УДК 343.8(575.1)
DOI 10.33463/2712-7737.2019.01(1-3).3.191-196

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THE PENAL LEGISLATION OF UZBEKISTAN: CONDITION, PROBLEMS AND PROSPECTS

УГОЛОВНО-ИСПОЛНИТЕЛЬНОЕ ЗАКОНОДАТЕЛЬСТВО УЗБЕКИСТАНА: СОСТОЯНИЕ, ПРОБЛЕМЫ И ПЕРСПЕКТИВЫ

Abstract. The article is devoted to reforms of the Penal legislation in the Republic of Uzbekistan. The goal is to formulate an opinion and an idea about the events taking place in the country among penitentiary scientists in order to formulate proposals for the legislation improving. Methodology is theoretical methods and systems approach. Results are in-depth analysis of the current state of the Penal legislation to determine the development directions and prospects. The conclusion is the need to reform criminal, penal and criminal procedure legislation of Uzbekistan to improve domestic policy and integration into the world community.

Keywords: resocialization of convicts, humanization of criminal penalties, penal system, introduction of international standards in the penal system.

Аннотация. Статья посвящена реформированию уголовного законодательства в Республике Узбекистан. Цель – анализ событий, происходящих в стране, мнений пенитенциарных ученых для формулирования предложений по совершенствованию законодательства. Методология – теоретические методы и системный подход. Результаты – углубленный анализ современного состояния уголовно-исполнительного законодательства с целью определения направлений и перспектив его развития. Выводы – необходимость реформирования уголовного, уголовно-исполнительного и уголовно-процессуального законодательства Узбекистана для совершенствования внутренней политики и интеграции в мировое сообщество.

Ключевые слова: ресоциализация осужденных, гуманизация уголовного наказания, уголовно-исполнительная система, внедрение международных стандартов в уголовно-исполнительную систему.

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Recommended citation / Для цитирования

Tadjibayeva, D. 2019, 'Penal legislation of Uzbekistan: condition, problems and prospects', *International penitentiary journal,* vol. 1(1–3), iss. 3, pp. 191–196, doi: 10.33463/2712-7737.2019.01(1-3).3.191-196.

Таджибаева, Д. Уголовно-исполнительное законодательство Узбекистана: состояние, проблемы и перспективы / Д. Таджибаева // Международный пенитенциарный журнал. – 2019. – Т. 1(1–3), № 3. – С. 191–196. – DOI : 10.33463/2712-7737.2019.01(1-3).3.191-196.

The Penal Code of the Republic of Uzbekistan consists of its General and Special Part. Legal engineering and the design of its norms and institutions as a whole do not differ from the legal engineering of the construction of the Penal legislation in Russia, in other states of Central Asia. At the same time, the Penal Code of the Republic of Uzbekistan (hereinafter – PC RUz) does not include a glossary with a list of used normative structures[1].

In the Republic of Uzbekistan, the activities of the National penitentiary system are regulated with participation of the norms and institutions of the Penal legislation. The basis of this legislation is the current PC RUz (adopted on 25.04.1997), which includes subsequent amendments and additions. This Code, as well as the legislative acts of other Central Asian states devoted to the sphere of punishments execution and adopted at the turn of the XX–XXI centuries, retains the structure of the previous legislation of the Soviet era and some novelty reflecting the state of the penal policy of the state development.

Certain provisions of the legislation of the Republic of Uzbekistan have been developed in the works of J. Pohl (2019), B. Muminov (2016), E. Santen (2018), H. Azim, T. Khurshid and K. Tunis (2019). In the modern English-language literature of free access, indexed in international citation databases, the problem of improving the penal legislation of the Republic of Uzbekistan has not received significant development.

The current PC RUz is the key source of legal regulation of relations for sentences execution and other measures of criminal legal influence. In terms of its content and significance, it is a law of the "transition period", which, on the whole, has exhausted its potential in the conditions of democratic changes in society and the state in modern Uzbekistan. The Code has fulfilled its historic mission of preserving the continuity of legal institutions, traditions of legal techniques bringing together the post-Soviet states of Central Asia, in combination with separate norms implementing the principles of International legal acts on the treatment of convicts.

