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CONCEPTUAL FRAMEWORK FOR THE DEVELOPMENT OF THE CRIMINAL LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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Annotation:
In this article, on the basis of the tasks envisaged for the further development of the Republic of Uzbekistan, problems in criminal law were analyzed, priority areas for the development of criminal law were developed.

Keywords: criminal legislation, priority direction, liberalization, unification, decriminalization.

The development of criminal legislation is important in improving the state policy to combat and prevent crime, ensure the rule of law, and educate the population in lawful behavior. The exclusivity and protective orientation of the norms of criminal legislation as a measure of legal protection presuppose the dynamic development of criminal law policy, since with the development and formation of new social relations there is an objective need to revise and improve the norms of criminal legislation. Of course, the effective functioning and implementation of the provisions of sectoral legislation requires the availability of appropriate legal measures of protection and protection, among which a special role is given to criminal law.

Today, a natural question has arisen all over the world about the need for a radical review of the existing overly repressive practice of applying the criminal law, including the introduction of alternatives to existing measures of criminal law.

During the years of independence, the Criminal Code of the Republic of Uzbekistan, adopted in 1994, has been amended and supplemented about 70 times. The current Criminal Code of independent Uzbekistan is an indicator of the state's desire to reliably protect the highest values recognized by the Constitution of the country, which are a person, his life, health, rights and freedoms. Changes and additions made during the years of independence were aimed at decriminalization of crimes, in particular crimes in the economic sphere, revision of the punishment system, exclusion of certain types of punishments (death penalty, confiscation, arrest), addition of some alternative types of punishment to deprivation of liberty (restriction of liberty, mandatory public works), the use of incentive norms, the improvement of the institution of exemption from liability and punishment (the institution of

reconciliation, the petition for pardon), the criminalization of certain acts (crimes in the field of information technology, crimes related to obstruction, illegal interference in business activities, and other crimes, encroaching on the rights and legitimate interests of economic entities), revision of the legal meanings of terms.

The most important condition for achieving these goals is the further liberalization of criminal legislation, the unification of the norms of the Criminal Code, the decriminalization of certain criminal acts, the improvement of certain provisions of the criminal legislation in order to bring them into line with the norms of international acts, the improvement of law enforcement practice in order to effectively combat crime. At the same time, a systematic analysis of the implementation of the Action Strategy, judicial and investigative and law enforcement practice indicate the existence of significant problems and gaps that impede the full implementation of judicial and legal reforms. In this regard, in May 2018, the Decree of the President of the Republic of Uzbekistan No. PP-3723 “On measures to radically improve the system of criminal and criminal procedural legislation” was adopted. In particular, within the framework of the concept, special attention should be paid to the following issues:

1) the disproportion of the existing sanctions within the framework of one article, the excessive use of punishments related to deprivation of liberty;

The Criminal Code of the Republic of Uzbekistan contains a number of articles that provide for punishments that are disproportionate in quantity and quality as sanctions. A number of articles - articles 123, 142 of the Criminal Code have sanctions that are not proportionate in terms of the type of punishment. In particular, article 122 of the Criminal Code provides for punishment in the form of corrective labor up to two years or imprisonment up to one year. At the same time, correctional labor is a less severe type of punishment, while imprisonment is the most severe type of punishment.

Some articles (articles 168, 251, 268 of the Criminal Code) have penalties that are not commensurate in number. For example, part one of Article 211 of the Criminal Code provides for punishments ranging from fifty to one hundred minimum monthly wages, or restriction of liberty from two to five years, or imprisonment for up to five years. In turn, according to the rules for the replacement of punishments in article 44 of the Criminal Code, one month of restriction and imprisonment is commensurate with the amount of a fine corresponding to sixteen minimum wages, but for a period not exceeding three years. For example, one hundred minimum wages under this rule will be commensurate with 6 months of restriction of freedom or imprisonment. Consequently, the sanctions in the article in question are not proportionate.

At the same time, a huge number of grave and especially grave crimes - articles 103, 1031, 104, 135, 164 of the Criminal Code do not provide for alternative types of sanctions for punishments related to restriction and deprivation of liberty.

2) insufficient and ineffective application of incentive norms providing for exemption from liability or punishment or non-application of punishments related to deprivation of liberty;

The Criminal Code of the Republic of Uzbekistan provides for several incentive norms that can be grouped into three groups:

exemption from criminal liability in 20 cases (articles 155, 1552, 1553, 157, 160, 177, 178, 180, 181, 1811, 184, 1852, 188, 189, 190, 1929, 211, 212, 213, 248 of the Criminal Code);

exemption from criminal punishment in 6 cases (articles 157, 159, 160, 175, 273, 276 of the Criminal Code) non-application of punishments in the form of restriction of freedom or imprisonment in 14 cases (articles 132, 167, 168, 173, 180, 181, 1811, 184, 1852, 1924, 19211, 198, 202, 233 of the Criminal Code).

