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RESEARCH ARTICLE

THE SCOPE OF POWER OF THE COURT OF APPEAL IN CRIMINAL PROCEEDINGS.

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Abstract

The article deals with topical issues concerning the institution of appeal and limits of the powers of the court of appeal in criminal proceedings in Uzbekistan. The work lays a foundation to the necessity of granting the right for new sentence by the appeal instance court.

Key words:

appeal, the court, the powers,
criminal proceedings.

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Introduction:-

The independence of judges is one of the most important constitutional principles upon which the justice is based (article 112 of the Constitution)¹. The issue of judicial independence is relevant to the activities of the appellate court. As we know, the activities of the appellate court is aimed at correction of the error of the trial court. At the same time, the appellate court is not entitled to violate the principle of independence of judges and their subordination only to the law in the exercise of justice in the trial court. These two aspects define the scope of the powers of the appellate court. But this does not mean that the limits are constraining fetters when checking the legality, validity and fairness of judicial decisions. The correct combination of these aspects in turn, defines the scope of the rights of the appellate court in assessing the evidence in the case, as well as on other issues. They should be broad enough so as not to limit the power of a superior court in matters relating to the correction of any court error. At the same time, they have to be so close, so as not to conflict with the inner conviction of the trial court judges, not to impose their will in solving the major issues of the case where judicial independence must be carefully guarded².

And, after all, it is sometimes thought that the first instance court placed in a subordinate, is in dependent position as of the instructions of a superior court³. In this regard, it should be noted that the wide powers of the appellate court determined facing the court of second instance the tasks needed to provide the most rapid, rapid elimination of errors and abuses that led to the illegality and invalidity of the sentence.

That is why the legislator in article 495 Criminal Procedure Code of the Republic of Uzbekistan found that the court of appeal, cassation or supervising instance, sending the case back for further investigation or a new trial, do not

¹ Allamuratov A.T. The immunities in criminal proceedings of the Republic of Uzbekistan: Dissertation for doctoral degree. - T. 2004. - p. 108.

² Perlov I.D. The appeal proceedings in the Soviet criminal trial. M.: juridical literature, 1968. - p. 301.

³ <http://www.supcourt.kz>. Kasimov A. Conditions, problems and prospects of the appeal institution in the criminal trial of RK.

have the right to prejudge the conclusions of proof or unproven allegations about the accuracy or inaccuracy of one or other evidence, about the advantages of one over the other evidence of qualification of the crime and punishment. The study of the definitions of appellate courts for annulment with the direction of the case for a new trial for the softness of the punishment has shown that courts of appeal instance is not always complied with the specified requirements of the CCP.

In turn, the Court of First Instance indicate appellate court on charges of proof of qualification of the crime, a punishment accept as binding, and, under the new examination of the case decide the sentence in accordance with the instructions of a superior court, which in fact leads to a denial of the principle of judicial independence.

Domestic and foreign case law leads to the conclusion about the necessity of the court of appeal instance the right to pass judgment on the case of the new and increased penalties and the application of more serious crimes law in those cases where, for these reasons, the appeal brought by the victim and the prosecutor protested. The appellate court must make a new sentence in the range of the charges of preliminary investigation in cases where the proceedings has incompleteness and one-sidedness; inconsistency of the court findings in relation to the factual circumstances of the criminal case; substantial violations of criminal procedural law; incorrect application of the Criminal Code and the rules of injustice by punishing the gaps and procedural violations committed by the trial court.

Study of criminal procedure legislation of some foreign countries led to the conclusion that granting appellate court the right to a new sentence with the application of the law on a more serious crime does not indicate a violation of the principle of non-transformation for the worse when a new sentence is imposed within the accusation against the investigating authorities. The law on a more serious offense applies in cases of the victim's complaint or protest of the prosecutor. For example, in France, the deterioration of the situation of the convicted person is possible only by the public prosecutor's appeal or if besides the convictancy of the other participants in the process filed cross-appeal, directed against its interests; in Germany, the penalty can be intensified only on the complaint of the public prosecutor and the private prosecutor. In Armenia, Kazakhstan, Kirgiz Republic, the Russian Federation, the Court of Appeal, based on the results of the proceedings, is entitled to decide a new sentence, to apply the law on a more serious crime within the charge against the investigating authorities or appoint a more severe penalty only in the case when on these grounds brought protest by the prosecutor or a complaint by the private prosecutor, the victims or their representatives.

Inadmissibility of provisions of transformation for the worse should be construed as a guarantee of realization of convicts' rights to appeal against without fear of negative consequences and the deterioration of their situation because of the appeal judgment. Consequently, the court, in the proceedings in appeal proceedings on the complaint of the convicted person, his defense counsel or legal representative can only reduce the punishment of first instance court or apply the law on a less serious crime, but may not enhance the punishment, as well as to apply the law on a more serious crime, if on these grounds is not brought the appeal by the victims or protest by the prosecutor. Otherwise, the threat of aggravation of their situation could stop convicts from going to the court of appeal with a complaint, even if the verdict of the court of first instance of their rights and legal interests have been violated.

In our opinion, giving the appellate court the right stand on the case of a new sentence and strengthening punishment and application of the law on more serious crimes within the charge against the bodies of preliminary investigation in cases when these reasons are brought by victims and appeal by the prosecutor, you must make the appropriate changes and additions to the article 490, 494 and 497¹³ of the CCP. Thus, based on the article 490 of the CCP it is necessary to provide the right to appeal court to issue a new sentence. In the article 494 of the CCP, the right to verdict in the downside of the convicted person should be put in the position of dependency on bringing on this ground of appeal by the victims, or by the prosecutor. Article 497¹³ of the Code of Criminal Procedure puts a duty for the appellate court to fill the gaps, eliminate procedural violations, and taking into account the results of the proceedings, to amend the sentence or cancel the sentence of the trial court, and issue a sentence.

Reference:-

1. Allamuratov A.T. The immunities in criminal proceedings of the Republic of Uzbekistan: PhD dissertation. - T. 2004. - p. 108.
2. Perlov I.D. The appeal proceedings in the Soviet criminal trial. M.: juridical literature, 1968. - p. 301.
3. <http://www.supcourt.kz>. Kasimov A. Condition, problems and prospects of the appeal in the criminal trial of RK.
4. Radchenko V.I. Judicial reform in Russia // Journal of Russian law. - 1999. - № 1. - p. 60.
5. Adamaytis M. When witnesses are questioned in the appeal court // Journal of Russian law. - 2003. - № 10. - p. 52.
6. Problems of improving the procedure of testing the legality, validity and fairness of court decisions // J. Attorney. - 2001. - № 2. - p. 55.