A COMPARATIVE LEGAL ANALYSIS OF THE APPLICATION OF INCENTIVE-BASED NORMS IN SENTENCING: THE EXPERIENCE OF UZBEKISTAN AND FOREIGN COUNTRIES

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Abstract: This thesis examines the criminal-law nature and application of incentive-based norms in sentencing, focusing on the legislation of the Republic of Uzbekistan and selected foreign jurisdictions. It explores how criminal justice systems recognize post-offence conduct, including voluntary compensation for harm, admission of guilt, genuine remorse, cooperation with law-enforcement authorities, and the conclusion of procedural agreements. Particular attention is given to the relationship between incentives, sentencing individualization, proportionality, equality before the law, and judicial discretion. A comparative approach is used to identify similarities and differences between the Uzbek legal framework and selected foreign models. The study argues that the effectiveness of incentive-based provisions depends on clearly defined statutory conditions, transparent judicial reasoning, and safeguards against arbitrary or unequal application. It concludes with proposals for improving the consistency and predictability of their application in Uzbekistan.

Keywords: sentencing, incentive-based norms, criminal law, comparative law, Uzbekistan, mitigation of punishment, guilty plea, remorse, compensation for harm, judicial discretion, proportionality.

Introduction

Sentencing is a central institution of criminal law because it determines the legal consequences imposed on a person found guilty of an offence. A fair sentencing decision must take into account not only the nature and seriousness of the crime but also the offender's individual circumstances and conduct. Incentive-based norms are relevant in this context because they allow criminal justice systems to recognize conduct that may demonstrate remorse, responsibility, cooperation, or efforts to repair the harm caused by an offence.

The importance of these norms extends beyond the reduction of punishment. Properly designed incentives may encourage offenders to compensate victims, assist in establishing the circumstances of a crime, and take steps towards lawful behaviour. Nevertheless, their application raises important legal questions. If the conditions for mitigation are unclear, similar cases may receive different treatment. Excessive reliance on an admission of guilt may also create concerns about voluntariness, procedural fairness, and the rights of the accused.

A comparative study of Uzbekistan and foreign jurisdictions therefore provides an opportunity to examine different legislative approaches, identify common principles, and consider safeguards that may improve sentencing consistency. The purpose of this thesis is to analyse the legal foundations of incentive-based sentencing, compare selected mechanisms in Uzbekistan and foreign countries, and formulate proposals for the further development of national criminal legislation and judicial practice.

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Main Part

1. The legal nature of incentive-based sentencing in Uzbekistan. Incentive-based sentencing provisions form part of the mechanisms through which criminal law seeks to reconcile punishment with the possibility of an offender's rehabilitation. Their purpose is not to exempt every cooperative offender from appropriate punishment, but to recognize legally relevant conduct in determining the nature and extent of criminal liability.

Under Article 55 of the Criminal Code of the Republic of Uzbekistan, mitigating circumstances include voluntary surrender, sincere remorse or active assistance in solving a crime, as well as voluntary compensation for the harm caused. These circumstances enable the court to consider the offender's behaviour after the commission of the offence when determining an appropriate sentence (Criminal Code of the Republic of Uzbekistan, Article 55).

Articles 57, 57^1 and 57^2 establish additional sentencing mechanisms. Article 57 concerns the imposition of a more lenient punishment in exceptional circumstances; Article 57^1 provides a special sentencing rule connected with active repentance, subject to statutory conditions; and Article 57^2 establishes a sentencing limit for offences covered by a plea-of-guilty agreement. These provisions demonstrate that Uzbek criminal law uses both general mitigating circumstances and specific statutory incentives.

An important distinction must therefore be drawn between recognizing a mitigating circumstance and applying a special sentencing rule. The existence of a mitigating circumstance does not, by itself, mean that the court must apply every available reduction mechanism. Each provision has its own legal conditions, and its application must be justified by reference to the relevant facts and statutory requirements.

The Plenum of the Supreme Court of Uzbekistan, in its Resolution No. 1 of 3 February 2006 on judicial sentencing practice, emphasizes the importance of legality, humanism, justice, and the proper determination of punishment. These principles are relevant to incentive-based sentencing because they require courts to consider individual circumstances without departing from statutory limits or treating comparable cases arbitrarily.

2. Comparative experience of Germany and the United States. The German approach provides a useful example of a sentencing framework based on judicial assessment of the offender's guilt and relevant circumstances. Section 46 of the German Criminal Code establishes that the offender's guilt forms the basis for determining punishment, while the expected effects of the sentence on the offender's future life in society must also be considered. The provision further requires the court to weigh circumstances both in favour of and against the offender.

This framework allows the offender's conduct and personal circumstances to be considered within a broader assessment of culpability and sentencing objectives. Compared with the specific statutory limits found in Uzbek provisions such as Article 57^2, the German model places substantial emphasis on judicial evaluation within the general sentencing principles. This does not mean that German courts have unlimited discretion: their decisions remain subject to the requirements of criminal law.