At the same time, the existing incentive norms are not systematized and the mechanism for their application in some cases contradicts the norms of the General Part of the Criminal Code. The meaning of incentive norms is that they should provide for more favorable circumstances than the general rules for exemption from liability and punishment. For example, article 233 of the Criminal Code provides for an incentive rule on the non-application of punishment in the form of restriction of liberty and imprisonment in the event of compensation for material damage inflicted in a threefold amount. At the same time, in the presence of certain circumstances (even if the condition of triple compensation for harm is not met), the guilty person may be sentenced to a punishment not related to deprivation of liberty, since the sanction of the article also provides for alternative types of punishment to deprivation of liberty. Thus, the effect of some incentive norms is limited due to impracticality and inefficiency. Some articles do not allow the application of an incentive rate. For example, part one of Articles 1852 and 198 of the Criminal Code does not provide for punishment in the form of restriction of freedom or imprisonment, although they have incentive norms.

Also, some institutions with an incentive norm, provided for by the General Part of the Criminal Code, are limited in application due to legislative provisions. In particular, Article 571 is applied only if there are circumstances mitigating the punishment provided for in paragraphs "a" and "b" of the first part of Article 55 of the Criminal Code, and there are no circumstances aggravating the punishment [1]. At the

same time, the presence of other mitigating circumstances does not allow the court to apply the norms of this article.

3) difference in the application and interpretation of terms in the criminal legislation of the Republic of Uzbekistan;

The uniform application of the norms of criminal law is an important condition for the implementation of the principle of legality. At the same time , the norms of the Criminal Code are not without some ambiguities and contradictions that do not allow for their unified understanding. For example, article 102 provides for liability for causing death by negligence, while the Uzbek version of the said article provides for liability for "ehtiyotsizlik orqasida odam o'ldirish", that is, for killing a person through negligence. A similar distinction exists in articles 100 and 101 of the Criminal Code. At the same time, the difference in the meanings of the words murder and infliction of death is an important condition for distinguishing the crime provided for in Article 102 of the Criminal Code from murder or intentional infliction of death, provided for in Articles 97-101 of the Criminal Code.

4) the inexpediency of establishing criminal liability for certain crimes that do not pose a great public danger or provide for administrative prejudice;

The decriminalization of criminal acts is one of the important directions of the policy of liberalization of the criminal law policy. At the same time, the Criminal Code contains a number of articles - articles 125, 126, 185, 192 of the Criminal Code, the presence of which is controversial and does not fully comply with the principle of liberalism and humanity of criminal law. In particular, part one of Article 125 of the Criminal Code provides for liability for disclosure of legally protected secrets of adoption or adoption of orphans or children deprived of parental care, committed against the will of the adoptive parents or adopters or guardianship and guardianship authority . At the same time, this act does not pose a great public danger and can be regarded as an administrative offense.

The next problem is the problem of crimes, the occurrence of which requires administrative prejudice . The Criminal Code contains 47 articles providing for the commission of a crime as a mandatory feature after the application of an administrative penalty for the same actions.

In particular, a number of articles providing for liability for a crime with administrative prejudice and an administrative offense have differences in disposition (articles 132, 140, 2291 of the Criminal Code). For example, article 2291 of the Criminal Code provides for liability for unauthorized seizure of land plots, while article 60 of the Code of Administrative Offenses (commission of the offense provided for in it is a condition for liability under article 2291 of the Criminal Code) provides

for liability for unauthorized use of land, subsoil, water, flora or fauna or the commission of transactions or other actions that directly or covertly violate the right of ownership of land and other natural resources, the assignment of the right to special use of natural resources, as well as the unauthorized seizure of land plots. Therefore, certain problems may arise in qualifying the deed as a crime.

There is also the problem of criminal liability for unfinished crimes. According to article 25 of the Criminal Code, responsibility for preparation and attempt occurs under the same article of the Special Part of the Criminal Code as for a completed crime. Thus, the Criminal Code does not provide for an exception to the application of this rule. At the same time , the recognition of criminal preparation for crimes that do not pose a great public danger, and less serious crimes, seems inappropriate and contrary to the principle of justice.

5) the presence of blanket dispositions in the Special Part of the Criminal Code of the Republic of Uzbekistan gives rise to significant problems in law enforcement practice and qualification of crimes;

The presence of blanket dispositions does not fully comply with the principle of legality, since it does not fully determine the actions (inaction) that entail criminal liability.

In turn, article 1 of the Criminal Code provides that criminal legislation is based only on the Criminal Code, therefore, the norm of this article requires the legislator to specifically describe certain acts that are subject to legal assessment as a crime.

For example, the correct qualification of the crimes provided for in articles 193, 198, 200, 201 of the Criminal Code requires a legal assessment of the act of the perpetrator on the basis of the relevant legal acts. In particular, the correct qualification of the deed under Article 196 of the Criminal Code requires referring to the relevant norms of the Laws of the Republic of Uzbekistan “On Nature Protection”, “On Subsoil” and other regulatory legal acts.

The adoption and implementation of the measures provided for by the Concept for the Development of Criminal Legislation will make it possible to fully implement the provisions of the Action Strategy, will have a positive impact on the implementation of judicial and legal reforms, help reduce the level of crime, and increase the effectiveness of criminal legislation.

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