

SCOPE OF CRIMINAL LAW IN THE CIS STATES: COMPARATIVE LEGAL ANALYSIS

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ANNOTATION:

The article provides a comparative legal analysis of the criminal law of the CIS member states, the content of the norms defining the scope of criminal law. The author compares the approaches of criminal law on the territory of the CIS, the legal consequences of conviction for crimes committed in a foreign state, issues of extradition, timeliness, retroactive force of the criminal law recognized in the legislation of the CIS member states. On the basis of their positive experience, well-grounded proposals and comments were made to improve the criminal legislation.

Keywords: Scope of criminal law, territory, time, extradition, citizens, stateless person, foreign citizen, political asylum, state territory, retroactive force of law.

INTRODUCTION:

When we study the criminal law of any state, one of the first problems we face is the scope of criminal law. Analysis of the sphere of criminal law in the CIS member states showed that various norms and mechanisms have been strengthened in this area.

First of all, let's take a look at the analysis of the field of criminal law in the CIS countries. The application of criminal law in these states differs depending on whether a socially dangerous act was committed on the territory of the respective state or outside it, as well as on

the legal status of the offender in relation to the state.

The first rule is enshrined in the laws of all states.

- Persons who have committed a crime on the territory of the respective state are criminally liable in accordance with the criminal legislation of that state. In particular, according to article 7 of the Criminal Code of Kazakhstan, "persons who have committed crimes on the territory of the Republic of Kazakhstan are held accountable in accordance with this Code". A similar rule exists in the criminal law of all CIS countries. It is noteworthy that in all CIS countries this situation is reflected in the form of a strict and peremptory norm without any exceptions, and in the Criminal Code of Tajikistan it is recorded with some exceptions. According to article 14 of the Criminal Code of Tajikistan, a person who has committed a crime on the territory of Tajikistan is liable under this Code, unless otherwise provided by international legal acts recognized by Tajikistan.

In fact, in practice, similar exceptions apply in other countries. This is due to the fact that all countries have recognized the priority of the international treaties they have ratified. In particular, the Criminal Code of Kazakhstan

According to article 1, international treaties ratified by Kazakhstan take precedence over the norms of the Civil Code of Kazakhstan.

It should be noted that an attempt has been made in the legislation of the CIS countries to clarify the concept of a crime committed on the

territory of the respective state. In this regard, based on the analysis of the legislation of the CIS countries, they can be divided into four groups.

The first group - according to the laws of Kazakhstan and Azerbaijan, an act initiated, continued or committed on the territory of the respective state is recognized as a crime committed on the territory of that state.

The second group is the legislation of Turkmenistan and the Kyrgyz Republic, although the content is close to the first group, but in a different form. That is, Article 5 of the Criminal Code of the Kyrgyz Republic provides for liability for a crime committed on the territory of another state if it is terminated or terminated on the territory of the Kyrgyz Republic.

The third group - in the legislation of Armenia and the Republic of Belarus, the scope of the concept of a crime committed on the territory of the respective state was further expanded taking into account the criteria of complicity in a crime. In particular, according to Article 5 of the Criminal Code of the Republic of Belarus, a crime is considered committed on the territory of the Republic of Belarus if it was started, continued or terminated on the territory of the Republic of Belarus or committed jointly with the person who committed the crime.

The fourth group - the legislation of Tajikistan and Moldova (including Uzbekistan) has expanded and relatively clarified the concept of the field of commission of a crime with the addition of a criterion for the occurrence of criminal consequences in the above cases. In particular, according to article 14 of the Criminal Code of Tajikistan, the following acts committed on the territory of Tajikistan should be recognized as a crime: a) started, ongoing or completed on the territory of Tajikistan; b) committed outside the territory of Tajikistan and

criminal consequences occurred on its territory; c) committed on the territory of Tajikistan and there have been criminal consequences outside of it; d) committed in cooperation with persons who have committed criminal acts on the territory of another state.

Also, in the Criminal Code of Moldova, these issues are described in a separate article 12, which, in contrast to the criminal legislation of other countries, is called "the place of the commission of the act".

