



THEORETICAL AND PRACTICAL ASPECTS OF SENTENCING FOR THE CRIME OF INTENTIONAL DESTRUCTION OF OR DAMAGE TO PROPERTY

<https://doi.org/10.5281/zenodo.22236032>

Fayzullayev Aslbek Ulugbek ogli

Independent researcher, Tashkent State University of Law

Aslbekf@mail.ru

Abstract: *This article examines the theoretical and practical aspects of sentencing for the crime of intentional destruction of or damage to property. It analyzes the legal basis for imposing criminal punishment, the principles of individualized sentencing, the role of mitigating and aggravating circumstances, and the challenges encountered in judicial practice. Based on national legislation and court practice, the study formulates scientific conclusions and proposes recommendations aimed at improving sentencing practices for this category of crimes.*

Keywords: *intentional destruction of property, damage to property, sentencing, individualized punishment, judicial practice, criminal law, criminal liability, sentencing principles.*

ТЕОРЕТИЧЕСКИЕ И ПРАКТИЧЕСКИЕ АСПЕКТЫ НАЗНАЧЕНИЯ НАКАЗАНИЯ ЗА УМЫШЛЕННОЕ УНИЧТОЖЕНИЕ ИЛИ ПОВРЕЖДЕНИЕ ИМУЩЕСТВА

Файзуллаев Аслбек Улугбек угли

Независимый исследователь Ташкентского государственного юридического университета

Аннотация: *В статье рассматриваются теоретические и практические аспекты назначения наказания за умышленное уничтожение или повреждение имущества. Проанализированы правовые основы назначения наказания, особенности индивидуализации наказания судами, значение смягчающих и отягчающих обстоятельств, а также проблемы, возникающие в судебной практике. На основе национального законодательства и судебной практики сформулированы научные выводы и предложения, направленные на совершенствование практики назначения наказания по данной категории преступлений.*



Ключевые слова: умышленное уничтожение имущества, повреждение имущества, назначение наказания, индивидуализация наказания, судебная практика, уголовное право, уголовная ответственность, принципы назначения наказания.

MULKNI QASDDAN NOBUD QILISH YOKI UNGA ZARAR YETKAZISH JINOYATI UCHUN JAZO TAYINLASHNING NAZARIY VA AMALIY JIHATLARI

Fayzullayev Aslbek Ulug'bek o'g'li

Toshkent davlat yuridik universiteti mustaqil izlanuvchisi

Annotatsiya: Mazkur maqolada mulkni qasddan nobud qilish yoki unga zarar yetkazish jinoyati uchun jazo tayinlashning nazariy va amaliy jihatlari tahlil qilingan. Jinoyat uchun jazo tayinlashning huquqiy asoslari, sudlar tomonidan jazo individuallashtirilishining o'ziga xos xususiyatlari, jazoni yengillashtiruvchi va og'irlashtiruvchi holatlarning ahamiyati hamda sud amaliyotida uchrayotgan muammolar o'rganilgan. Shuningdek, milliy qonunchilik va sud amaliyoti asosida jazo tayinlash amaliyotini takomillashtirishga qaratilgan ilmiy xulosalar hamda takliflar ilgari surilgan.

Kalit so'zlar: mulkni qasddan nobud qilish, mulkka zarar yetkazish, jazo tayinlash, jazoni individuallashtirish, sud amaliyoti, jinoyat huquqi, javobgarlik, jazo tayinlash prinsiplari.

INTRODUCTION

Crimes involving the intentional destruction of or damage to property belong to the category of socially dangerous acts that undermine the stability of property relations in society, threaten economic security, and cause harm to the rights and interests of citizens. Crimes of this type are not limited to material damage alone but also have a negative impact on the principles of social justice. For this reason, the issue of sentencing for such crimes occupies an important place in both the theory of criminal law and judicial-investigative practice.

