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# PROBLEMS OF CRIMINAL LIABILITY AND EXECUTION OF CERTAIN TYPES OF CRIMINAL PENALTIES UNDER THE NEW LEGISLATION OF THE KYRGYZ REPUBLIC

# ПРОБЛЕМЫ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ И ИСПОЛНЕНИЯ ОТДЕЛЬНЫХ ВИДОВ УГОЛОВНЫХ НАКАЗАНИЙ ПО НОВОМУ ЗАКОНОДАТЕЛЬСТВУ КЫРГЫЗСКОЙ РЕСПУБЛИКИ

**Abstract.** As part of measures to improve the justice system and the legal system in the Kyrgyz Republic, the President's decree No. 147 (adopted on 08.08.2013) and the decisions of the Council on judicial reform established an expert working group to develop new criminal and civil laws. After four years of work, the new Code on offences, the Code of violations, the Penal Code and other "related" laws were adopted simultaneously with the new Criminal and Criminal-procedural Codes, which allows us to see the scale of changes in the legal system of the Kyrgyz Republic. In parallel, measures are being taken to reform the judicial system and law enforcement agencies. New codes have introduced rules and institutions that cannot be analyzed in detail in a single article. In addition, for almost a year and a half, training of practical employees of law enforcement agencies and courts has been organized for the full and high-quality implementation of these institutions and rules, automated systems, separate structures and services are being created, which are equipped with appropriate equipment and office equipment. For this reason, the author considers it premature to draw any conclusions about the effectiveness of the ongoing reforms, since technical errors and gaps in the new codes are still being corrected, regulatory legal acts are being brought into line, and new regulations and instructions are being developed. This article attempts to give a brief general description of the reform of the criminal law direction, primarily the norms related to criminal liability under the new legislation of the Kyrgyz Republic.

**Keywords:** Kyrgyz Republic, crimes, offences, violations, probation Institute, criminal law measures, life imprisonment.

**Аннотация.** В рамках мер по совершенствованию правосудия, правовой системы в целом в Кыргызской Республике указом Президента Кыргызской Республики от 8 августа 2013 г. № 147 и решениями Совета по судебной реформе была образована экспертная рабочая группа по разработке новых законов уголовно-правового и гражданско-правового направления. По истечении четырехлетней работы одновременно с новыми Уголовным и Уголовно-процессуальным кодексами были приняты новые Кодексы о проступках, Кодекс о нарушениях, Уголовно-исполнительный кодекс и другие «родственные» с ними законы, что позволяет увидеть масштабность преобразований правовой системы Кыргызской Республики. Параллельно предпринимаются меры по реформированию судебной системы, правоохранительных органов. В новых кодексах были введены правила и институты, подробно проанализировать в рамках одной статье невозможно. Кроме того, почти полтора года для полноценной и качественной реализации указанных институтов и правил организовано обучение практических работников правоохранительных органов, судов, создаются автоматизированные системы, отдельные структуры и службы, которые оснащаются соответствующими оборудованием и оргтехникой. В силу этого в настоящее время делать какие-то выводы об эффективности проводимых реформ автор считает преждевременным, поскольку до сих пор исправляются технические погрешности и пробелы новых кодексов, приводятся в соответствие нормативные правовые акты, разрабатываются новые положения и инструкции. В данной статье предпринята попытка в лаконичной форме дать краткую общую характеристику реформы уголовно-правового направления, в первую очередь норм, связанных с уголовно-правовой ответственностью по новому законодательству Кыргызской Республики.

**Ключевые слова:** Кыргызская Республика, преступления, проступки, нарушения, институт пробации, уголовно-правовые меры воздействия, пожизненное лишение свободы.

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As part of measures to improve the justice system and the legal system in the Kyrgyz Republic, the President's decree No. 147 (adopted on 08.08.2013) and the decisions of the Council on judicial reform established an expert working group to develop new criminal and civil laws. After four years of work, the expert working group developed and simultaneously adopted the new Criminal and Criminal-procedural Codes, the new Code of offences, the Code of violations, the Penal Code and other "related" laws, which allows us to see the scale of changes in the legal system of the Kyrgyz Republic. When developing the new Criminal code of the Kyrgyz Republic (the CC of the KR) and other codes of the criminal law cycle, the main direction was determined by the idea of humanizing justice, moving away from repressive measures of criminal law influence, developing and implementing new institutions and mechanisms of influence on convicts in order to correct them, resocialize and then reintegrate into society. Priority tasks in the development of a criminal law should include: 1) optimization of criminal liability; 2) a new approach to the nature of administrative responsibility; 3) the decriminalization and depenalization acts; 4) the reform of system and types of punishments (gradation of all types of sentences for criminal law violations); 5) introduction to the CC of the KR of criminal law measures (security measures); 6) the introduction of the institution of probation; 7) establishment of criminal liability for legal entities.

