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Historische Aspekte der Entwicklung des Strafrechts zu Söldner- und Gewaltverbrechen auf dem Territorium Usbekistans

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Zusammenfassung: In diesem Artikel betrachtet der Autor die Hauptetappen der evolutionären Entwicklung des nationalen Strafrechts zu Erwerbs- und Gewaltverbrechen auf dem Territorium des modernen Usbekistans aus historischer und rechtlicher Sicht. So werden die Entwicklungsstufen des Strafrechts zur Regelung der Verantwortlichkeit für Söldner-Gewaltdelikte in fünf Stufen eingeteilt, die jeweils im Rahmen der strafrechtlichen Verantwortlichkeitsregelung für diese Taten usw. ausführlich behandelt werden. Die wichtigsten Rechtsquellen, darunter Avesta, Zhety Zhargy, Kodizes von Timur, Gerichtsvorschriften usw., Kodizes der Sowjetzeit wurden untersucht. Basierend auf den Ergebnissen der Studie präsentiert der Autor theoretische Schlussfolgerungen und Schlussfolgerungen.

Schlüsselwörter: Egoistische und Gewaltverbrechen, Raub, Vergewaltigung, Tatba, Scharia, Kodex, Avesta, urf-adat.

Historical aspects of the development of criminal law on mercenary and violent crimes on the territory of Uzbekistan

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Abstract: In this article, the author considers the main stages of the evolutionary development of the national criminal law on acquisitive and violent crimes in the territory of modern Uzbekistan from a historical and legal position. Thus, the stages of development of the criminal legislation regulating liability for mercenary-violent crimes are divided into five stages, each of which is covered in detail in the context of criminal-legal provision of liability for these acts, etc. The most important legal sources, including Avesta, Zhety Zhargy, Codes of Timur, Judicial regulations, etc., codes of the Soviet period have been studied. Based on the results of the study, the author presents theoretical conclusions and conclusions.

Keywords: Selfish and violent crimes, robbery, rapine, tatba, Sharia, Code, Avesta, urf-adat.

The formation and development of the criminal legislation of any country has a long history and its own specific features. The study and detailed consideration of its roots are relevant and important today for comprehending and understanding the current state of affairs in this area, and also help to determine the prospects for further improvement.

Criminal law in its specificity has a very long history and undeniable roots in the mists of time. Already at the dawn of the emergence of mankind, there were moments relating to criminal cases. In this regard, there is an urgent question of creating a

criminal periodization, and after that, the design of a periodization of criminal legislation, in which the successive stages of its emergence, development and formation would be identified and disclosed.

The topic of creating a periodization of criminal legislation was dealt with by many researchers of the past and present, many worthy and entertaining studies are devoted to this problem. Until now, this issue remains debatable in scientific circles. In this study, we believe it is necessary to consider and characterize the development and formation of Russian and Kazakhstani criminal legislation, based on past and extant monuments of criminal law.

The legislation of the criminal sphere of any country in its evolutionary development goes through a rather long path of reform. The changes apply to all industries in this area. It must be said that responsibility for the implementation of certain types of mercenary and violent offenses was no exception in the criminal lawmaking of both states. In the presented study, we will reveal in detail the evolutionary path of development of criminal lawmaking regarding responsibility for the implementation of acquisitive and violent crimes.

We are confident that the basic and significant stages in the formation of criminal lawmaking regarding responsibility for the indicated crimes must certainly be in the closest interdependence with the official history of the country as a whole, since both of these phenomena, namely the state and law, have existed and developed since their inception, mutually complementing and correcting each other.

For a better understanding and understanding of the historical aspects of the formation of criminal legislation, it is necessary to consider the development of the criminal industry as a whole. On this account, in legal science there are several interesting periodizations that have the right to exist.

Let us turn our attention to historical periodization. The development of criminal legislation should focus on the following four key stages:

1) criminal legislation of the pre-Islamic period;
2) criminal law of the Islamic period;
3) criminal legislation in the period of colonialism;
4) the criminal legislation of the Soviet state;
5) criminal law of the Republic of Uzbekistan after the collapse of the USSR.

