

## **DIE LIBERALISIERUNG DER STRAFSTRAFEN IST EIN WICHTIGER FAKTOR ZUM SCHUTZ DER MENSCHENRECHTE**

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**Zusammenfassung:** Der Erlass des Präsidenten der Republik Usbekistan vom 7. November 2018, Nr. PP-4006 „Über Maßnahmen zur radikalen Verbesserung des Systems der Straf- und Strafprozessgesetzgebung“, die Aufgabe der Strafmilderung oder Erweiterung der Normen zur Festlegung der Bedingungen auf Strafbarkeit oder Straffreiheit. Die Frage der strafrechtlichen Verfolgung und Bestrafung von Minderjährigen nimmt im Strafgesetzbuch der Republik Usbekistan einen besonderen Platz ein.

Der Artikel analysiert die Straffreiheit, die Verbesserung des Strafmaßes und die Rolle der Kriminalpolitik bei der Kriminalitätsbekämpfung.

**Schlüsselwörter:** Rechtsnorm, Liberalisierung, Verhältnismäßigkeit, Vermutung, Haftung, Strafe, Entkriminalisierung, Freiheitsstrafe, Mäßigung, Legitimität, Strafanstalten.

## **LIBERALIZATION OF CRIMINAL PENALTIES IS AN IMPORTANT FACTOR IN PROTECTING HUMAN RIGHTS**

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**Abstract:** The Decree of the President of the Republic of Uzbekistan dated November 7, 2018, No. PP-4006 “On measures to radically improve the system of criminal and criminal procedure legislation”, the task of mitigating punishment or expanding norms establishing the conditions for criminal liability or exemption from punishment. The issue of criminal prosecution and punishment of minors occupies a special place in the Criminal Code of the Republic of Uzbekistan.

The article analyzes the liberalization of criminal penalties, the improvement of penalties for criminal offenses, the role of criminal policy in reducing crime.

**Keywords:** legal norm, liberalization, proportional, presumption, liability, penalty, decriminalization, imprisonment, moderation, legitimacy, penitentiary institutions.

In recent years, judicial and legal reforms have been developing rapidly in the Republic of Uzbekistan. This process has set before the state and society the urgent task of building a democratic state and civil society based on the rule of law. In this regard, the liberalization of criminal law has required the reform of its important institutions, including criminal liability, the penal system and sentencing institutions.

In the Decree of the President of the Republic of Uzbekistan dated February 7, 2017 “On the Strategy for the Further Development of the Republic of Uzbekistan”, special attention is paid to the improvement and liberalization of criminal legislation, decriminalization of certain crimes, humanization of criminal penalties and their execution.

In addition, the Concept for improving the criminal executive legislation of the Republic of Uzbekistan for 2019-2021, approved by the Decree of the President of the Republic of Uzbekistan dated November 7, 2018 No. PP-4006 “On measures to radically improve the system of criminal and criminal procedure legislation”, the task of mitigating punishment or expanding norms establishing the conditions for criminal liability or exemption from punishment.

Ensuring the rule of law in society is the most important task of the state. Although the rule of law is largely dependent on legal education and the culture of citizens, the law enforcement function of the state also plays an important role in this regard. This is due to the fact that the fight against various offenses and crimes, their prevention and the application of appropriate sanctions against the perpetrators strengthen the role of the state in ensuring the rule of law. In this sense, the fair punishment of offenders is now essential to achieve the basic goals of punishment. In particular, the issue of criminal prosecution and punishment of minors occupies a special place in the Criminal Code of the Republic of Uzbekistan. At the same time, it would be advisable to conduct a comparative analysis of the criminal law of our country and the legislation of foreign countries when sentencing minors and to study its positive aspects [Zaripov Z.S, Mirzazhonov K., 2001; 50].

According to the acts of amnesty, based on humanitarian principles inherent in our people during the years of independence, criminal cases against persons under 18 years old, women who first committed a crime, men over 60 years old, foreign citizens, invalids of groups I and II were terminated and were released from punishment.

The Criminal Code of Uzbekistan also provides for a special procedure for sentencing minors, women and persons over 60 years of age. In particular, this category of persons is not subject to life imprisonment. In addition, the rules introduced through liberalization provide that minors should not be sentenced to imprisonment if they have committed a crime of low social risk or as a result of negligence.

By liberalizing criminal penalties, it is possible to return the offender to society by imposing other lesser penalties without isolating him from society. To this end, the

“libertarian” approach (as a means of ensuring freedom) is gaining priority today in assessing law and all related phenomena in the world. According to this concept, the law is, first of all, a criterion of freedom and justice, a means of ensuring them, the safety of the population and a regulatory system that ensures the property independence of each citizen [Odilkoriev Kh.T., Tulteev I.T., 2002; 7].

In this regard, the liberalization of criminal law has become one of the most important tasks. Let's pay attention to the meaning of the term “liberalization”. The word liberalization comes from the Latin word *liberalis* - a free-thinking, freedom-loving word, but the direct translation does not fully reflect the meaning of this word. More precisely, it represents not only freedom, but also the ability of a person to think freely, to judge various spheres of human activity, including the assessment of any political system, to criticize it, and even to stand in (constructive) opposition. Sometimes this term is used in the field of law in the sense of tolerance, benevolence towards their various representatives, as well as the views and ideas of the liberal movement, a representative of the liberal ideology [Gulomova M., 2006; 7].