In the United States federal system, the Sentencing Guidelines provide a more structured mechanism for recognizing acceptance of responsibility. Section 3E1.1 of the Guidelines provides for a reduction in the offence level when a defendant clearly demonstrates acceptance of responsibility. An additional reduction may be available in qualifying cases where the defendant has assisted authorities through timely notification of an intention to plead guilty, subject to the applicable requirements.

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The US mechanism differs from a simple automatic discount for pleading guilty. The Guidelines recognize that acceptance of responsibility must be demonstrated and that the sentencing judge evaluates whether the requirements have been met. Thus, the guilty plea is relevant, but it does not independently guarantee a reduction.

The comparison reveals three different emphases: Uzbekistan combines mitigating circumstances with specific statutory sentencing rules; Germany emphasizes the assessment of guilt and circumstances under general sentencing principles; and the US federal system uses guideline-based adjustments tied to defined forms of acceptance of responsibility and cooperation.

3. Comparative analysis

Table 1. Comparative characteristics of incentive-based sentencing in Uzbekistan, Germany, and the United States

Jurisdiction	Legal basis and mechanism	Principal feature
Uzbekistan	Criminal Code Articles 55, 57, 57[1] and 57[2]	Mitigating circumstances and specific statutory sentencing rules, including provisions concerning repentance and guilty-plea agreements.
Germany	Criminal Code, Section 46	Assessment of guilt, circumstances for and against the offender, and expected effects of punishment on the offender's future social life.
United States (federal)	Sentencing Guidelines, §3E1.1	Guideline-based reduction for demonstrated acceptance of responsibility, with an additional reduction possible under specified conditions.

Source: Compiled by the author on the basis of the Criminal Code of the Republic of Uzbekistan, the German Criminal Code, and the United States Sentencing Guidelines.

The comparison demonstrates that incentive-based sentencing can be implemented through different legal techniques. A system may establish specific statutory limits, as in Uzbekistan; rely on a general judicial assessment of culpability and relevant circumstances, as in Germany; or employ structured guideline adjustments, as in the US federal system. Despite these differences, all three approaches illustrate the importance of relating sentencing decisions to legally relevant features of the case rather than relying on an offender's unsupported assertion of remorse.

From a theoretical perspective, the comparison also highlights the need to distinguish between incentives that recognize post-offence conduct and procedural arrangements that affect the course of criminal proceedings. A guilty plea, for example, may have procedural consequences, but its sentencing significance depends on the governing legal framework and the conditions established by law.

4. Implications for the development of Uzbek criminal law. The comparative findings suggest several considerations for the further development of incentive-based sentencing in Uzbekistan.

First, the legal conditions for recognizing repentance, voluntary compensation, and cooperation should be applied consistently. Courts should distinguish genuine post-offence efforts from formal statements that are not supported by the circumstances of the case.

Second, judicial decisions should explain how the relevant mitigating circumstances influenced the sentence. Such reasoning promotes transparency and enables the parties to understand the relationship between the offender's conduct and the punishment imposed.

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Third, comparative experience may be useful in improving the clarity of sentencing guidance. The structured approach of the US federal Guidelines and the general principles reflected in German law offer different models for examining how statutory rules and judicial assessment can operate together. Their provisions should not, however, be transferred mechanically: any reform must be compatible with Uzbekistan's legal system, constitutional principles, and existing criminal procedure.

Finally, incentive-based sentencing should preserve a balance between encouraging rehabilitation and ensuring proportionality. Cooperation or remorse should not eliminate the need to consider the seriousness of the offence, the harm caused, the offender's culpability, and the rights of victims.

Conclusion

The comparative legal analysis establishes that incentive-based sentencing is an important mechanism for individualizing criminal punishment and recognizing an offender's positive post-offence conduct. Uzbekistan, Germany, and the United States employ different legislative techniques, but their approaches demonstrate the significance of considering legally relevant circumstances when determining punishment.

In Uzbekistan, Articles 55, 57, 57^1 and 57^2 of the Criminal Code provide a combination of mitigating circumstances and specific sentencing mechanisms. German law emphasizes the assessment of guilt and circumstances for and against the offender, while the US federal Guidelines establish structured adjustments for demonstrated acceptance of responsibility. These differences illustrate that incentive-based sentencing is not a uniform legal institution and must be understood within the framework of each jurisdiction.

The study supports the importance of clear statutory conditions, consistent judicial reasoning, and a balanced assessment of post-offence conduct. Further development of Uzbek sentencing practice may benefit from clarifying the application of incentive-based provisions and strengthening the transparency of judicial decisions, while preserving legality, equality, proportionality, and the rights of victims.

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