In the presented periodization, we do not establish a chronological framework, it is also clear that the time periods are quite different. For example, the first two cover several centuries, while the third and fourth are no more than one century in time.

Today, in the criminal sector of the Republic of Uzbekistan, there is scattered information about the periodization of criminal lawmaking. Regarding the presented periodizations, we will focus on the history of the formation of criminal lawmaking, in particular, responsibility for the implementation of acquisitive and violent crimes.

Fortunately, legal monuments have come down to us in writing. Thanks to these monuments of legal norms, we have the opportunity to analyze the content and development of criminal law and legislation of the pre-Islamic period. Avesta traditionally belongs to legal monuments. Distinctive features of the Avesta are: the

absence of a clear system, the casuistic nature of the presentation of legal norms, the interweaving of several divisions of law at the same time.

However, it is in this legal monument that there is already a tendency to single out acquisitive and violent crimes. Separately, appropriate penalties for the commission of the indicated crimes are indicated [1].

For the first time in the documents of the ancient world, we find mention of encroachments with a violent focus on personal property. The term "robbery" was first mentioned in the specified legal act of that time. The noted document contains a section under this title, which already indicates the allocation of responsibility for acquisitive and violent crimes. Remarkable is the fact that robbery is defined as a murder with strictly mercenary motives, for which capital punishment is provided: flow (this is deportation from one's native lands; further, the conversion of a person into slavery) and plunder of property.

The Avesta provides punishment for two groups of crimes - theft (duz) and robbery (appar). Theft, as in its modern concept, was considered the secret appropriation of someone else's property, and robbery had the character of the forcible appropriation of someone else's property. The forcible seizure of the disputed thing during the process was also considered robbery, even if this act was committed by the rightful owner. In the latter case, his title to the possession of the thing was not infringed by the act of robbery, but he lost his right to demand compensation from the other party for the damages he suffered as a result of the unlawful interruption in his possession of the thing. Another provision in the case of the theft by the debtor of a thing that was pledged: this thing was withdrawn from his possession, and he could receive it only upon payment of its value.

In some cases, failure to fulfill the contract for the transfer or return of property was also considered a crime. For example, in line 1 of part 1 of Fargard 4 of the Vendidad, it is noted that if a person who has acquired the property of another person refuses to return it to the owner, then his act is equated with the act of a person who stole someone else's property, and every time he stretches his hand to this property, his act is considered to be another robbery and, of course, his guilt increases significantly. [2]Late Zoroastrianism more concretizes the concept of "good word", prescribing not to break the word, to comply with agreements, to act honestly in all commercial affairs, to return debts, etc.

Cases of mercenary-forcible appropriation of another's property are designated by the word "tatba". Apparently, the authors put two meanings into this word: robbery and robbery. Subsequently, in criminal law, these types of crimes began to be distinguished from other groups of crimes [3].

For several centuries, among the nomadic peoples of Central Asia, the code of national customs was considered the source of law. They were oral in nature, passed down from one generation to another and were called customary law. In terms of their content, they were clear, concise and easily perceived by representatives of the steppe peoples [4].

At present, the existence (presumably at the end of the 17th - beginning of the 18th centuries) of the colossal handwritten code of customary law of Jeta Zhargy has

been officially proven in science. Unfortunately, the original version of this unique document has not come down to us, we can only judge its quality and content based on the records of Russian travelers and researchers [5]. The norms of customary law, as well as the state of criminal legislation in the field of responsibility for committing violent crimes, can be understood through the comprehension of this handwritten code.

So, what crimes did Jety Zhargy contain? The said document contained the following provisions: family, state, procedural, civil and criminal. Criminal cases occupied almost a leading place. This set reflected such types of crimes as adultery, mutilation, disrespect for parents and elders, violence against women and children, murder, insult, incest, intimate relationship with relatives by blood, beatings and, of course, all kinds of theft [6].

In the mentioned handwritten code of laws, such concepts as “rapine”, “robbery” and “extortion”, of course, are not singled out in a separate category, but a special place is given to theft of other people's property. In the proceedings of the embezzlement process, such nuances as the size of the stolen person and the identity of the offender were taken into account. The guilty person under customary law had to return the amount increased by 27 times from the stolen property. Of course, the offender himself was responsible for the commission of the crime, but cases were envisaged in which responsibility fell on the shoulders of all close relatives.

