult to find a clear answer in the legal literature on this issue. Therefore, the correct determination of the conditions for considering cases of handing over weapons as voluntary is not only theoretical, but also of practical importance.

In order to correctly apply the norm provided for in the fourth part of Article 248 of the Civil Code, we believe that it is necessary to correctly interpret the concept of voluntarily handing over the items provided for in this article and analyze each basis and conditions for releasing a person from liability as a result.

First of all, it is necessary to determine which side initiated the decision to hand over weapons. "Voluntariness" exists if the initiative, desire to hand over the weapons is firmly expressed by the perpetrator, but if the request to hand over the weapons is made by subjects with legal powers, then there is no voluntary

handover. Because, as stated in the above-mentioned decision of the Plenum of the Supreme Court of the Republic of Uzbekistan, it is determined that a person's handover of a weapon during a search or as a result of the evidence of the presence of a weapon by the employees of the relevant bodies is not considered voluntary.

It is also worth noting that, although the close relatives of the guilty person demand that the weapon be handed over, it should be considered that the weapon was voluntarily handed over even in cases where the guilty party expressed this initiative based on their request. Because the relations arising on the exemption from liability as a result of voluntary handing over of the weapon are considered to be compatible with criminal law, and the subjects of these relations are only the guilty and the relevant authorities of the state. The fact that close relatives will not be held criminally liable for not reporting information about the culprit to the relevant authorities, based on humanitarian principles, is reflected in the third part of Article 31 (Commitment to a crime) and the second part of Article 240 (evasion of duties by participants in criminal proceedings) of the Criminal Code. .

That's why the initiative taken by the guilty before handing over the weapon is of great importance and takes the main place in the application of the special norm of releasing the person from responsibility.

The second important sign of "voluntariness" is to determine which bodies the perpetrator applied to, that is, to which body or entity the person applied orally or in writing to hand over the weapon serves as a basis for his release from responsibility. In the legal literature, it is possible to find that not only law enforcement bodies - prosecutor's office, investigation, inquiry bodies, but also other bodies, i.e. military administration bodies, "legal bodies" are mentioned as bodies of reference by scholars, at the same time, the Plenum of the Supreme Court of the Republic of Uzbekistan Paragraph 12 of Decision No. 3 of February 27, 1996 states "to the relevant authorities".

In addition, it is specified in the Criminal Procedure Code that law enforcement officials who have the authority to initiate criminal proceedings should be referred to as the body of appeal regarding the voluntary surrender of weapons. Because it is they who have the authority to decide the issue of bringing a person to criminal responsibility or releasing him from criminal responsibility in a procedural manner. However, at the same time, there are also cases where officials who do not have the authority to initiate a criminal case, but who have the authority to take quick measures, apply for the handover of weapons. For example, it is an appeal made by the representatives of the Internal Security Department, which operates in the system of internal affairs, regarding the handover of the weapon illegally stored in the house of an employee operating in the system.

In our opinion, when determining the official body to which a person applies for the voluntary transfer of weapons, it is necessary to pay attention to the entities that fall into the scope of criminal-legal relations arising according to the procedure established by the fourth part of Article 248 of the Criminal Code. More precisely, if the subject of these relations is a person on the one hand, and on the other hand, they are officials of state bodies who have the authority to bring a person to criminal responsibility or exempt him from responsibility.

According to the Code of Criminal Procedure of the Republic of Uzbekistan, bodies that carry out pre-investigation investigations (CPC 391-m), investigative bodies (CPC 38, 381-mm.), preliminary investigation bodies

(Article 344 of the Civil Code) and the court have the authority to decide whether or not to bring a person to criminal responsibility, the fact that a person officially appeals to the officials of these relevant bodies is the second basis for the voluntary surrender of weapons. Appealing to other law enforcement bodies, in particular to justice bodies or to persons of the above bodies who do not have the authority to directly implement the issue related to criminal responsibility, does not confirm that the person is free to hand over the weapon.

