

Assessment of the current criminal legislation of the Republic of Uzbekistan

Umid Holikulov

PhD, Associate Professor Senior science researcher at Tashkent State University of Law

E-mail: umid_holikulov@mail.ru

Annotation. *This article describes the prerequisites for the establishment of the new Criminal Code of Uzbekistan, on the basis of the analysis of the changes and additions made to the existing criminal legislation of the Republic of Uzbekistan, as well as the opinions of scientists and regulatory practices of countries with developed market economies, made an attempt to find the main directions of its further improvement.*

Keywords: Criminal Code of the Republic of Uzbekistan, Model Penal Code of the CIS countries, the Constitution of the Republic of Uzbekistan, the gaps in the legislation, unification, decriminalization, the offense

In the fight against crime it is very important the stability of the criminal law, but since the 90s, the criminal legislation of Uzbekistan is developing dynamically. Political, economic, social and other changes in the country required the adoption of new criminal legislation, the relevant legal realities, which were implemented with the adoption in 1994 of the new Criminal Code.

The Criminal Code was a legislative act, reflected the democratic principles and market laws of the country in a systematic conformity with the comprehension of the hierarchy of values prevailing in our society, and was not created in a vacuum. Theoretical considerations relating to the General Part of criminal law, mainly basic, were in a concentrated form is reflected in

the scientific work entitled "Theoretical Model Criminal Code (General Part)"¹.

Later they were used in the creation of the Model Penal Code of the CIS countries. However, this does not mean that it is "blind" copy. Criminal Code of the Republic of Uzbekistan is markedly different sequence and system. So, in the Model Code of priority protection shall be the peace and security of mankind, while the nationwide Criminal attention is paid to the individual, its rights and freedoms, the principles of the Uzbek Criminal Code also provides broader than in the Model Code. In short, the Criminal Code of the Republic of Uzbekistan in accordance with national traditions, the international treaties of our country, is not inferior to the laws of the countries with developed market economies.

It should be noted that changes in society over the expiring period, the need for consistency in the judicial policy, as well as to eliminate the dualistic approach, gaps in the legal acts, further improving the legal mechanism, required changes and amendments to the criminal law countries. These changes in one degree or another relate to almost all the major institutions of criminal law and stand out in phases, a certain systematic and focused. From this point of view, in our view, these amendments are due as follows:

- The need to reflect in legislative acts of socio-economic reforms, consistently and gradually implemented in the country;
- The need to ensure linkages, consistency and integrity of the legal system

¹ See., Criminal Law. Experience of theoretical modeling. -M.: Nauka, 1987. p.235 -274.

as a consequence of changes in the laws and regulations of other branches of law;

- The need to bring the criminal law into line with international instruments to which Uzbekistan joined;

- The need to ensure unity in the interpretation of the law in the Uzbek and Russian languages.

It should be noted that a law passed during the transition period, according to his ability can not be stable, since it is impossible to predict the course of development of socio-economic and socio-political processes. After a certain period of legal practice in the beginning to identify him some gaps and shortcomings, which determined its further development with a view to respond adequately to the new threats of the modern world.

So, at the time of the adoption of the Criminal Code of the Republic of Uzbekistan there were 302 articles, 96 of them - in general and 206 - in the Special Part. Over twenty years of operation of the Code more than 548 amendments and additions were made to it. If this figure to take one hundred per cent, on the general part of the Criminal Code had 11.5% of the changes and additions, and 88.5% - in the Special Part of the Criminal Code.

From 1996 to 2000, in the Criminal Code of the Republic of Uzbekistan made 90 changes and additions. Of these, 41 change due to the criminalization of acts (and supplemented by 12 new articles), 15 to the decriminalization, 13 related to the penalization and 21 with decriminalization.