Tatba, robbery and rapine are given as separate concepts, although they are very similar in descriptive features. Robbery is considered by the authors as a murder for the mercenary purpose of taking possession of other people's property [7]. During that period, there were frequent crimes that were committed on the road in relation to travelers, criminals traditionally expected them in the bushes. Everything described was characteristic of a mercenary-violent crime - robbery, which is defined as the open taking of another's property with clearly expressed violent features. In the considered monuments of criminal law, there is still no clear and precise definition of “rapine” (it will appear a little later) [8].

A similar situation in terms of setting a clear and correct definition of robbery took place in Sharia. In Muslim law, robbery was revealed as an attack by a group (gang) of persons with the aim of taking possession of the products of labor activity. An interesting fact is that there is an open seizure of property, even, perhaps, with extortion [9].

At the same time, regarding robbery as a crime of the Hudud category, there is no single agreed understanding in Muslim law and doctrine. To criminalize robbery as a particularly dangerous crime, the existing norm in the Koran served, which coincides with all the signs of this criminal act:

"And recompense for those who fight against God and His messenger, daring to sow wickedness on the earth."

In Muslim criminal law, this norm of the Koran is explained in different ways, which served as the basis for the emergence of varieties of the concept of robbery. For example, according to L.R. Syukiyainen, in this norm we are talking about an armed attack [10]. But A.K. Nazarov notes that the words “fighting against Allah” in

Arabic sound like “harb”, and the original meaning of this word is “attack”, “robbery”, “committing a serious violent act”. He believes that “this last word cannot be identified with war and the conduct of hostilities. Fight against Allah and His prophets means not to submit to His religion and His laws in the matter of observing the rights of other people [11].

According to Islamic law, which is the current law in some modern states, most madhhabs and Muslim jurists refer to robbery as “an attack on travelers, tourists on the road with the aim of stealing their property” [12].

Others consider as such any intimidation of travelers with the aim of taking possession of their property, and the Shafiites understand by robbery any act that intimidates travelers, regardless of whether its purpose was theft of property or not [13].

The peculiarities of robbery itself as a criminally punishable act are that it damages several objects and values that are under the protection of Muslim criminal law. Robbery is violence that is dangerous to human life and health, and is a dangerous form of theft of someone else's property.

M.M. Mullaev, according to Muslim law, divides robbery into four types: 1) robbery attacks, which were accompanied by a threat, murder and other violence against the victim, and the things seized as a result of the robbery were in the presence of the criminal; 2) robbery attacks, which, although not accompanied by murder, however, the things taken have already been distributed among the accomplices of the crime and to some extent spent; 3) robbery attacks, when the confiscated things are completely spent by the criminals; 4) robbery attacks in which a murder was committed [14].

Rapine, which has the character of open theft of someone else's property, is included in the category of tazir crimes. Open rapine enables the victim to resist, protect his property, call for help and detain the offender.

Subsequently, robbery takes on varieties: with violence, with weapons or without both. It should be noted that this particular type of mercenary-violent crimes has a special place. Often robbery is regarded as part of some other crime. There is no talk of extortion and robbery [15].

Tuzuki (Code of Timur), according to I.B. Buriev was also a source of criminal law, it establishes punishments for committing crimes against the state and princes, as the willfulness of princes, military and other state officials [16]. The Code of Timur is an instruction from Timur's personal experience and a wish (advice) for his children, happy conquerors of states, his descendants.

The approach to the consideration of mercenary and violent crimes during the reign of Amir Temur is peculiar. During this period, robbery is a crime of a personal nature, and robbery belongs to the category of crimes against property with violent tendencies. A reservation - only that when committing a robbery, severe beatings and wounds were not inflicted.

The Code of Timur already gives clearer and more specific definitions of robbery and robbery, speaking of them as property crimes with pronounced violent features [17].