In recent years, a fluctuating dynamic has been observed in the number of crimes related to the intentional destruction of or damage to property, which requires special attention to be paid to the correct qualification of such crimes and to the imposition of just punishment. Although liability for this crime is established under the current criminal legislation, certain problems still arise in judicial-investigative practice when imposing punishment - in particular, in assessing the amount of damage caused, correctly taking into account aggravating and mitigating circumstances, and in matters related to the individualization of punishment.



This article analyzes, in mutual interconnection, the theoretical foundations and practical problems of sentencing for the crime of intentional destruction of or damage to property, critically reconsiders existing approaches, and puts forward scientifically grounded proposals for their improvement. In particular, the legal assessment of the amount of damage, the method of committing the crime, the form of guilt, and the individual characteristics of the offender are examined in a comprehensive manner as they relate to sentencing.

Main part. In waging an effective struggle against crime, the imposition of a just and appropriate punishment for particular types of crime is of special importance. Article 8 of the Criminal Code provides that the punishment or other measure of legal influence applied to a person who has committed a crime must be just.[1] This, in turn, requires that the punishment be determined in proportion to the gravity of the crime, the degree of the person's guilt in the act, and its social danger.

For a person who has committed the crime provided for in Article 173 of the Criminal Code, the court imposes one of the measures of legal influence envisaged by the sanction of that article, in accordance with the provisions of the General Part.

In imposing punishment, the court takes into account:

1) the nature of the crime committed, and

2) the degree of its social danger,
3) the cause of the act,
4) the nature and amount of the damage caused,
5) the personality of the guilty party,
6) circumstances mitigating and aggravating the punishment.

It would not be appropriate, in giving a theoretical definition of the concept of the general principles of sentencing, to confine oneself solely to the norm of criminal law, since, like social relations themselves, any norm of law is subject to change.[3]

As Q. Rozimova puts it, "Failure to impose a just punishment on a person who has committed a crime leads to a violation of the principles of legality, justice, and responsibility for guilt enshrined in criminal law." [4]

Article 42 of the Criminal Code of the Republic of Uzbekistan provides that the main purposes of the institution of punishment are the moral reform of the offender, deterring them from reoffending, and serving as a measure for the prevention of crime in society.

It is well known that only a court has the authority to impose punishment for a crime. Sentencing is accordingly regarded as the most responsible part of judicial activity. It is precisely at the sentencing stage that many issues are resolved, since it is at this point that the principle of justice of the criminal law manifests itself in practice, serving as the main criterion of the extent to which justice has been administered. Imposing a just punishment on an offender - taking



into account their personality, the social danger of the crime committed, the amount of damage caused, and other circumstances of the case - also gives rise in the offender to a sense of having received a punishment commensurate with their act. The emergence of such a sense is the first, yet most important, achievement of the purpose of punishment.[5]

Whenever punishment is imposed for a crime, the offender must understand that the punishment is a consequence of their own act. Unjustifiably lenient punishment may create in the offender a sense of not having been sufficiently punished and of having successfully deceived the law-enforcement agencies, while in other persons it gives rise to a sense of dissatisfaction with the work of law-enforcement officers, since they perceive that “social justice has not been achieved.” Moreover, in such a case the restoration of social justice is considered not to have taken place.[5]

For this reason, the extent to which the punitive measures applied to the crime of intentional destruction of or damage to property serve the purposes established by this norm is a matter requiring serious analysis. The severity and fairness of the punishment, the individual approach taken to the offender, and the degree of effectiveness achieved in reforming them are the principal criteria for attaining these purposes.

These aspects must ensure that punishment fully realizes not only its

punitive function but also its educational and deterrent functions.

According to data provided by the Supreme Court of the Republic of Uzbekistan, courts examined criminal cases under Article 173 of the Criminal Code against 51 persons in 2020, 74 persons in 2021, 101 persons in 2022, 69 persons in 2023, and 78 persons in 2024, that is, against 373 persons in total.[6] The number of criminal cases examined by courts under Article 173 of the Criminal Code of the Republic of Uzbekistan has followed a fluctuating dynamic over the years.

According to the Supreme Court's data, of the 373 persons whose cases were examined, a verdict was rendered against 339, proceedings were terminated with respect to 26, and compulsory measures of a medical nature were applied to 8. Thirty-five persons were acquitted.