At the same time, many provisions of the PC RUz are outdated conceptually and do not correspond to the needs of democratic development of the country, the political course to strengthen the image of Uzbekistan as a dynamically developing modern state. First of all, these are provisions relating to ensuring human rights in sentences execution, the implementation of various forms of control in the activities of the penitentiary system, the use of alternative sanctions tools, the creation of legal conditions for the implementation of modern forms and methods of educational influence as the basis for the resocialization of convicts.

Penal law is by its very nature a branch with a decisive predominance of procedural rules and institutions. In fact, this is the law procedure where procedural mechanisms should work clearly. This is just not enough in the current PC RUz. Many of its provisions, especially those devoted to the rights of convicts, monitoring the activities of the penitentiary system, are declarative, not having a mechanism for implementation, which greatly reduces their practical meaning.

The passion of the legislator for legal casuistry and the incompleteness of implementation of international human rights standards have in some cases led to inconsistencies between the provisions of the PC of the Republic of Uzbekistan and recommendations of these standards. Violations of legal equipment have led to the fact that the rules on the use of physical force, special means, firearms by the staff of the Penal system are wording to allow broad interpretation of the grounds for such use, which not only does not comply with the key provisions of International UN standards and creates a risk of abuse in the process of using force and special means, but also damages the

[1] The tasks of the penitentiary authority are to regulate the procedure and conditions for execution and serving sentences, the definition of remedies for convicts, the protection of their rights, freedoms and legitimate interests, the release of convicted assistance in social adaptation.

image of state bodies, with which the use of physical force and special means is personified. The same applies to the regulation of the use of special means for mentally ill prisoners. Unfortunately, in the PC RUz there are no provisions implementing the rule of the Nelson Mandela Rules that "...the prison administration is recommended to use, as far as possible, conflict prevention mechanisms, mediation or any other alternative dispute resolution methods to prevent disciplinary violations or conflict resolution" (Rule 38).The presence of such an implementation in the "letter" or "in the spirit" would make it possible to consolidate the grounds for the use of force, special means, and especially firearms, as truly exceptional, dictated by extreme necessity.

The current PC RUz pays insufficient attention to procedural issues of handling and resolving complaints of convicts, but little affects the possibility of judicial appeal of disciplinary punishments by convicts, refusal to leave correctional facilities due to exceptional circumstances, which does not help minimize conflicts between convicts and the prison administration.

Unfortunately, the peculiarities of ensuring decent conditions for serving sentences of imprisonment by convicted persons of vulnerable categories are not reflected in PC RUz (Norms about minors, about women prisoners, about people with disabilities, about people with mental disorder). There are presented and described, however, they very incompletely reveal the problems of these persons. There are also no real guarantees for the protection of female prisoners from sexual and other violence. It should be noted that these are not only the problems of the PC RUz, but also the Penal codes of other Central Asian states. But in the PC RUz some categories of vulnerable prisoners are not mentioned at all. This, in particular, HIV-infected and AIDS patients. If we assume that such persons, even in small numbers, are held in penitentiary institutions, there is a risk that they are attributed (can be attributed) to convicts suffering from infectious diseases, and subjected to discriminatory isolation from other convicts to imprisonment.

The current PC RUz, as noted earlier, proclaims the consideration of generally accepted norms and principles of international law, the priority of international treaties over the norms of the National Penal legislation. However, the most important provisions of international standards relating to the protection of human dignity, the inadmissibility of torture and ill-treatment are practically not mentioned in the foundations of the legal status of convicts in articles of PC RUz regulating various legal restrictions and coercive measures, carried out by prison officers in correctional institutions.

In the current PC RUz there is no legal basis for exercising public control over the activities of penitentiary institutions, which does not correspond with the recommendations of UN international legal acts, but also with the experience of many modern States in the implementation of public control, which justifiably allows improving the correctional and preventive activities of penitentiary institutions.

