



THE PRINCIPLE OF DEMOCRATISM IN CRIMINAL LAW

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ABSTRACT

Article 6 of the Criminal Code of the Republic of Uzbekistan states that the principle of democracy is expressed in such a way that public associations, self-governing bodies of citizens or communities can be involved in the work of correcting the morality of persons who have committed crimes in cases provided for by law. In the criminal legislation of foreign countries, this principle is practically not found. According to its meaning, there are opinions that the principle of democracy is more consistent with the subject of criminal procedure law or penal enforcement law, and not criminal law. This article analyzes the application of the principle of democracy in criminal law on the basis of scientific literature and foreign experience. The principle of democracy was also considered in connection with the criminal procedure and penal enforcement legislation. The article provides suggestions and recommendations for improving the theory of criminal law, taking into account the subject under study, and provides recommendations for reflecting the principle of democracy in criminal law.

Introduction.

Article 13 of the Constitution of the Republic of Uzbekistan establishes that democracy in the Republic of Uzbekistan is based on universal principles, according to which a person, his life, freedom, honor, dignity and other inviolable rights are considered high values, democratic rights and freedoms are protected by the Constitution and laws.

Proceeding from this rule, article 6 of the UK states that the principle of democracy “public associations, self-governing bodies of citizens or communities may be involved in the work of correcting the morality of persons who have committed crimes in cases provided for by law”. Since the principle of democracy is a more universal principle, only in a few States it is reflected in criminal law as a principle. Why is the principle of democracy not provided for by the criminal legislation of most states, what is the essence of this principle?, questions about how it is applied in the process of lawmaking and judicial practice require studying this topic.



The purpose of the study is to study the essence of the principle of democracy established by the Criminal Code, substantiate scientific conclusions based on the analysis of the experience of foreign countries in this regard. Comparative legal analysis, questionnaire survey of internship staff and other methods were used as research methods.

Literature review. Since the principle of democracy in criminal law is reflected only in the criminal codes of several states, this principle has been studied mainly as a doctrinal principle. P.A.Fefelov considers legality, humanism and democracy as a universal principle of greater importance for the sphere of criminal law [1. 15-16 p.]. I.V. Filimonov and H.A. The Zukhovs expressed such principles as internationalism, classicism, patriotism, socialist democracy as a product of the theory of Soviet criminal law, in which socialist legal values were manifested, expressed universal character and reflected in the legal consciousness of Soviet citizens [2. 15-16 p.]. V.A.Ivanov believes that public participation in the activities of criminal punishment institutions is the main sign of the manifestation of the principle of democracy [3. 15-16 p.]. R.V.Korolev, on the other hand, having studied the question of the principle of democracy in the penal system of Russia, proposed to introduce a separate article into the Penal Code of Russia called "The Principle of democracy"[4. 10 p.]. M.V.Stepanov and A.A. Volchkova showed the principle of democracy in the penal system in the following three different ways:

firstly, he (democracy) instructs convicts that they are subjects of law, despite several restrictions of criminal punishment, each convict has rights and legitimate interests;

secondly, democracy (democracy) presupposes openness and transparency in the execution of punishments, public control over the activities of penitentiary institutions and the participation of public organizations in this activity;

thirdly, democracy presupposes the participation of local authorities in the activities of the penal system [5. 422 b.]. M.H.Rustambayev suggested that the principle of democracy can also be called in another way "the principle of public assistance" [6. 53 b.]. V.T.Klenova proposed to include the principle of democracy in the number of a number of other principles as principles of codification of criminal law norms [7. 267-268 b.].

The analysis of the literature shows that the principle of democracy was studied rather as a principle of penal enforcement law.

Description of the issue. In accordance with international legal acts and doctrinal views, democracy (democracy) is understood as a political system in which the people or a significant part of it is a political source of state power.

In general terms, it can be highlighted that there are the following principles of democracy:

- that the people's state is one of the sources of state power;
- equality of citizens, the possibility of equal participation in political life;
- recognition and guarantee by the State of the existence of the fundamental rights of individuals;
- redemption of the minority for the majority;
- political pluralism;
- legal statehood;
- separation of powers;



transparency of the activities of state bodies;
electoral law;
the presence of a local government system.

Article 13 of the Constitution of the Republic of Uzbekistan establishes that democracy in the Republic of Uzbekistan is based on universal principles, according to which a person, his life, freedom, honor, dignity and other inviolable rights are considered high values, democratic rights and freedoms are protected by the Constitution and laws.

Based on this rule, the principle of democracy is also enshrined in the system of principles of branches of law. How is this principle reflected in the criminal legislation of our country?

Article 6 of the Criminal Code states that the principle of democracy is that “public associations, self-governing bodies of citizens or communities may be involved in the work of correcting the morality of persons who have committed crimes in cases provided for by law” [8]. Since the principle of democracy is a more universal principle, only in a few States it is reflected in criminal law as a principle. We have reviewed the experience of reflecting this principle in criminal law and legislation, since the system of legislation of now independent states is similar to each other, being part of the former Soviet Union. The criminal codes of Russia, Kazakhstan, Ukraine, Kyrgyzstan, Belarus, Ukraine, Armenia, Azerbaijan, Georgia, Turkmenistan, Latvia, Lithuania, Estonia lack the principle of democratization. Article 10 of the Criminal Code of Tajikistan states that the principle of democracy is as follows: “in the cases specified in this Code, political parties, public associations, self-governing bodies of citizens may be involved at their request and consent to correct persons who have committed crimes” [9].