The second phase of improvement of the national Criminal Code has been associated with the country's transition to the phase of consolidation achieved by the country's transformation and upgrading. The criminal policy of the state has changed in line with these reforms and liberalization has been carried out of the Criminal, Criminal Procedure Code and the Code of Administrative Responsibility, in this connection for the period 2001-2006 in

general and norms of the Criminal Code of Uzbekistan 134 changes were made. Criteria for classification of crimes reduced offenses have been changed, as a penalty involving deprivation of liberty, implemented incentive rules for the application of imprisonment is not the case in respect of pecuniary damage, supplemented by article providing for exemption from criminal liability in connection with reconciliation. Also it was made the criminalization of certain acts and the Criminal Code amended 16 articles of the Criminal Code as well as bringing the rules into line with the norms of international treaties and conventions to which Uzbekistan joined the organization.

Since 2007, the Criminal Code was made more than 200 changes. Most of the changes have affected the species and size of penalties. An important event was the global abolition of the death penalty and its replacement with life and long-term incarceration. Most of the change was related to the adjustment of the rules of the general and specific in relation to the abolition of the death penalty and its replacement long-term or life imprisonment.

Also in the Criminal Code was amended (mostly in the sanctions article of the Criminal Code of Uzbekistan) in connection with the introduction of a new form of punishment in the form of restriction of freedom. In addition to the changes that have been made in some articles of the Criminal Code several times, new articles have been included in it.

For all the duration of the Criminal Code in 1994 General Part of the Criminal Code was supplemented with three articles, while the special part replenished 44 articles.

Analysis of the General Part of the Criminal Code of the Republic of Uzbekistan has shown that the greatest changes and additions were subjected to such institutions as the criminal law: classification of crimes, punishment system; sentencing and release from liability or

punishment, and in the Special Part of the Criminal Code of crimes against the peace and security of mankind; economic crimes; crimes against public order; crimes against public security. So, were criminalized certain acts related to terrorism, economic activity, there is a separate chapter for crimes related to the obstruction, illegal interference in entrepreneurial activity, and other crimes that infringe on the rights and legitimate interests of economic entities, acts in the field of information, etc. Also it provides for criminal liability for violation of the order of beliefs, in the sphere of morality. In general, they can be divided according to the following criteria:

- Economic security;
- Peace and security of mankind;
- Securing the moral foundations of society.

If to count the data, the annual accounts for 2 or more supplements, and considering the changes, the figure in the aggregate more than 27 per year. At the same time in the last five years of operation of the law it had just 289 changes and additions, i.e. 57.8 changes per year. The vast majority of the changes and additions to account for the period in which significantly increased security of economic activity and private property, establishes responsibility for a number of acts that impede the economic growth of the country. An analysis of the changes shows that the legislator on the one hand increases the number of standards that criminalize, on the other hand includes the Criminal Code new types of release from punishment or promotional rates. In addition, almost every year the Senate Oliy Majlis amnesty acts adopted on the basis of which of the prison released sufficient number of prisoners.

To date, the process of making numerous changes and additions to some extent suffered systematic CC.

Naturally, we can not give a scientific and practical evaluation of all proposals and comments offered by

scientists on the improvement of national criminal law, and try to synthesize the main directions and methods to improve the Criminal Law, which, in our opinion, are of greatest interest.

Thus, R. Kaboulov offers several areas for further improvement of the Criminal Code of the Republic of Uzbekistan. This 1) unification; 2) differentiation and individualization; 3) the decriminalization². Regarding the responsibility of differentiation with the view of R. Kaboulov and other scientists agree³.

Also, scientists such as F. Gulyamov, Sh. Abdukadirov, W. Mirzayev and others point out the shortcomings of legislative technique in the design elements of a crime and the mismatch of individual parts of the criminal law⁴.

It seems that the work to improve the existing Criminal Code can be conditionally divided into three main groups: 1) conceptual shortcomings; 2) defects of form and language of the criminal law in general,

² Kaboulov R. Professor of the Department of Criminal Law of the Academy of Ministry of Internal Affairs of the Republic of Uzbekistan, Doctor of Law. / In sb. International scientific-practical conference Improve the criminal and criminal procedural legislation: national and international experience. T. TSUL 2014. P. 30

³ Zufarov R.A. Abdukodirov Sh.Yo. Mirzaev U.M. Criminal law reforms and the prospects for its development. / International scientific-practical conference Improve the criminal and criminal procedural legislation: national and international experience. T. TSUL 2014. P. 76.