The timing of handing over the weapon is also important in recognizing it as a voluntary handover. Paragraph 12 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 3 dated February 27, 1996 states that "If a person comes to the conclusion to hand over a weapon during a search or as a result of evidence that he has a weapon, he is not considered to have surrendered the weapon voluntarily", but the Supreme Court The plenum only determined the time when "Tintuv" investigation action was carried out or evidence was presented. It is known that law enforcement officers who have information about the presence of an illegal weapon on a criminal not only conduct a search and investigation to identify and seize

this weapon, but also take procedural measures to arrest the suspect based on Articles 221 and 222 of the Criminal Code, at this time the person even when it comes to the conclusion about handing over the weapon, it is not considered that he handed over the weapon voluntarily.

Also, it is necessary to take into account that the weapons handed over by the criminal during the arrest of a person or during the implementation of investigative measures are not always considered voluntary surrender. If no demand has been made by the authorities regarding the handover of the weapon, or when investigation and urgent measures are being carried out in connection with another situation, not in order to identify and seize it, the person decides to hand over the weapon of his own free will, when he hands it over, the weapon should be deemed to have been voluntarily handed over. Therefore, as stated in the above decision of the Plenum of the Supreme Court, it is not enough for the officials to make a decision that handing over the weapon during the search process or when evidence of the presence of a weapon is not considered voluntary, and it is also necessary to express the fact that the weapon is being identified and taken away. will be

At the same time, communication about the location of weapons is also very important in solving this problem. In our opinion, in order to consider that the weapon has been voluntarily surrendered, it is necessary not only to give (handover, release) the weapon with one's own hands, but also to inform about the possession of an illegal weapon while being held in a temporary detention center for another crime, and the criminal person by law enforcement officers it is necessary to consider the cases of going and taking away weapons from the said place, as the person voluntarily handed over the weapons. Because, it is necessary to take into account that the purpose of setting the norm stipulated by the fourth part of Article 248 of the Criminal Code is to put an end to the illegal circulation of weapons and to prevent the commission of other serious and extremely serious crimes through them in the future. This ensures the principle of justice in criminal law.

Another important situation that must be determined in order to release a person from liability in case of voluntary handover is the existence of a clear (real) possibility that the person will illegally distribute the weapon, that is, the person comes to the conclusion about handing over voluntarily. If a person finds it impossible to continue illegally storing a weapon and is forced to hand it over, i.e. when he finds out that he is being watched, the place where the weapon is stored is known to others, or when he realizes that it is impossible to use it illegally, handing over the weapon should not be considered voluntary. Because in such cases, the person is influenced not by his own will, but by the influence of external forces or is left helpless, which prompts him to come to such a conclusion. In other words, as we mentioned above, it is caused not by his own initiative, but by the occurrence of circumstances unrelated to him.

In the legal literature, there are a number of other opinions on the issue of exemption from criminal liability as a result of voluntary handing over of weapons. For example, M.Kh. Rustambaev states that "a person is released from criminal responsibility if, before handing over the weapon, it should not have been used for a crime." We support this point of view and emphasize that if a person buys a weapon for the purpose of committing a crime, and after committing it, sincerely repents for the crime he committed, submits and voluntarily surrenders the weapons without the request of law enforcement agencies. it is necessary not to consider that he submitted voluntarily.

This is because, when establishing the norm provided for in Article 248 of the Criminal Code, the legislator aimed to increase the effectiveness of the criminal-legal fight against the illegal handling of weapons and thereby prevent real damage to important objects protected by the Criminal Code in the future. there is such a requirement that the person commits the crime for the first time, even if these requirements are not taken into account in the special conditions. If a person prepared a weapon illegally and then used it to commit another crime, in such cases, the norm provided for in the fourth part of Article 248 of the Criminal Code has lost its positive effect.

It is reasonable to say that a person is exempted from criminal responsibility if he hands over all illegally stored weapons, ammunition, explosives, explosive devices. will be the basis for weighing.