Another important rule that needs to be analyzed when applying the criminal law to a territory is the water and air territory of states. In particular, according to Article 11 of the Criminal Code of the Russian Federation, crimes committed in the sea and airspace of the Russian Federation are considered committed on the territory of the Russian Federation. Also, unless otherwise provided for by an international treaty of the Russian Federation, a person who has committed a crime on a ship registered in a port of the Russian Federation, located on open water or in airspace outside the Russian Federation, is prosecuted. Code of the Russian Federation. A person who has committed a crime on a warship or a military aircraft of the Russian Federation is subject to criminal liability in accordance with the Criminal Code of the Russian Federation, regardless of his location. Similar norms exist in the legislation of other states.

Another important aspect of the application of the criminal law to the actions of persons who have committed crimes on the territory of the respective state is the application of the criminal law to the actions of diplomatic representatives of foreign states and other persons enjoying the right of immunity. It should be noted that the views of almost all states in this direction

practically coincide. That is, the issue of criminal prosecution for the actions of diplomatic representatives of foreign states and other persons enjoying the right of immunity is resolved in accordance with the norms of international law.

But even in states, this norm is expressed in two ways. In particular, the criminal legislation of the Russian Federation, Kazakhstan, Azerbaijan, Armenia, Tajikistan and Turkmenistan provides for the application of these rules to diplomatic missions of foreign states and other persons enjoying the right to immunity. Citizens outside its jurisdiction.

Currently, the legislation of Uzbekistan differs from the legislation of the aforementioned countries, i.e. if the issue of the responsibility of foreign citizens is not within the jurisdiction of the courts of Uzbekistan, they will be resolved in accordance with international law. That is, the actions of diplomatic missions of foreign countries are also covered by this concept.

The second rule, enshrined in criminal law, is that a person who has committed a crime outside the territory of a certain state has the right to civil relations with the state, that is, a citizen of that state, the application of the criminal law is interpreted differently depending on whether it was committed by a foreign citizen and a stateless person permanently residing or not permanently residing in this state.

In particular, according to Article 11 of the Criminal Code of Moldova, citizens of Moldova and stateless persons permanently residing in Moldova are liable in accordance with this Code for crimes committed outside the territory of Moldova. It should be noted that this article does not provide a clear explanation of whether these persons were prosecuted in a foreign state for crimes committed outside Moldova.

Such norms can be observed in the criminal law of other states. In particular, citizens of the Russian Federation and stateless persons permanently residing in the Russian Federation are held accountable under the Criminal Code of the Russian Federation for crimes against interests protected by the Criminal Code outside the Russian Federation, if they have not been punished with a penalty. foreign court.

As you can see, the criminal legislation of the Russian Federation provides that such persons can be prosecuted under the Criminal Code of the Russian Federation only if they have not been punished by a court of a foreign state. It can be concluded that otherwise there will be no criminal liability under the Criminal Code of the Russian Federation.

A different experience in this matter can be observed in Kazakhstan. Citizens of Kazakhstan who have committed a criminal offense outside the territory of Kazakhstan, if their actions are recognized as punishable by criminal punishment in the country where the crime was committed. and is prosecuted if it is provided for by the Criminal Code of Kazakhstan, if the person has not been convicted in another state. If this person is convicted, the punishment cannot exceed the upper limit of the sanction provided for by the legislation of the state in which the criminal offense was committed. On the same basis, foreigners on the territory of Kazakhstan and stateless persons are liable in cases where they cannot be extradited to a foreign state for criminal prosecution or punishment in accordance with an international treaty of Kazakhstan.

There are special rules on the scope of the Criminal Code for crimes committed by military personnel from the CIS countries in Russia, Kazakhstan and Azerbaijan. In particular,

servicemen of Azerbaijani military units that are part of peacekeeping units are held accountable in accordance with the Criminal Code of Azerbaijan for crimes committed outside the territory of Azerbaijan, unless otherwise provided by an international agreement of Azerbaijan.

In the legislation of Armenia and Azerbaijan, there are additional features concerning the scope of national legislation in relation to crimes committed on the territory of a foreign state by citizens of a certain state and stateless persons permanently residing in this state. In particular, if the citizens of Armenia outside the territory of Armenia and stateless persons permanently residing in Armenia commit crimes provided for by Articles 384, 386-391, 393-397 of the Criminal Code of Armenia, regardless of whether such an act is provided for in a criminal offense, state law will be prosecuted under the Armenian Criminal Code.