**Optimization of criminal liability**

To this end, criminal offences have been excluded from the Criminal Code, which have been codified in a separate Code of offences; these are mostly minor offences. In view of the fact that the responsibility of officials for administrative violations will be regulated by an independent law on administrative procedures, there is a problem of placing the remaining administrative offenses committed by private (non-official) persons in the existing system of legislation.

At the same time, the developers of the draft laws proceeded from the position that the nature of administrative responsibility is the responsibility of an official for his actions before citizens and society. These are claims of individuals against officials of state or municipal bodies for their illegal actions or decisions, which have a shade of administrative and legal responsibility. The nature of other offences committed by private or legal persons is criminal law, and the nature of former administrative offences is also criminal law. All this predetermined their fate, and they were classified as acts of a criminal nature. However, due to the fact that the harm caused by a person is insignificant, it was decided to classify the rest of the administrative offenses as simple violations, that is, there was another new code – the so-called Code of violations. In this regard, we can speak about criminal legal relations in both the broad and narrow sense of the word.

**Decriminalization of acts in the CC of the KR**

In the current CC of the KR, there were rules on acts that were recognized as criminally punishable, criminal, although by their nature they can be attributed to civil law relations. In the process of preparing the draft of the new CC of the KR, these norms were excluded. Examples include acts such as illegal use of a trademark, illegal actions in bankruptcy, and so on. The remaining acts are classified as misdemeanors and are grouped in the Code of offences of the Kyrgyz Republic. It is assumed that the person brought to justice for an offence will not have a criminal record, since the Code of offences provides for non-custodial penalties. For the most part, penalties and community service are provided.

**Depenalization of acts in the CC of the KR**

An important place in the process of criminal code reform belongs to the depenalization of acts. It is no secret that the current CC of the KR is highly repressive both in terms of prison sentence and in the regime of execution of this

type of punishment. From now on, the regime of serving sentences will be determined not by the court, but by a special Commission under the State penitentiary service under the government of the Kyrgyz Republic, which includes both representatives of state bodies and the public. In connection with the preparation of the new CC of the KR and the associated Code of offences, many institutions of criminal law have undergone changes. In particular, this is the rejection of the institution of criminal records and the concept of repeat crimes. It is proposed to abandon the institution of criminal record as a qualifying feature of certain elements of crimes for the following reasons:

– any person is responsible only for what he/she have done (crime, offence, violation), and not for the fact that he/she is "a bad person who did not take the path of correction";

– the presence of a criminal record indicates an objective imputation.

In conditions when the reform of criminal legislation is covered by the division of acts into crimes, offences, violations, all sense and logic in the existence of this institution is lost, since the criminal record for both misdemeanors and violations is excluded. However, it should be borne in mind that the criminal record of a person for a crime has consequences, that is, it is also associated with other legal restrictions, for example, in the field of holding certain positions or professional activities. For these and other cases, it is planned to develop a draft Law of the Kyrgyz Republic "on the criminal record register". These are cases when a database of convicted persons is created, including persons released from criminal liability or punishment, persons who have been subjected to probation supervision or other measures of criminal law influence. Currently, this accounting is carried out by the Information center of the Ministry of Internal Affairs of the Kyrgyz Republic (for which scanning and digitization of archival materials are carried out).

In this situation, the Institute of recidivism also loses its meaning. And in the current code, it is blurred and difficult to understand. Recognition of a person as a recidivist contradicts the general concept of the new judicial and legal policy, which is based on the norms of the new codes. First, it contradicts the principle of equality of all before the law, including regardless of whether the person has committed crimes in the past. Secondly, this is contrary to the principle of justice, since no one can be criminally liable again for a crime for which they have already been convicted on the basis of a court verdict. Third, it contradicts the purpose of punishment. Recognizing a person as a recidivist deprives them of the incentive to return to normal society and makes them an outcast from society. In accordance with the norms of the Penal Code of the Kyrgyz Republic, in order to reduce the stigmatization of convicts both while serving their sentences and after their release, it is proposed to develop a separate state-scale program and assign responsibility for conducting targeted work in this direction to individual services and divisions of the penitentiary service. However, this does not mean the complete loss of the institution of criminal record and recidivism. They are specified in the Penal Code and are used in determining, for example, the place and regime of serving a sentence by a person previously convicted for committing a crime.