The system of liberal views is one of the most advanced and, most importantly, reasonable theories of humanity, imbued with the spirit of goodness. The word liberalization is also sometimes called simplification, justification, moderation, etc. However, these words convey only certain aspects and content of liberalization (for example, liberalization of social and political life, moderation of criminal law policy, mitigation of punishment, etc.). Liberalization is the word that acquires a holistic meaning [Rustamboev M.Kh., 2001; 165].

I.E. Khojanazarov, who studied the socio-political, philosophical, spiritual, moral, political, economic and legal aspects of liberalization, gave a clearer understanding and notes that: “Liberalization is a priority of legal reforms aimed at establishing the rule of law and the formation of civil society, the process of forming a national legal system based on privileged and encouraging democratic rules that reflect the priority of freedom, justice and human rights and freedoms” [Khozhanazarov I.E, 2009; 7].

Consequently, every step of the state in the implementation of criminal policy, every stage of the development of criminal law and its application must be assessed both in terms of its effectiveness and its legitimacy in accordance with the principles of humanity. Indeed, humanity is undoubtedly the main idea of the concept of state policy in the fight against crime [Pulatov Yu.S., 2002; 81-83].

All researchers who have studied the issue of punishment note that it is impossible to effectively fight crime with one punishment. Because a punitive approach to solving the problem of crime is ineffective both economically and socially.

At the current stage of development of society and in the future as a whole, it is impossible to eradicate crime only with the help of criminal policy. According to the Russian criminologist A.I. Korobeeva, “the goal of criminal policy is the complete eradication of crime and the use of criminal, criminal procedural, criminal executive

rights as the main tool in this matter” [A.I. Korobeeva, 1991; 7]. He stressed that criminal policy should not be regarded as the main means of regulating the development of society, economy, culture, consciousness and living standards, social protection of members of society. In the face of criminal policy, the goal is to reduce crime in the future, to prevent an increase in crime in a situation where there are complex reasons. Also M.D. Shargorodsky: “Objective conditions do not necessarily lead to a certain number of crimes. No result can be expected from punishment that he cannot give. Punishment cannot eliminate the crime generated by certain social conditions, but punishment can affect the reduction of crime in certain social conditions and hinder the growth of crime” [Shargorodsky M.D, 1973; 35]. Thus, according to scientists studying criminal punishment and its effectiveness, the liberalization of criminal punishment does not mean the end of the fight against crime. On the contrary, liberalization is the inevitability of punishment for every criminal act.

In terms of the liberalization of criminal law policy, it can be said that since 2016, prisoners have been allowed to pray in Uzbekistan, and a draft resolution is currently being developed that will allow prisoners to receive higher education online [[kun.uz/news/2021/01/30/](http://kun.uz/news/2021/01/30/)].

In addition, it should be noted that today, as of January 1 2021, 57,036 people are under control in probation departments (at the moment there are 43 penitentiary institutions and 11 pre-trial detention centers in Uzbekistan, 18 closed-type penitentiary institutions, 25 targeted colonies). The number of prisoners in relation to the capacity of colonies in the penitentiary system is 56.4%, vacancies –43.6%.

Based on the above, the following conclusions can be drawn:

Firstly, the Republic of Uzbekistan is taking comprehensive measures to liberalize its criminal law policy.

Secondly, from the point of view of the liberalization policy, it is not about the ease or severity of criminal punishment, but about its inevitability and fairness. Historically, the impossibility of ending a crime with a harsh punishment for a crime has been proven in practice. In this regard, the measures taken by Uzbekistan to liberalize the penal policy are of great importance in all respects.

Thirdly, today it is necessary to pay special attention to the liberalization of criminal law policy:

- expanding the institution of exemption from criminal liability in connection with the reconciliation of the parties;
- decriminalization of certain elements of crimes that do not pose a significant social threat, and in essence related to other branches of law (civil, administrative);
- initiation of a criminal case only to expand the list of offenses that can be committed at the request of the victim;

– rejection of the system of administrative prejudice in the construction of criminal norms.

### References:

1. Usmonaliev M. Criminal law. General section. Textbook. – Tashkent: Yangi asr avlodi, 2005. 37 p.
2. Odilkoriev Kh.T., Tulteev I.T., Liberalization of criminal law policy: necessity and factors // Huquq - Prava - Law. – 2002. № 2. 1.7-pp.
3. Pulatov Yu.S. On the humanization of conditional conviction in criminal and penal legislation // Huquq - Prava - Law. – 2002. № 2. 81-83 pp.
4. Zaripov Z.S, Mirzazhonov K. Alternative measures for juvenile offenders. // Huquq - Prava - Law. – 2001. No. 4, p-50.
5. Korobeeva A.I. and others. Criminal law policy. – Kazan, 1991. 7 p.
6. Shargorodsky M.D. Punishment, its goals and effectiveness. – Leningrad: LSU, 1973. – p. 35.
7. Rustamboev M.Kh. Liberalization of criminal penalties is a requirement of the time and problems of the future // Materials of the international scientific-practical conference “Judicial and legal reform: theory and practice” – Tashkent, 2001, 165 p.
8. Khodzhanazarov I.Ye. Liberalization is the central direction of legal reform in Uzbekistan. kan. legal sciences. diss. abstract. – Tashkent, 2009, p-7.
9. Gulomova M. Issues of liberalization of the judicial system. – Tashkent, 2006, 7 p.
10. <https://kun.uz/news/2021/01/30/uzbekistonda-ayni-vaqtda-kancha-kachakakhim-borligi-malum-qilindi>.