The sanction of part one of Article 173 of the Criminal Code provides for punishment in the form of a fine ranging from fifty to seventy-five times the base calculation amount, or up to three hundred hours of compulsory community work, or up to two years of correctional labor.

What punishments have been applied to persons who have committed this crime? What effect have the applied punitive measures had on their reoffending?

According to data provided by the Supreme Court, between 2020 and 2024 a conviction verdict was rendered against 292 persons found guilty under Article



173 of the Criminal Code. Of these, a fine was imposed on 21 persons (7.1%), correctional labor on 94 persons (31.6%), restriction of freedom on 70 persons (23.6%), and deprivation of freedom on 109 persons (36.7%); 4 persons received a suspended sentence (1.3%).

A verdict was rendered against 3 persons on other grounds (Article 88 of the Criminal Code - compulsory measures applied to minors; Article 463 of the Code of Criminal Procedure).

This data shows that the most frequently applied type of punishment is deprivation of freedom, which accounts for more than one third of all verdicts.

Correctional labor ranks second (31.6%), followed by restriction of freedom (23.6%). The share of the mildest types of punishment - fines and suspended sentences - is very low, amounting to 7.1% and 1.3% respectively. This distribution indicates that courts more often select stricter punishments for this type of crime, which is explained by the amount of damage caused to property, the consequences of the crime, and the severity of the methods used to commit it. In practice, sentencing is carried out on the basis of an individual approach corresponding to the degree of social danger of the crime.

An analysis of nearly 300 court verdicts examined in the course of this study shows that the proportion of previously convicted persons among those sentenced under Article 173 of the Criminal Code is considerably high. According to the overall figures, 54% of

convicted persons had no prior convictions, while the remaining 46% had been convicted at least once before.

As a result of courts not always deeply grasping the essence of the liberalization of criminal punishment - an important component of judicial-legal reform - errors are being made in certain criminal cases in determining the type and degree of punishment.[2]

Cases of repeated offending have also been observed to a considerable extent. In particular, among previously convicted persons:

- convicted once - 28.5%,
- convicted twice - 28.5%,
- convicted three times - 14.5%,
- convicted four times - 10.7%,
- convicted five or more times - 17.8%.

These figures indicate that the risk of repeat offending in this type of crime is high, and that in sentencing, courts must give serious consideration not only to the degree of social danger of the crime but also to the offender's criminal history. At the same time, this situation shows the need to strengthen special preventive mechanisms against recidivism as part of crime-prevention measures.

As M. Valiyev, a deputy of the Legislative Chamber of the Oliy Majlis, points out: "Persons who have been conditionally released ahead of schedule from serving their sentence, or whose punishment has been replaced with a milder one, are reoffending without reforming and without drawing the appropriate conclusions from the crime



they have committed. For example, whereas the number of crimes committed by previously convicted persons amounted to 9,724 in 2021, this figure reached 11,635 in 2022, that is, an increase of 19.6 percent. Likewise, whereas the number of crimes committed by persons previously conditionally released ahead of schedule amounted to 168 in 2021, it increased by 9.5 percent to reach 184 in 2022. The punishments applied by the courts are not sufficient for the moral reform of such persons. Moreover, cases of conditional early

release are opening the way for new crimes to be committed. To state our position more precisely, the leniencies in punitive policy are giving rise to the following negative consequences:"[7]

Agreeing with M. Valiyev's views, we have also carried out a comparative analysis of humanitarian acts - namely, conditional early release from serving a sentence and replacement of punishment with a milder one - as applied under Article 173 of the Criminal Code (Chart 1).