However, it can be seen in the Criminal Code of Moldova that the principle of democracy is stated in a completely different way, in accordance with article 5 of this Code, the principle of democracy is stated as follows: “Persons who commit crimes are subject to criminal liability before the law, regardless of their equality and gender, race, skin color, language, religion, political and other views, national or social origin, belonging to a national minority, property or other status.

The protection of the rights and interests of an individual cannot be carried out by violating the rights and interests of other persons or society” [10]. The principle of democracy in the Criminal Code of the Republic of Moldova essentially corresponds to the content of the principle of equality of citizens before the law in the criminal legislation of the Commonwealth of Independent States.

Considering the history of the emergence of the principle of democracy, we can say that it goes back to the experience of widespread use of public participation in the fight against crime in the former Soviet Union. That is, to reflect the principle of democracy in criminal law in the work of correcting the morality of persons who have committed crimes that do not pose a high social risk in the post-Soviet space, widely involve the public, work collectives, release them from criminal liability, send cases for review in a friendly court to establish a guarantee, the reason was the existence of such a rule as the referral of the case to the juvenile affairs commission.



Article 26 of the Constitution of the Republic of Uzbekistan, adopted in 1992, establishes the norm that the case of every person accused of committing a crime is considered in court legally, publicly, until his guilt is established, that he is not considered guilty, that the person accused in court will be provided with all the conditions for self-defense, in 1994 Article 21 of the Code of Criminal Procedure establishes that during the investigation of a criminal case and the consideration of the case in court, the inquirer, investigator, prosecutor and court have the right, within their competence, to use public assistance to clarify the circumstances under which the crime was committed, to search and expose the criminal. guilty, pass a fair sentence, and

The viewing of criminal cases is due to the fact that public participation in the correction of the morality of persons who have committed crimes (refusal to bring comrades to court to view cases) is due to the formation of a new order of relations between the state and public associations.

In accordance with article 58 of the Constitution, the State ensures respect for the rights and legitimate interests of public associations by providing them with equal legal opportunities to participate in public life. Interference of state bodies and officials in the activities of public associations, as well as interference of public associations in the activities of state bodies and officials is not allowed [11]. Article 106 also establishes that the judicial power in the Republic of Uzbekistan acts independently of legislative and executive authorities, political parties, and other public associations, article 112 does not allow any interference in the activities of judges in the administration of justice.

First of all, the issue of public participation in the second part of article 121 of our Constitution can be considered a certain constitutional basis even if there is a norm that law enforcement agencies can be assisted by public organizations and citizens in protecting the rule of law and the rule of law, the rights and freedoms of citizens. Should changes in our legislation be a matter of public participation in correcting the principle of democracy, that is, the morality of the monks who committed crimes, has it lost its relevance today? it was he who gave rise to the questions "what is it?" But in subsequent years, a sharp increase in the level of awareness of criminal cases in visiting courts required further attention to this issue. If in 2016 criminal cases considered in visiting courts accounted for 6.2% of the total number of criminal cases considered in courts, then in 2017 this figure was 28.5%, in 2018 - 46.1%, for the first nine months of 2019 - 47.8% [12]. If we consider public participation in the consideration of criminal cases as democratization, then this principle should be more applicable to criminal procedure legislation.

As we have shown above, crime is the basis of the Criminal Code Article 12 establishes that justice should be administered only by the court [13]. In this sense, public participation should not hinder justice, but contribute to it. Article 6 of the Penal Enforcement Code lists the principles of penal enforcement law, according to which the principles of legality, justice, humanity, respect for differentiation and individualization in the execution of punishment, rational use of means of coercion and stimulation of law-abiding behavior of convicts are established [14]. But, unlike criminal and criminal procedure legislation, the content of the principles in penal enforcement law is not disclosed in separate articles. For this reason, based on the analysis of the literature, we believe that the principle of democracy in penal



enforcement law provides for an understanding of public participation in the process of execution of criminal penalties.

The principle of democracy in article 6 of the Criminal Code manifests itself in the release of persons who have committed crimes from responsibility under the guarantee of public associations, neighborhoods, therefore, it is also possible to express the opinion that the principle of democracy corresponds to criminal law. In the criminal legislation of some States, there is an institution of exemption of a person from criminal liability in connection with the transfer to the guarantor. In particular, article 47 of the Criminal Code of Ukraine establishes the release of a person from liability by providing a guarantor, article 69 of the Criminal Code of Kazakhstan from punishment by establishing a guarantor, article 40 of the Criminal Code of Lithuania establishes exemption from liability by providing a guarantor.