The current PC RUz practically does not contain the norms devoted to the regulation of educational influence on those sentenced to punishment without imprisonment. There is no algorithm for participation in this process (and in a wider context – the process of resocialization) by civil society institutions and its resources, including those related to the social, cultural and spiritual traditions of the society in Uzbekistan. In PC RUz there are no criteria for correcting convicts, and no tools are used to create conditions for resocialization of convicts, taking into account the world experience in applying parole. This does not contribute to the effective application of criminal law. With regard to the resocialization of convicted persons, in case of punishments and other measures (that are alternative to imprisonment) using, it is necessary to qualitatively strengthen the Penal legislation.

Certain shortcomings of the legal technique and content of the context in the current PC RUz, which are considered in this expert

study, can be eliminated "article by article" by making changes and additions to the current Penal code. However, conceptual changes and the adoption of the new PC of the Republic of Uzbekistan are more preferable.

The best available experience of penal regulation in Uzbekistan should be preserved as well as the established traditions of legal technique, language and style of law. At the same time, in the process of drafting a new PC of Uzbekistan, it is advisable to refuse the provisions of "yesterday", impeding the dialogue of civil society institutions, establishments and bodies of the Penal system, effective educational and preventive effects on prisoners, their resocialization, respect for and protection of fundamental human rights in terms of execution of punishments and other measures of criminal and legal impact.

The democratic choice of Uzbekistan development and the priority of ensuring and protecting human rights and freedoms on the basis of the rule of law consistently leads to humanize National penal law.

Our society at the turn of the XXI century has undergone a gigantic transformation, due to both socio-political and economic transformations in the state. The transformation that took place in society has affected all spheres of public life, including the country's penitentiary system, and demanded the reorganization of all state structures, including a change in the methodological foundations of their activities. In this aspect, numerous transformations were carried out and a new model for managing the penitentiary system was built.

By the Decree of the President of the Republic of Uzbekistan on February 7, 2017, the "Action Strategy for the Five Priority Development Areas of the Republic of Uzbekistan in 2017–2021" was adopted. In accordance with the decree, one of the priorities for improving the system of state and social construction is "ensuring the rule of law and further reforming the judicial system", including the improvement and liberalization of criminal and criminal procedure legislation, decriminalization of individual criminal acts, humanization of criminal penalties and the procedure for their implementation (clause 2.3 of the "Strategy for Action"), as well as "the development of modern forms of implementation of public control, increasing the efficiency of social partnership", which implies interaction, cooperation of state bodies and civil society institutions; the need to develop civil society institutions, increase their social and political activity (Section 1.3).

"The state program for implementation of the Action Strategy in the five priority areas of development of the Republic of Uzbekistan in 2017–2021", in 2018, among other things, was tasked: "Introduction of additional mechanisms to ensure the rights of prisoners, widespread introduction of international standards in the system of punishments execution" (Para. 59), providing for the development and approval of the concept of the Penal legislation for 2018–2021.

So, to further strengthen measures to improve the penitentiary system, systematize and harmonize the norms of the Penal legislation, the "Concept of improvement of the penitentiary legislation of the Republic of Uzbekistan in 2019-2021" was adopted by the resolution of the President of the Republic of Uzbekistan on 7.11.2018. The main Concept's tasks are:

– expanding the base of normative legal acts based on the inventory of the Penal legislation for its compliance with international standards;

– exclusion of rules that allow different interpretations or manifestations of corruption or require clarification on their application, as well as a complete transition to the practice of applying direct laws;

– clear definition and ensuring a uniform application of the legal meaning of terms and concepts used in the Penal legislation;

– improvement of legal mechanisms for ensuring public control over activities of institutions and bodies executing punishments and other measures of legal influence;

– further improvement of principles, procedure and conditions of criminal legal impact, taking into account modern approaches,

advanced international standards and foreign practices;

– creation of a system for automated registration of convicts in penitentiary institutions;

– determination of the legal framework for functioning of probation units, mechanisms and authorities for implementation of their assigned tasks and functions;

– introduction of the order for the chamber type of convicts' detention in institutions for punishments execution alternative to collective form of detention;

– development and implementation of criteria for evaluating the activity of employees in probation units and penitentiary institutions;

– unification of the norms of the Penal legislation.

The final result of the Concept's implementing should be the correction of convicts, prevention of their criminal activities, as well as the organization of an effective preventing system for crimes commission other persons.

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