⁴ Gulyamov F. Liability for environmental crimes: analysis and prospects of the development of the norms of the current legislation / International scientific-practical conference Improve the criminal and criminal procedural legislation: national and international experience. T. TSUL 2014. C. 217-229; Abdukodirov Sh.Yo. Mirzaev U.M. Criminal law reforms and the prospects for its development. / International scientific-practical conference Improve the criminal and criminal procedural legislation: national and international experience. T. TSUL 2014. P. 78.

and 3) the shortcomings of certain provisions of the criminal law.

Conceptual shortcomings of criminal law are primarily concerned with the theory of criminal law.

The study of the current Criminal Code of the Republic of Uzbekistan shows that there are still shortcomings doctrinal natures, which are mainly related to the one-sided approach to the theory of criminal law. The limited legal knowledge outside a country, isolation on a purely natural or legal rulemaking material will generate certain shortcomings in the legislative activity. In this sense, it is necessary to study the theory of law with different approach to it with a view to finding common ground and use in the improvement of national legislation⁵.

Analysis of the existing criminal legislation of Uzbekistan showed that the introduction of amendments and additions, the legislator adhered to the main line of liberalization in relation to criminal-law measures. Thus, in the Criminal Code included the general and special incentive rules for the exemption from liability or punishment, are excluded the most severe and inappropriate penalties as confiscation of property and the death penalty, there is a tendency to mitigate the category of crimes and mode of punishment, mitigated punishment system.

On the other hand, when there is no change in the classification of offenses sanctions articles translated in a lighter category that can give the wrong conclusion about the repressive criminal law. During this period, prevailing criminalization of acts, rather than decriminalization. It seems that the legislator exaggerates the role of criminal law in the country's modernization.

The study of foreign practice in the field of rulemaking will avoid some of the

mistakes in connection with what we consider some of them.

So, the reform of federal criminal legislation of the USA began in 1973, in connection with the intensification of the economic crisis in the country. The first project, S I, was extremely repressive and has not received approval in Congress⁶. This project involved serious restrictions on civil liberties in the United States. However, some scholars have noted a certain attractiveness of the project. There have been many definitions simplified; eliminating inconsistencies and reorganized offenses reduced seventy-nine states uncertain of guilt, which abolished a number of obsolete or unused rules⁷.

After the failure of S. I, under the leadership of the Senate Judiciary Committee, including the new bill Senators Edward Kennedy and John McClellan S was developed in 1437 and introduced in 1976. Those supported S 1437 pointed to its advantages in comparison with S. I⁸.

In 1978, S 1437 the project was studied Criminal Justice Subcommittee of the White House, where it was noted that the project was based on the project of S 1 and was not able to change his conceptual way. Bill HR 6915 was passed in 1980, which largely improved the protection of civil liberties.

During 10 years of work was carried out in the direction of strengthening the individual rights. At the same time it has increased kinds of offenses for which the punishment of imprisonment.

Finland began the reform in the field of criminal law to improve the general part

⁵ Cm.: George P. Fletcher. The Nature and Function of Criminal Theory, 88 Cal. L. Rev. 687 (2000). P. 691.

⁶ Russel M. Coombs, *Criminal Law Reform and the Law Reviews*, 13 Wm. & Mary L. Rev. 159 (1971)

⁷ John H.F. Shattuck David E. Landau. Civil Liberties and Criminal Code Reform. 72 J. Crim. L. & Criminology 914 (1981). p. 916.

⁸ D. Reznick, The Rights of Criminal Defendants, in THE RIGHTS OF AMERICANS 433 (N. Dorsen ed. 1970). See also Amsterdam, The Supreme Court and the Rights of Suspects in Criminal Cases, 45 N.Y.U.L. REV. 785 (1970).

of criminal law. By the end of the 40's early 50-ies of the Finns refused to punitive criminal policy, for the most part borrowed from Russia at that time.

The fact that Finland is a relatively peaceful and safe society with low crime rates contributed to the adoption of liberal policies in the fight against crime. However, this factor is the only explanation. For example, at the beginning of the 50s the number of prisoners per 100,000 of the population in Finland was 200 people. After the reforms, already by 1955, this figure dropped to 150 prisoners. In the 1960s, Finland experienced serious social and structural changes in its development, the transition from agriculture to industrial production, thus improving the general welfare in cities⁹. This rapid development has had a positive impact on reducing crime. Finnish criminal policy flowed under the insolvency penal policy, like it was carried out in the sphere of economy policy¹⁰.