Also, citizens of Azerbaijan and stateless persons permanently residing in Azerbaijan can be prosecuted in accordance with the Criminal Code of Azerbaijan if they have committed other crimes against the interests of corruption and service outside the territory of Azerbaijan, if they have not been convicted in a foreign state.

Another important issue related to crimes committed outside the national territory is the application of national criminal law to acts committed by foreign citizens and stateless persons not permanently residing in a particular state outside the territory of that state.

As a rule, foreign citizens, as well as stateless persons who do not permanently reside in the territory of a certain state, are liable in accordance with national legislation for crimes committed outside this territory, only in cases provided for by international treaties or

agreements. This norm is also enshrined in the legislation of Uzbekistan (Article 12 of the Criminal Code).

In turn, the CIS countries have their own characteristics in this regard. In particular, according to the Belarusian experience, foreign citizens or stateless persons not permanently residing in the Republic of Belarus are held accountable in accordance with the Criminal Code of the Republic of Belarus for a crime committed outside the territory of the Republic of Belarus. Similar norms are enshrined in the criminal legislation of Armenia, Tajikistan and Turkmenistan.

Thus, we exclude from the general rule mentioned above, the interests of a particular state or the rights of citizens of this state, and we have noticed that the provisions of national law can apply to serious or very serious crimes against freedom.

The list is additionally expanded in the legislation of other countries, in particular, Moldova. According to him, in relation to crimes committed by such persons outside the territory of Moldova, the crime contradicts the interests of Moldova, the rights and freedoms of citizens of Moldova, the peace and security of mankind, war crimes, as well as international treaties to which the Republic of Moldova is responsible in accordance with the Criminal Code of Moldova, if it has not been punished in a foreign state and will be responsible in the Moldova area.

In this regard, the experience of Azerbaijan, which pays special attention to corruption in the application of criminal legislation, deserves attention. According to him, foreign citizens and stateless persons who have committed crimes outside Azerbaijan will be held accountable in accordance with the Criminal

Code of Azerbaijan if their actions are directed against the citizens of Azerbaijan, against the interests of Azerbaijan, as well as in accordance with international treaties. If foreign citizens and stateless persons have committed other crimes against the interests of corruption and official interests with the participation of officials of international organizations, members of international parliamentary assemblies, officials and judges outside Azerbaijan, if they have not been convicted abroad by international courts and for this crime, they will be held accountable on the basis of the Criminal Code of Azerbaijan.

It should be noted that in the Criminal Code of the Republic of Uzbekistan the general rule, which we spoke about above, has been strengthened, and in other cases there is no rule on the application of the criminal law. In our opinion, based on the experience of the above countries, the Criminal Code of the Republic of Uzbekistan applies to crimes against peace and security of foreign citizens and stateless persons not permanently residing in Uzbekistan, grave or very grave crimes against citizens of Uzbekistan. and corruption against citizens of Uzbekistan. It is necessary to clarify the volume

The third important rule that needs to be analyzed is the rules of application of national criminal law, regardless of the area in which the crime was committed. In particular, in the case of committing terrorist or extremist crimes or crimes against peace and human security or other serious crimes that damage the vital interests of the republic, regardless of the territory where the crime was committed by citizens of Kazakhstan, stateless persons permanently residing in the territory of Kazakhstan. otherwise, the rules of the Civil Code of Kazakhstan apply.

Also, if we pay attention to the experience of the Republic of Belarus on this issue, then the norms of the Criminal Code of the Republic of Belarus, regardless of the criminal law of the crime scene, apply to the following crimes: 1) genocide (Art. 127); 2) crimes against human security (Article 128); 3) production, collection or distribution of prohibited weapons of war (Article 129); 4) ecocide (Article 131); 5) use of weapons of mass destruction

(Article 134; 6) violation of the laws and customs of war (Article 135); 7) crimes of violation of international humanitarian law during an armed conflict (Article 136); 8) failure to act or issuance of a criminal order during an armed conflict (Article 137); 81) human trafficking (Article 181); 9) other crimes committed outside the Republic of Belarus, prosecuted on the basis of an international treaty that is binding on the Republic of Belarus.