Although the Criminal Code of our country does not provide for exemption from criminal liability by granting a guarantor, there are many reports in the media that persons are being released from criminal liability on the basis of a guarantor. In particular, it was reported that "386 persons were released from responsibility in 2018, and 456 in 2019 under the auspices of the Youth Union." In the Khorezm region " last year, criminal actions of 24 persons were discussed in the courts on the basis of letters of guarantee. Neighborhood civic gatherings in places were much more active in it. 16 of the letters of guarantee received were sent by these organizations and were the logical result of the auspicious initiative. 5 requests aimed at surety corresponded to the contribution of the women's organization, and 3 requests-the local link of the Youth Union. In the courts, not a single one of such requests was ignored. As a result, effective measures were applied to 19 persons not related to imprisonment, and conditional sentences were applied to 5 people. 8 more persons were released from the courtroom", "80 young people were released from the courtroom in Jizzakh region on the basis of the guarantor of the Youth Union of Uzbekistan for 2017-2022" [15].

Such information, at first glance, is a gross violation of the principle of legality established by article 4 of the Criminal Code, since criminality, punitive nature and other legal consequences of the ACT are determined only by the Criminal Code. And the Criminal Code does not provide for exemption from liability or punishment on the basis of a guarantee, the application of a more lenient punishment.

Only articles 251 and 252 of the Code of Criminal Procedure establish personal surety as a precautionary measure, as well as the surety of a public association or community. But when it was established from the employees of the practice in this case, since in reality there are no grounds in the Criminal Code (judges and adulterers) for exemption from criminal liability on the basis of a guarantee, it was indicated that if there is a guarantee of the Union of Youth, microdistricts, public associations, there is the use of a milder punishment, accepting The text of the principle of democracy expressed in the law can be considered as a principle that is more consistent with criminal procedure (if there is public participation in the process of considering cases) or penal enforcement legislation (if there is a correction of the morality of convicts), and not criminal law.

It is established here that there is a discrepancy between the Criminal Code and the Code of Criminal Procedure on the issue of releasing a person from criminal liability on the basis of a guarantee. Although the Criminal Code does not provide for the possibility of



releasing a person from punishment by applying public pressure measures or administrative penalties applied by public associations and communities, paragraph 4 of article 463 of the Code of Criminal Procedure establishes that it is on this basis that a court can issue an indictment without imposing punishment against a person.

In our opinion, in order to eliminate the discrepancy between the Criminal Code and the Code of Criminal Procedure, we believe that the Criminal Code should include a provision on release from punishment when the recovery of a convicted person can be achieved by public associations and community-applied measures of public influence or administrative penalties.

Rustambayev believes that the principle of democracy can also be called "the principle of public assistance" in another way. The reason for this naming of this principle is the fact that criminal law relies on state assistance in the re-education of persons who have committed crimes, expressed through this norm. According to some scientists, the principle of democracy has remained since the era of socialism, which led to a violation of the principle of legality. But this opinion cannot be combined. Since the re-education of a person who has committed a crime is the basis of the humanistic principle, the principle of democracy pursues the goal of educating criminals in the kite and is one of the forms of their re-education" [6. 53-54 b.].

In response to a question asked during a survey among practitioners on the principle of democracy, which is set out in article 6 of the Criminal Code, 24% of interrogators and investigators said that this principle does not correspond to the content of the Criminal Code, it cannot be left in the Criminal Code in its current form. the publication, 64% said that, since the principle is precisely this question, 11% of magistrates of the Higher School of Judges and jurors said that this principle does not correspond to the Criminal Code in content, it should not be left in the Criminal Code in the current version, while 67% said that, since the principle of democracy is and in other branches of the law, it should be left in

Conclusion. In general, we, too, joining the discussion on whether the principle of democracy corresponds to criminal law, section 2 of the Criminal Code defines as the tasks of the Code the education of citizens in the spirit of compliance with the Constitution and laws of the Republic, and part two of article 42 of the Criminal Code provides for punishment for moral correction of a convicted person, preventing him from continuing criminal activity, and also the convicted person, as well as other persons. application by individuals in order to prevent the commission of new crimes, Article 87 establishes that a minor who has committed a crime that is not socially dangerous for the first time may be released from responsibility and the case may be referred for consideration to the interdepartmental commission on juvenile affairs if it is concluded that, taking into account the characteristics of the committed act, the identity of the perpetrator and other circumstances of the case, it can be corrected even without the use of punishment. we have come to the conclusion that it is advisable for the code to remain in force.

At the same time, in order to eliminate the discrepancy between the norms of criminal and Criminal Procedure legislation, it is proposed to supplement the Criminal Code of the Republic of Uzbekistan with article 76¹ of the following content:

"Article 76¹. Exemption from punishment based on the imposition of measures of influence by public associations, communities or administrative penalties



In cases where a petition is submitted from public associations and communities for the correction of a person who has committed a crime that does not pose a great social risk and is not very serious, by applying measures of public influence, the court may release him from punishment.

If it is concluded that a person who has committed a crime that does not have a high social risk and is not very serious can be morally corrected by applying administrative punishment, the court may release him from punishment”.

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