COMPARATIVE DATA on the Periods for Application of Humanitarian Acts (Chart 1)

Term of punishment	Article 74 of the Criminal Code (Replacement of punishment with a milder one)	Article 73 of the Criminal Code (Conditional early release from punishment)
Crime not posing great social danger (Art. 173, part 1) 2 years, correctional labor	at least 1/4 of the term (after 6 months)	at least 1/3 of the term (after 8 months)
Crime not posing great social danger (Art. 173, part 2) 3 years, deprivation of freedom	at least 1/4 of the term (after 9 months)	at least 1/3 of the term (after 1 year)
Crime of lesser gravity (Art. 173, part 3) 5 years, deprivation of freedom	at least 1/4 of the term (after 1 year 3 months)	at least 1/3 of the term (after 1 year 8 months)

From this standpoint, a comparative analysis of the mechanisms of conditional

early release from serving a sentence and replacement of punishment with a milder



one under Article 173 of the Criminal Code makes it possible to assess their effectiveness in practice and to identify existing shortcomings. Chart 1, compiled in the course of this study, visually reflects this comparative analysis, which may serve as a scientific basis both for the study of institutions of criminal law and for the development of optimal mechanisms for the application of humanitarian acts in judicial practice.

Examples from Judicial Practice.

Citizen P.J. was convicted on 18 March 2025 by the verdict of the Zafarobod District Criminal Court under paragraph "a" of part 3 of Article 169 and paragraph "b" of part 2 of Article 173 of the Criminal Code. Prior to this, his record was as follows:

On 28 December 2007, the criminal case initiated against him under paragraphs "v" and "g" of part 2, and paragraph "a" of part 3, of Article 169 of the Criminal Code was terminated on the basis of subparagraph "b" of paragraph 1 of the Resolution "On Amnesty" of 30 November 2007; by the verdict of the Jizzakh City Criminal Court of 28 March 2008, he was sentenced under paragraph "v" of part 2 of Article 169 of the Criminal Code to 3 years of correctional labor;

By the verdict of the Jizzakh City Criminal Court of 3 July 2012, he was sentenced under paragraph "v" of part 2 of Article 169 of the Criminal Code to 3 years of correctional labor; by the ruling of the Jizzakh District Criminal Court of 12 July 2013, the unserved 2 years and 9

months of correctional labor were replaced, for the same term, with deprivation of freedom; by the ruling of the Navoi City Criminal Court of 9 April 2014, the unserved 2 years and 3 days of deprivation of freedom were replaced, for the same term, with correctional labor;

By the verdict of the Jizzakh City Criminal Court of 17 March 2015, he was sentenced under paragraph "a" of part 3 of Article 169 of the Criminal Code to 5 years of deprivation of freedom; by the ruling of the Jizzakh City Criminal Court of 18 November 2016, the unserved portion - 3 years, 3 months and 29 days - of the deprivation-of-freedom sentence was replaced, under the procedure of Article 74 of the Criminal Code, with correctional labor for the same term;

By the verdict of the Sharof Rashidov District Criminal Court of 16 February 2018, he was sentenced under paragraph "a" of part 3 of Article 169 of the Criminal Code to 5 years of deprivation of freedom, and, pursuant to Articles 60 and 61 of the Criminal Code, to 5 years and 1 month of deprivation of freedom; by the ruling of the Muborak District Criminal Court of 9 December 2020, the unserved 1 year, 11 months and 11 days of the deprivation-of-freedom sentence were replaced, under the procedure of Article 74 of the Criminal Code, with correctional labor for the same term; by the ruling of the Zarbdor District Criminal Court of 12 August 2022, he was conditionally released ahead of schedule, pursuant to Article 73 of the Criminal Code, from the unserved



6 months and 29 days of the correctional-labor sentence.[8]

Although the initial punitive measure against him was terminated in December 2007 pursuant to an act of amnesty, not long afterward, in 2008, he was sentenced to 3 years of correctional labor. In the following years he was convicted several more times under Article 169 of the Criminal Code; in some instances his correctional-labor sentence was replaced with deprivation of freedom, while in others his deprivation-of-freedom sentence was mitigated to correctional labor.

P.J.'s criminal record also contains instances of conditional early release under Article 74 of the Criminal Code, some of which ended with him reoffending in less than a year. This example shows that, for certain repeat offenders, the mitigation of punitive measures and the imposition of alternative punishments do not produce the expected positive result but, on the contrary, may keep the likelihood of reoffending at a high level.