It should be noted that the criminal legislation of Uzbekistan does not provide for any norms and mechanisms on this issue. In our opinion, based on the experience of Kazakhstan, Azerbaijan and the Republic of Belarus, it is necessary to improve the national legislation.

The fourth rule that needs to be analyzed is the question of the legal consequences of a conviction for persons convicted of a crime committed in a foreign state. There are two different approaches to this issue in the CIS countries.

The first approach is that, according to the experience of Kazakhstan and Tajikistan, a person convicted of a crime committed on the territory of another state is responsible for a crime committed on the territory of a nation state has no criminal value for permission.

The second approach is that, according to

the experience of Moldova, Armenia and the Republic of Belarus, the criminal consequences of a crime committed in a foreign state have a criminal significance for resolving the issue of criminal responsibility for a crime committed in the country. In particular, criminal penalties and convictions for crimes committed outside Moldova are taken into account when individualizing the punishment for a new crime committed by the same person on the territory of Moldova in accordance with the Criminal Code of Moldova, and when deciding on amnesty in court.

It should be noted that in other CIS countries, including Uzbekistan, the number of crimes committed on the territory of a foreign state the criminal consequences have not been resolved. In our opinion, based on the experience of the aforementioned countries, it is necessary to fill this legal gap in our national criminal legislation. At the same time, it should be noted that the criminal consequences of a person for a crime committed in a foreign state have criminal significance for resolving the issue of responsibility for a crime committed on the territory of Uzbekistan, as well as its conditions in the Criminal Code.

The next important issue that needs to be analyzed in the framework of criminal law is the extradition of the perpetrator. According to article 12 of the Criminal Code of Uzbekistan, a citizen of Uzbekistan cannot be extradited for a crime committed on the territory of a foreign state, unless otherwise provided by international treaties or agreements. There are no other provisions on extradition in the country's Criminal Code.

An analysis of the criminal legislation of foreign countries shows that extradition relations are relatively fully regulated by

criminal legislation.

First, the criminal legislation of all states provides that a citizen of this state cannot be extradited for a crime committed on the territory of a foreign state. In particular, according to Article 13 of the Criminal Code of the Russian Federation, a citizen of the Russian Federation who has committed a crime on the territory of a foreign state is not subject to extradition to that state.

It should be noted that such a privilege is provided only in the criminal legislation of Uzbekistan, Russia, Kazakhstan, Belarus, Azerbaijan, Armenia, Tajikistan, Turkmenistan, as well as for asylum seekers in Moldova.

In our opinion, in this case, using the experience of Moldova, it is advisable to supplement the national criminal legislation with the rule that asylum seekers in Uzbekistan cannot be extradited. It should be noted that Article 223 of the Criminal Code of Uzbekistan exempts foreign citizens and stateless persons from entering the Republic of Uzbekistan without proper registration of entry documents for the right of political asylum, provided for by the Constitution of the Republic of Uzbekistan.

Secondly, in the criminal legislation of almost all states, foreign citizens who have committed a crime outside the territory of this state and provided that stateless persons can be extradited to a foreign state for prosecution or punishment in accordance with international treaties.

Naturally, a natural question arises as to how this issue will be resolved if there are no such international agreements recognized by the state. In this case, the person is not extradited to a foreign state. However, this issue is also regulated by the Criminal Code of the Republic of Belarus. According to him (Article 7), in the absence of such an international agreement,

foreign citizens and stateless persons can be extradited to a foreign state on the basis of the principle of reciprocity, subject to the requirements of the legislation of the Republic of Belarus.

Based on the above analysis, foreign citizens in our country and stateless persons can be extradited to a foreign state only in cases stipulated by international treaties of Uzbekistan.

Thirdly, the criminal legislation of foreign countries establishes the rules according to which foreign citizens and stateless persons cannot be detained.

In particular, according to article 9 of the Criminal Code of Kazakhstan, if a person is subjected to torture, violence, other cruel or inhuman treatment in a foreign state no one can be extradited to a foreign state if there is no threat of the death penalty or a serious threat of the death penalty, or if there are serious grounds to believe that such a threat exists, unless otherwise provided by international treaties of the Republic of Kazakhstan.