Criminal policy in Finland proceeded in conjunction with the overall social policy in the country, which made it possible to integrate criminal law in general legal regulation system and thereby eliminated the punitive policy. By 1969, the Criminal Code of Finland have changed the types and amounts of punishment, decriminalized many acts, and those serving sentences for minor crimes, released from prison.

Germany. Soon after the formation in 1949 in West Germany started to prepare the reform of the Criminal Code in 1871

Since 1951 g. Bundestag started to publish the so-called laws of change in the criminal law, which generally are made in private supplement of the Criminal Code, carried out a total modernization, "cleaning" Criminal Code of obsolete provisions, etc. For more radical changes affecting the fundamental institutions of criminal law, penal policy issues, penalties and other measures of a system of repression in Germany used a different form - the so-called laws on the reform of criminal law. Since 1954 y. unfolded work Bundestag Committee on the "big reform". The Commission has presented some preliminary, and then the official draft of the new Criminal Code (1962), are extremely reactionary and focused on incarceration as a means of intimidating. In contrast, a group of forensic document professors presented "alternative project" in 1966, which offered a more flexible punitive policy and liberal interpretation of the tasks of criminal law (widely used conditional renunciation of sentencing, the idea of re-socialization of prisoners, etc.). The Special Committee of the Bundestag on the reform of criminal law created in 1966, tried to find a compromise by removing the most reactionary in 1962, the provisions of the draft and adopted some authors claim "alternative project", in particular on probation and on the wording of certain articles relating to the most important legal institutions. The Committee considered it expedient to confine only reform of the General Part of the Criminal Code. A number of laws on the reform of criminal law adopted since 1969 (their entry into force is not delayed again), was approved by the new version of the General Part of the Penal Code and amended articles of the Criminal Code of 1871, as upheld. To align two different parts of the Criminal Code in 1974 published the Introductory Act to the Criminal Code, numbering 326 articles - the largest in terms of all previously adopted in the Federal Republic of Germany. As a result of the reform of 1

⁹ O. Ekunwe and Richard S. Jones. Finnish Criminal Policy: From Hard Time to Gentle Justice The Journal of Prisoners on Prisons, Vol. 21, No. 1&2 (June 2012): 173-189. © University of Ottawa Press 2012.

¹⁰ Ekunwe, I. O. and R. S. Jones (2011) "Doing Re-entry: Accounts of Post-prison Release in Finland and the United States" in I. O. Ekunwe and R. S. Jones (eds.), *Global Perspectives on Re-entry*, Tampere (FI): University of Tampere Press, pp. 443-469. Lappi-Seppala, T. (2000) "The Fall of the Finnish Prison Population", *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 1(1): 27-40.

January 1975 in Germany he began to act the Criminal Code, which is composed of the total in the 60-ies. XX century., And serve as a special part of the Code Article 1871, even if subjected to significant change, but keep the old system, numbering, many formulations. After the "great reform" individual acts were published in the Federal Republic of Germany relating to some of the most serious crimes, in particular, the laws on the fight against economic crime (the first - in 1976, the second - In 1986 y), the Law on Combating Terrorism 1986. Given accumulated changes in 1987, the new edition of the Code was published.

As can be seen from the practice of normative activities of these countries, especially changes were general provisions of criminal law defining the crime and offenses, enhanced communication of criminal and industrial law decriminalized some actions, traced the line-out of the punitive policy, not only in the field of criminal policy, but and in the economic sphere.

To further improve the existing criminal legislation of the Republic of Uzbekistan, it is necessary to continue work to improve the institution of crime classifications, for which it would be appropriate to introduce a category of criminal offense. In addition, to eliminate the disparity in law terminology and some vague concept of characterizing the effects of the crime, as well as signs of action. To strengthen unity and without spaces criminal law must be parallel to the improvement of the norms of the Criminal Code and the rules of other branches of law, elimination of administrative-command "tone."