This situation indicates the need to exercise greater caution in applying the principle of individualization of punishment in judicial practice. In particular, before alternative punishments are imposed on repeat and dangerous recidivists, a thorough analysis must be made of the person's propensity for crime and of the duration and character of their prior criminal record.

Citizen X. was convicted on 26 November 2024 by the verdict of the

Fergana City Court under paragraph "b" of part 2 of Article 173 and paragraph "a" of part 3 of Article 25, 173 of the Criminal Code of the Republic of Uzbekistan. Prior to this, his record was as follows:

By the verdict of the Margilan City Court of 10 August 2007, he was sentenced under paragraph "v" of part 2 of Article 169 of the Criminal Code of the Republic of Uzbekistan to a fine of 62,100 soums;

By the verdict of the Fergana City Court of 4 November 2008, he was sentenced under paragraph "a" of part 3 of Article 169 of the Criminal Code of the Republic of Uzbekistan to 3 years of deprivation of freedom; by the ruling of the Fergana Regional Court of 24 February 2009, the verdict was amended and, pursuant to Article 72 of the Criminal Code, a 2-year probationary period was established;

By the verdict of the Fergana City Court of 6 May 2009, he was sentenced under paragraph "a" of part 3 of Article 169 of the Criminal Code of the Republic of Uzbekistan to 3 years and 6 months of deprivation of freedom;

By the verdict of the Fergana City Court of 14 December 2010, he was sentenced under paragraph "a" of part 3 of Article 169 of the Criminal Code of the Republic of Uzbekistan to 6 years of deprivation of freedom and was released from the sentence pursuant to an act of amnesty;

By the verdict of the Fergana City Court of 12 December 2013, he was



sentenced under paragraph “a” of part 3 of Article 25, 169 of the Criminal Code of the Republic of Uzbekistan to 3 years and 6 months of deprivation of freedom;

By the verdict of the Kokand City Court of 4 April 2016, he was sentenced under paragraph “a” of part 3 of Article 169, and paragraph “a” of part 3 of Article 25, 169, of the Criminal Code of the Republic of Uzbekistan to 5 years and 6 months of deprivation of freedom;

By the verdict of the Fergana City Court of 5 May 2021, he was sentenced under part 1 of Article 177 of the Criminal Code of the Republic of Uzbekistan, pursuant to Article 60 of the Criminal Code, to 2 years and 6 months of correctional labor;

By the verdict of the Oltiariq District Court of 27 December 2021, he was sentenced under paragraph “a” of part 3 of Article 277 of the Criminal Code of the Republic of Uzbekistan, pursuant to Articles 60 and 61 of the Criminal Code, to 3 years and 6 months of deprivation of freedom; by the ruling of the Olmaliq City Court of 29 September 2023, the unserved sentence — 1 year, 8 months and 28 days — was replaced, under the procedure of Article 74 of the Criminal Code, with correctional labor for the same term; by the ruling of the Margilan City Court of 24 May 2024, he was conditionally released ahead of schedule, pursuant to Article 73 of the Criminal Code, from the unserved 10 months and 24 days of the correctional-labor sentence.[9]

Certain instances from judicial practice show that, among persons held liable under Article 173 of the Criminal Code, there are also those for whom committing crimes has become habitual, having been convicted on numerous occasions. For example, Citizen X. was convicted on 26 November 2024 by the verdict of the Fergana City Court under paragraph “b” of part 2 of Article 173 and paragraph “a” of part 3 of Article 25, 173 of the Criminal Code of the Republic of Uzbekistan.

Prior to this verdict, he had been held liable a total of nine times for crimes of varying gravity. His criminal record consists mainly of theft (Article 169 of the Criminal Code), other property-related crimes (Article 177 of the Criminal Code), and crimes against public order (Article 277 of the Criminal Code). In certain verdicts, the deprivation-of-freedom sentence imposed on him was subsequently altered, pursuant to Articles 72, 73 and 74 of the Criminal Code, either through mitigation of the sanction or through conditional early release from punishment.