In addition, the above list in the criminal law of Armenia is relatively expanded. According to Article 16 of the Criminal Code of Armenia, foreign citizens and stateless persons cannot be extradited to a foreign state if there are compelling reasons to believe that they have been extradited or punished for their racial, religious, ethnicity, belonging to a particular social group or their political views. No one can be extradited to a foreign state where there is a high risk of torture, inhuman or degrading treatment or the threat of punishment. If the laws of a country requiring the extradition of offenders provide for the death penalty, extradition may be refused if the requesting party does not provide the requested party with

sufficient guarantees that the death penalty will not be applied.

In turn, the peculiarity of the criminal legislation of Armenia is that the Criminal Code specifies the issue of the responsibility of the culprit in case of refusal to extradite. According to him, in case of refusal to extradite a person who has committed a crime, criminal liability for crimes committed on the territory of a foreign state comes in accordance with the legislation of the Republic of Armenia.

The rules for the extradition of persons who have committed crimes in our country are set out in the Code of Criminal Procedure (Articles 599-609).

In our opinion, based on the experience of foreign countries, it is proposed to strengthen the criminal law of this institution in the Criminal Code and to supplement the Criminal Code with Article 121, entitled "Extradition of criminals".

In the criminal law of foreign countries, as in national legislation, there are three issues that must be taken into account in a timely manner when applying the criminal law.

1. The criminality and punishability of an act are determined by the criminal law in force at the time of the commission of the act. This norm is enshrined in the criminal law of all states in the same sense. In particular, according to the rule established by Article 10 of the Criminal Code of Azerbaijan, the criminality of an act (action or inaction) and the appropriateness of the punishment is determined by the criminal law in force at the time of the commission of the act.
2. There are two approaches to determining the time of the commission of a crime:

According to the first approach, the time of committing a socially dangerous act (action or inaction) is considered to be the time of

committing a crime, regardless of the time of the onset of its consequences. This approach RF (article 9), Republic of Belarus (article 9), Kyrgyz Republic (Article 7), Kazakhstan (Article 5), Moldova (Article 9), Azerbaijan (Article 10), Armenia (Article 12), Tajikistan (Article 12) are enshrined in criminal law. That is, with this approach, the issue of criminal consequences is not related to the determination of the time of the crime;

According to the second approach, the time of committing a crime is considered the moment of committing an action or inaction in the Criminal Code, the time of committing a socially dangerous act is the time of committing a crime, if the time of committing a crime is the time of committing it. This approach exists in the criminal legislation of Turkmenistan (article 5) and Uzbekistan (article 13).

3. A law annulling a criminal offense, mitigating punishment or otherwise improving the condition of the offender shall have retroactive effect. In addition, a law criminalizing an act that increases punishment or otherwise aggravates a person's condition is not retroactive. These rules are reflected in the criminal law of all states.

According to article 9 of the Criminal Code of the Republic of Belarus, an act committed from the date of entry into force of the law on cancellation of a criminal act until its entry into force is not considered a crime. If the new criminal law mitigates the punishment that may be imposed on a person for an act for which he is serving a sentence, the court will impose the punishment in accordance with the sanction of the new criminal law. If the criminal law in force at the time of the commission of the crime has been repealed or amended by the criminal law, the law canceling the crime, mitigating

punishment or otherwise improving the position of the offender is subject to another "harsh" period during the criminal investigation or trial. "If the criminal law comes into force, the mildest criminal law shall apply.

It is advisable to use state private enterprise mechanisms to support agricultural producers. Lease financing is an effective tool for increasing the competitiveness of agricultural producers. The competitiveness of domestic agricultural producers is largely determined by their technical equipment. [11]

In the practice of foreign countries, it has become an international practice where the crimes of bribery of officials are widespread. In some countries, it was even possible to get deductions from your company's tax liabilities in exchange for bribes, and this is not surprising, as multinational corporations around the world have already paid bribes to support their businesses. [12]

In the criminal legislation of Moldova there is a separate article on the application of the criminal law, which is more convenient for the final judgment (Article 10-1).

The above analysis shows that the criminal law of Uzbekistan over time strengthens only general provisions on the validity of the criminal law. Clear mechanisms for the application of these rules make it possible to solve a number of problem situations arising in the application of criminal law, unfortunately, there is no solution in our national criminal legislation. In this regard, we believe that by incorporating most of the aforementioned good practices of foreign countries into our national legislation, such gaps in our legislation will be closed.

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