**Introduction of a new probation Institute**

Probation is applied by a court verdict when imposing a sentence of imprisonment for a term not exceeding five years, while taking into account the identity of the perpetrator, which is fully studied by the probation service within a month, his consent to the use of probation supervision, as well as other circumstances of the case. The basis for passing a sentence without punishment or release from it with the use of probation supervision is the conclusion of the probation authorities in the form of a probation report, the content of which includes: a socio-psychological portrait of the accused; data on the social and living conditions of residence; the circumstances and motives for committing a crime by a person, as well as

conclusions about the possibility (impossibility) of applying probation supervision in relation to a specific accused for committing a less serious crime. At the same time, the court takes into account only the recommendations contained in the probation report, and when passing a sentence, it must take into account all the circumstances to be proved in each criminal case, the grounds and conditions for applying probation (Article 83 of the CC of the KR). Since 01.09.2019, the probation service has been established, which is under the jurisdiction of the Ministry of justice of the Kyrgyz Republic.

**Introduction of security measures in the CC of the KR**

In recent years, the society has come to the conclusion that it is necessary to find new measures to influence crime and delinquency. Based on the generalization of international experience, as well as on the experience of Kyrgyzstan in combating crime, the new Criminal Code provides for Chapter 16 "Other compulsory measures of criminal law impact (security measures)". These means are somewhat similar to punishment, since they are compulsory in nature and are associated with certain legal restrictions aimed at deterring a person from committing a crime. Within the framework of these measures, the goals of preventing criminal acts, compensating for caused damage and restoring damage from criminal acts are implemented (Kulbaev, A. K. 2018, p. 175). However, these coercive means of criminal and legal impact cannot be considered as punishment, since they are not included in system of punishments, not provided for in the sanctions of articles of the Special part of the Criminal Code. Created to provide a special warning, these means are applied by the court along with the punishment for any crime and only in cases where the court considers it necessary. Such compulsory means of criminal law influence include: a) confiscation of property (articles 94–96 of the CC of the KR); б) compensation for material or moral damage for the committed crime (article 97 of the CC of the KR); в) expulsion from the Kyrgyz Republic (articles 98 the CC of the KR).

**Measures of criminal-legal influence concerning legal entities**

The court may apply the following types of compulsory measures of criminal law influence to a legal entity: a) fine; b) restriction of rights; c) liquidation of a legal entity. It should be noted that such measures of influence are applied if the crime is committed by an individual on behalf of or through a legal entity, in the interests of that legal entity, regardless of whether such an individual is criminally liable (part 2 article 123 the CC of the KR). This is quite consistent with the principle of personal culpability enshrined in the new CC of the KR, and does not break its structure. Criminal measures are applied to a legal entity not for every crime, but for the commission of official crimes or crimes against the procedure for carrying out economic activities.

**Life imprisonment**

The new criminal legislation of the Kyrgyz Republic has changed the focus in the fight against crime, differentiated and significantly humanized penalties, accompanied by the possibility of applying more lenient measures of criminal law impact on the perpetrator. At the same time, criminal repression has been strengthened for certain types of crimes, and the means and opportunities for reeducation and resocialization of the convicted person have been leveled. All these issues are directly related to the most severe measure of criminal punishment under the legislation of the Kyrgyz Republic – life imprisonment. In the Kyrgyz Republic, life imprisonment, introduced in the criminal code in 1998, was applied for the commission by a person of such particularly serious crimes as murder, rape of a minor, assault on the life of a statesman, a justice officer or law enforcement agency, and genocide, and was also imposed by a court on the totality of these crimes.