Robbery and rapine are quite sharply different, where exactly robbery is dangerous in nature for life and health. An important point is that in this Code for the first time the term and definition of extortion was introduced, but it still correlates with public affairs [18].

The presence of Turkestan as part of the Russian Empire, and the vassal nature of the Central Asian khanates, of course, could not do without consequences. The changes affected almost all spheres of society, including law. Now, along with customary law and Sharia, royal (imperial) law functioned in Uzbekistan.

The Russian administration, before adopting any legal document, always identified popular sentiments and a possible reaction to its introduction. So, barymta [19], robbery, refusal to obey the authorities, murder, state crimes, issuance of counterfeit banknotes and coins, perjury in a trial, deliberate arson were now related to criminal aspects. In addition to robbery, other types of mercenary and violent crimes of interest to us (robbery and rapine) were not specified and prescribed. Cases, the content of which included the theft of property, foreign or state, were considered exclusively by the court of biys[20].

In 1844, the Regulations on the management of the Orenburg Kirghiz were published, they are already distinguished into a separate category of robbery and rapine, but so far there is no information about extortion as a property crime [21].

1903 [22]significantly differs from previous monuments of criminal law in the sense that the term "robbery" is absent at all, and its characteristic features refer to the crime "theft". It also states that robbery is not only the seizure of property, it is one of the forms of crimes of a property nature. It should be noted that it is in this document that “rapine” acquires its true meaning and is now characterized as a purely property crime [23].

Later in Uzbekistan, in particular in the legal system, there were no cardinal or significant changes until the October Revolution.

The beginning of the Soviet period, of course, was marked by large and dramatic changes in almost all spheres of people's life, which also affected the legal system of the national outskirts, which entailed the abolition of all regulatory legal acts in force at that time [24]. Initially, the leaders of the Soviet state were tolerant towards the folk traditions of national minorities. The leadership even faced the task of adjusting the new criminal legislation to the already existing folk customs. In support of our words, we state that on May 11, 1918, the Kirghiz department of the People's Commissariat for Nationalities of the RSFSR was created, which in its charter had the following task: the creation of "drafts of criminal and civil laws, appropriate with the customary law of the steppe inhabitants, where the red thread must to go through the ideas of socialism" [25].

Later, the leadership of Uzbekistan was given the task of creating a specific legal commission, which was supposed to draft such a Criminal Code, in which the customary law of the steppes, the urban people and the “correct ideas of the socialist system” would harmoniously converge [26].

In the 20s. 20th century the constituent congress of Soviets took place in the Uzbek SSR, where it was decided to take a number of fundamental measures to

change the customary law of the inhabitants of Uzbekistan. The opinions of the founders of the congress were radically divided, and two groups were formed, one was for the preservation of the people's foundations, the other group was categorically against national peculiarities and supported the leadership in terms of changing the legislation. The views of the founders influenced the decisions of the congress, where two opposing sides were also present. The second group not only did not accept the norms of customary law, but also declared them harmful, as well as relics of the past [27].

The consequences of this congress were not long in coming. November 10, 1921 The Central Executive Committee of the Uzbek SSR condemns the barymta and declares a fight against it. From now on, barymta is equated with the theft of personal, public and state property. It was proclaimed in the court to regard cattle theft as robbery or rapine. Thus, such a national phenomenon as barymta is equated with such mercenary and violent crimes as robbery or rapine.

There were no cardinal changes even with the adoption of the Criminal Code of the RSFSR of 1922, in which the concepts of robbery and rapine did not change at all, and the word “attack” reappeared in the definition of the term “robbery”, from which they departed in the past [28].

In the Uzbek SSR, the Criminal Code was introduced on July 1, 1926, which also did not introduce anything new into the definition of acquisitive and violent crimes [29].

Changes in criminal legislation took place only with the advent of the USSR Law of August 7, 1932 “On the protection of property of state enterprises, collective farms and cooperation and the strengthening of public (socialist) property”, which had the immediate goal of increasing the amount of punishment for the implementation of mercenary and violent crimes [30].