It should be noted that the exemption from criminal liability provided for in the fourth part of Article 248 of the Criminal Code applies to persons who have committed the criminal acts provided for in the first to third parts of this article. However, as socially dangerous acts of the objective part of the crime provided for in the first part of this article, production, repair, acquisition, storage, carrying, transportation, sending, use of firearms, ammunition, main parts of firearms, as well as explosives, the development, production, acquisition, storage, transportation, and use of explosives or explosive devices is defined, and the third part defines the

transfer of firearms, ammunition, explosives or explosive devices. If voluntary handing over of weapons is considered the only basis for exemption from responsibility, then the question arises as to how a person who does not have them, but has sent and transferred them to other persons, can bring and hand over the weapons that he has taken away from him by his own will and hands.

Therefore, it will not be possible to apply the incentive norm defined in the fourth part of this article to a person who does not have it, but has committed the actions of sending and transferring weapons and other specified items provided for in Article 248 of the Criminal Code.

Thus, the norm of this positive nature can be applied only to persons who have committed all the actions specified in the first part except for the sign "sending" and the circumstances specified in the second part (of course, except for sending).

Another important point is that the legislator JK

The use of the term "item" in the statement of the norm of a positive nature, provided for in Article 248, requires discussion.

At a glance, the legislator in the fourth part of Article 248 of the Criminal Code defines "the items referred to in this article as ...", which items, i.e. firearms, ammunition, main parts of firearms, explosives, explosives or detonation although it is clear that they are devices, we believe that it indicates that the original meaning of the listed items does not lie in the meaning of the word "item". Because, if we pay attention to the dictionary meaning of the term "item", it can be understood as "any thing that is used for living and livelihood". To be more precise, any property in free circulation is understood.

The objects in Article 248 of the Civil Code do not have the characteristics of "item", but in Article 82 of the Civil Code of the Republic of Uzbekistan "Objects of civil rights are freely transferred to other persons or in the order of universal legal succession (inheritance, reorganization of a legal entity) or other method, if they are not removed from circulation or their circulation is not restricted, they can be transferred from one person to another person.

It is established that the types of objects of civil rights that are not allowed to be in circulation (objects excluded from circulation) should be directly specified in the law. According to the Criminal Procedure Code, the objects of the crime are referred to as "items" or "things", but it is possible to witness that the term "criminal object" is not used anywhere. Therefore, JK's

Instead of the word "item" described in the fourth part of Article 248, it is appropriate to use one of the terms "items", "things" or, to be precise, "prohibited items".

Thus, as a result of the analyzes carried out above, in order to provide a uniform interpretation of the concept of voluntarily handing over objects (things) provided for in the fourth part of Article 248 of the Criminal Code and to ensure the correct application of this norm in practice, the legal bases and conditions for the release of a person from criminal liability in the following order We believe that it is necessary to fully express it in the Criminal Code and the Plenum of the Supreme Court of the Republic of Uzbekistan.

We suggest that the fourth part of Article 248 of the Criminal Code of the Republic of Uzbekistan be expressed in the following order:

"A person shall be released from responsibility if he voluntarily hands over the items provided for in this article.

If a person has real opportunities to hand over the mentioned items, and decides to hand them over on his own initiative (willingness of determination), he himself applies in writing or verbally to the authorities that have the authority to hand over these things or release the person from responsibility about their location (informed) and hands them over, he is considered to have handed over the things voluntarily."

Plenum of the Supreme Court of the Republic of Uzbekistan, 1996

It is recommended to make the following additions to Resolution No. 3 of February 27:

In the following cases, a person is not released from criminal liability when he hands over the items mentioned in Article 248 of the Criminal Code:

when a person voluntarily hands over the listed items during the arrest of the suspect, in the course of a search or other investigative measures, or as a result of evidence of the presence of these items;

when a person uses the listed items to commit another crime and then hands them over voluntarily;

when all of the listed items illegally stored in a person are complete, i.e., a part is voluntarily handed over, and the rest are kept without being handed over.

In conclusion, it should be said that we believe that the proposed changes and additions to the fourth part of Article 248 of the Criminal Code of the Republic of Uzbekistan and the practice of their application will help to further improve the norm in the criminal law and implement the principles of legality, justice and responsibility for guilt in criminal law.

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