To date, prisoners sentenced to life imprisonment are serving sentences in special regime correctional colonies, as well as persons

whose life imprisonment has been commuted to 20 years imprisonment by way of a pardon (part 7 article 73 of the PC of the KR). Under these conditions, 347 convicts are serving their sentences, 172 of which were previously sentenced to death and their sentence was commuted to life imprisonment in 2007. The majority of persons serving sentences are convicted persons at the age of 30 to 60 years (84%), and there are also persons over 60 years of age (16 in total). As the article-by-article analysis of crimes for which the courts imposed a sentence of life imprisonment shows, the main part of them is murder (94.0%), and only 6%, that is, 19 people, rape committed against minors. Because of this, it is clearly possible to consider the sentences and penalties against them fair, and the negative attitude of a certain part of society to them is adequate. In this regard, none of the petitions sent to the Commission for clemency received a positive decision on any application, all of them were rejected in the period from 2011 to 2020 (a total of 37 convicts filed such petitions). In accordance with part 2 and 3 of article 93 of the CC of the KR, a person sentenced to life imprisonment with a repeated request for clemency with the replacement of the sentence with deprivation of liberty can declare in the absence of new, noteworthy circumstances only after 10 years.

Since all persons sentenced to life imprisonment are convicted of committing particularly serious crimes against the person and pose a danger both to the employees who protect, supervise and control them, and to the entire society, all of them are on the preventive register, and certain individual preventive, educational and psychological work is carried out with them.

At the beginning of 2020, 65% of those serving sentences in conditions of life imprisonment officially filed statements about non-compliance of the established rules in the CC of the KR, the PC of the KR with the norms of international law. In their opinion, with the adoption of new laws and codified acts of criminal law, not only penalty has been tightened, but there are no provisions for the correction and resocialization of convicted persons to life imprisonment. In addition, one of the main demands of the convicts was to review their criminal cases in accordance with the new legislation of the Kyrgyz Republic.

However, all submissions on the review of criminal cases under the rules of the new Criminal, Criminal-procedural and Penal Codes of the Kyrgyz Republic in relation to those sentenced to life imprisonment were left without consideration by the courts, with reference to Part 15 of Article 7 of the law of the Kyrgyz Republic (adopted on 24.01.2017) № 10 “About introduction in action of the Criminal Code of the Kyrgyz Republic, the Criminal-procedural Code of the Kyrgyz Republic, the Penal Code of the Kyrgyz Republic, Code on offences of the Kyrgyz Republic and the Law of the Kyrgyz Republic “About amnesty and its applications””, since the new criminal law provides for a criminal penalty of life imprisonment for the same criminal act.

However, in accordance with Article 3 of the CC of the KR, one of the goals of criminal punishment is to create conditions for the correction and resocialization of convicts, including for persons sentenced to life imprisonment. At the same time, in accordance with Article 69 of the CC of the KR of 1998, those sentenced to life imprisonment had the possibility of parole. The Criminal and Penal Codes of the Kyrgyz Republic of 2017 exclude this possibility, thus minimizing the chances of those sentenced to life imprisonment for parole. Taking into account the direction chosen by the state in the direction of humanizing the penal legislation in the framework of judicial and legal reform, from the point of view of rehabilitation and resocialization, it seems correct to conclude that those sentenced to life imprisonment should have chance for: parole; frequent meetings with close people; access to better conditions of detention with good behavior. All these factors, as it seems to us, are the main motivating factors for

convicts, which contribute to their correction, reeducation, and also serve to preserve their human qualities while serving their sentence.

In order to resolve issues according to strict execution of court sentences to life imprisonment, bearing in mind the principles of humanism and to achieve the main objectives of criminal punishment, reeducation, resocialization and reintegration of prisoners, we consider it necessary to make appropriate changes to the PC of the KR and the CC of the KR.

At the same time, measures are being taken to reform the judicial system and law enforcement agencies, which structurally ensure the implementation of the normative setting in the new codes. The new CPC and PC of the KR have introduced rules and institutions that cannot be described in detail in a single article. For almost a year and a half, training of law enforcement and court practitioners has been organized for the full-fledged and high-quality implementation of new institutions and rules; new automated systems, separate structures and services are being created, which are equipped with appropriate equipment and office equipment. Therefore, we consider it premature to draw any conclusions at the moment, since technical errors and gaps in the new codes are still being corrected, regulatory legal acts are being brought into line, and new regulations and instructions are being developed. This article is only an attempt to give a brief general description of the reform of the criminal law direction, primarily the norms related to criminal liability under the new legislation of the Kyrgyz Republic.

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