This situation attests to the offender's high degree of social danger, since, despite the various punitive measures applied - deprivation of freedom, correctional labor, and fines - he continued to commit crimes. This constitutes a classic manifestation of recidivism and indicates the low effectiveness of crime-preventive mechanisms.



Such examples from judicial practice demonstrate the need, in sentencing, to thoroughly study the offender's criminal history, to assess the effectiveness of alternative types of punishment, and to strengthen special preventive measures for crime prevention.

The punitive measures established under Articles 167, 173 and 233 of the Criminal Code - in relation to elements of crime that are, from an objective standpoint, closely related to one another - are not proportionate to each other. In particular, despite the amount of damage being the same, there is a considerable discrepancy in the application of incentive norms.

First, whereas Article 167 of the Criminal Code allows for release from restriction of freedom (RF) and deprivation of freedom (DF) upon full compensation of the damage, Articles 173 and 233 grant such a possibility only where the damage has been compensated threefold. This is, in practice, an unrealistic requirement, and instances of threefold compensation of damage are almost never encountered in judicial practice. As a result, the incentive norm fails to operate, and offenders choose to serve their sentence rather than compensate the damage.

Second, this situation has a serious adverse effect on the material interests of victims, since, even after a court verdict has been rendered, they are compelled to initiate a separate enforcement procedure in order to obtain compensation for the

damage, which requires considerable time and resources.

Third, such disproportion in the application of the incentive norm is also inexpedient from a criminological standpoint, since it reduces offenders' incentive to voluntarily compensate the damage and increases the risk of recidivism.

For this reason, the incentive norms contained in these articles of the legislation should be established on identical or similar conditions. This would not only be consistent with the principles of justice and proportionality but would also encourage offenders to voluntarily compensate material damage and would effectively protect the rights and interests of victims.

In light of the foregoing, it is proposed that part 4 of Article 173 of the Criminal Code be set forth in the following wording:

"Where the material damage caused has been compensated in full, punishment in the form of restriction of freedom or deprivation of freedom shall not be applied."

At the same time, this proposal serves to secure a number of positive outcomes in judicial-investigative practice. Above all, this approach strengthens the principles of justice and proportionality in sentencing, meaning that where the material damage caused to the victim has been compensated in full, an excessively severe punishment is not envisaged to be applied. This, in turn, expands the courts' ability to



individualize punishment while taking crime.
into account the degree of gravity of the

REFERENCES:

1. Criminal Code of the Republic of Uzbekistan // <https://lex.uz/docs/-111453#-111481>
2. Resolution No. 1 of the Plenum of the Supreme Court of the Republic of Uzbekistan of 3 February 2006 “On the Practice of Courts in Sentencing for Crimes” // <https://lex.uz/docs/-1455976>
3. Rozimova Q.Y. Theoretical Analysis of the General Principles of Sentencing // Jurisprudence Scientific-Practical Journal, 2022, No. 6. <https://jurisprudence.tsul.uz/2023/01/24/jazo-tayinlash-umumiy-asoslarining-nazariy-tahlili/>
4. Rozimova Q.Yu. Sentencing for Multiple Crimes and Multiple Verdicts. Abstract of PhD dissertation in Law. Tashkent, 2020. P. 14.
5. Usmonaliyev M. Criminal Law. Textbook. — Tashkent: “Yangi Asr Avlodi”, 2010. P. 120.
6. Letter No. 07-14/25-783 of the Supreme Court of the Republic of Uzbekistan of 13 March 2025.
7. Valiyev M.Sh. Are Leniencies in Punitive Policy Opening the Way for New Crimes? <https://parliament.gov.uz/articles/1432>
8. Verdict of the Zafarobod District Criminal Court of March 2025. <https://public.sud.uz/report/CRIMINAL>
9. Ruling of the Appellate Instance of the Criminal Court Panel of Tashkent Region of 10 March 2023. <https://public.sud.uz/report/CRIMINAL>