Immediately after the war, the normative-legal acts of wartime, which established criminal liability for acts that were socially dangerous only in conditions of war, were canceled or declared null and void. On June 7, 1945, the Presidium of the Supreme Soviet of the USSR issued a Decree "On amnesty in connection with the victory over Nazi Germany." Persons sentenced to imprisonment for up to three years were released from punishment, and the unserved term of imprisonment was reduced by half.

The amnesty did not apply to those convicted of counter-revolutionary crimes, theft of socialist property, banditry, counterfeiting, premeditated murder, and also did not apply to persons repeatedly convicted of theft, embezzlement, robbery and hooliganism.

On May 26, 1947, the Presidium of the Supreme Soviet of the USSR adopted the Decree "On the abolition of the death penalty." It stated: "... meeting the wishes of the trade unions of workers and employees and other authoritative organizations expressing the opinion of broad public circles, the Presidium of the Supreme Soviet of the USSR considers that the use of the death penalty is no longer necessary in peacetime."

At the same time, liability for crimes against property is being tightened. Decrees of the Presidium of the Supreme Soviet of the USSR dated July 4, 1947 "On criminal liability for theft of state property" and "On strengthening the protection of personal property of citizens" competently distinguished crimes against personal, public and state economy [31].

They clearly manifested the main trend of state criminal policy: preference was given primarily to the protection and protection of state and public property. Theft, embezzlement, other theft of state and public property was punishable by imprisonment for a term of seven to ten years with or without confiscation of property.

With qualifying signs (committed repeatedly, by an organized group or with a large amount of stolen), the term of imprisonment was increased to 25 years, i.e., according to the degree of punishment property crime was equated to the most serious crimes.

Robbery was punishable by imprisonment in labor camps for a term of 10 to 15 years with confiscation of property, combined with violence dangerous to the life and health of the victim, the threat of death or serious bodily harm, as well as committed by a gang or repeatedly - imprisonment in labor camps. camps for a period of 15 to 20 years with confiscation of property.

On January 12, 1950, “in view of the applications received from national republics, from trade unions, peasant organizations, and also from cultural figures” the Presidium of the Supreme Soviet of the USSR restored the application of the death penalty to “traitors to the Motherland, spies and subversive bombers.”

For a certain period of time, criminal legislation was stable and was implemented according to previously outlined criminal postulates. And even the Criminal Code of the UzSSR, approved in 1960, returned to its previous positions in relation to the definitions of robbery, robbery and extortion. In the end, as a result of long changes and interventions, they came to a common denominator about the distinctions between certain types of acquisitive-violent crimes.

The important fact is that it was its own and independent normative legal act. This normative legal act served for many years until a new one was adopted in 1994, which is currently in force. The features of these Criminal Codes are more detailed definitions of acquisitive and violent crimes, a variety of options for punishment (fine, involvement in public works, restriction of freedom, confiscation of property); the characteristics of the commission of a crime are given (with violence, causing harm to health of varying degrees, the frequency of commission, the number of participants in the crime, the size of the stolen goods, etc.).

In the modern Criminal Code of 1994, adjustments were made to the definitions of the elements of the described mercenary-violent crimes.

In our study, we revealed the evolutionary path of criminal law and legislation in the field of responsibility for acquisitive and violent crimes, based on the results of the analysis, we can draw the following conclusions:

1. The criminal law of Uzbekistan has gone through a complex evolutionary path from simple legal canons to complex codified criminal legislation.

2. Consideration of responsibility for committing violent crimes took place in the documents of Ancient Uzbekistan (Avesta), in the norms of customary law of the steppe inhabitants who inhabited the territory of modern Uzbekistan, and later in Sharia norms.

3. For a long time, violent crimes were classified as property crimes (until the beginning of the 20th century).

4. Robbery and rapine in the monuments of criminal law and legislation of Uzbekistan are often mentioned and described quite extensively, which cannot be said about extortion, which appears in legal monuments only at the beginning of the 20th century.

5. From the moment Turkestan was a part of Russia and until the conquest of the USSR, Russian imperial criminal legislation was in force along with Sharia, and customary law (adat) also existed in parallel.

6. During the years of Soviet power and in modern times, the criminal legislation of Uzbekistan regarding liability for committing violent crimes is almost identical with minor differences.

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