

THEORETICAL FOUNDATIONS OF THE "ULTIMA RATIO" PRINCIPLE AND ITS PLACE IN CRIMINAL LAW

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Abstract: This article examines the “ultima ratio” principle in criminal law — the idea that criminal legislation should be applied only as a last resort. This principle defines the limits of the application of criminal law, aiming to prevent excessive criminalization and punishment. The article analyzes the historical formation of the principle, its application in modern legal systems, and its theoretical approach. It also discusses the principle's role in law, its relationship with the principles of subsidiarity and proportionality. The article highlights the significance of the ultima ratio principle in ensuring the legitimacy and effectiveness of criminal law through the views of foreign scholars.

Keywords: ultima ratio, law, principle, right, proportionality, sentencing, crime, criminality.

Ensuring that criminal legislation conforms to universally recognized principles in the fight against crime is becoming increasingly important in today's global trends. The intensification of globalization worldwide demonstrates the need to improve legislation in the field of combating crime in line with the demands of the time. According to the United Nations analysis of crime rates in 137 countries, an average of 44.74 crimes per 100,000 people occur at the international level¹. Although high levels of poverty and unemployment are cited as causes of rising crime, it is observed that economic development does not lead to a reduction in crime, and that the failure to reform criminal legislation in accordance with the level of crime in society also affects crime rates. This indicates the urgency of improving criminal legislation, defining and ensuring compliance with the principled rules for combating crime.

The role of the institution of sentencing is important in enabling a person to draw the correct conclusions from their actions, to turn to the right path, and to cultivate law-abiding behavior. In sentencing for a crime, the principle of “goal – means – result” serves as a fundamental rule. Research is being conducted on improving criminal legislation to combat crime, ensuring the inevitability of responsibility for those who have committed crimes, preventing arbitrary punishment of guilty persons, most importantly ensuring that criminal penalties do not become excessively harsh and that unjustly lenient or extremely severe sentences are not imposed on the guilty, fostering a humane attitude toward those held accountable, and studying and implementing the fundamental ideas, experiences, and norms of international law in this area.

Today, the number of criminal cases being examined by courts of first instance at the national level and the number of persons sentenced are growing day by day. In particular, in 2023, a total of 58,418 criminal cases were reviewed involving 73,797 persons. In 2024, this figure shows that a total of 61,481 criminal cases were reviewed involving 77,995 persons. At

¹ World Population Review Database. 2025. See: <https://worldpopulationreview.com/country-rankings/crime-rate-by-country>.

the same time, in 2023, custodial sentences were imposed on 17,391 persons, and in 2024 on 20,655 persons².

Alongside this, the level of crime is also increasing year by year. In 2023 (2024): 358 (402) intentional homicides, 272 (272) rapes, 5,887 (6,046) misappropriation or embezzlement offenses, 7,319 (8,321) thefts, and 6,204 (8,373) drug-related crimes were committed³. The growing number of criminal cases being reviewed, the increasing number of persons being sentenced, and the growing dynamics of crime necessitate a re-examination and improvement of fundamental aspects of concepts such as sentencing and penalty determination in criminal law.

The improvement of the institution of fair sentencing — avoiding the imposition of excessively many criminal penalties on a person — is reflected in the following:

First, research on the application of principled norms for sentencing and on improving the legal functions of these principles is insufficient, and the number of researchers who have worked in this area is limited;

Second, in practice, the diversity of regulatory norms considered necessary in sentencing individuals, the fact that they are not sufficiently developed, and the absence of ideal measures defining when an imposed sentence is excessively harsh;

Third, in the imposition and execution of sentences, attention is not paid to the social, socio-pedagogical, and psychological conditions of individuals; rather, a repressive attitude toward them is maintained;

Fourth, principles, legal concepts, and theoretical views on improving the fundamental-principled norms of criminal law in foreign countries are developing and are being widely applied in practice.

It is no secret that reforms and plans are being developed in our country in this area, and these reforms are aimed at reforming the system of fair sentencing for persons who have committed crimes, preventing sentences from exceeding the norm, improving criminal legislation, and directing the activities of law enforcement agencies toward protecting human interests, dignity, and rights⁴.

In particular, Article 26 of the new version of the Constitution of the Republic of Uzbekistan enshrines the legal norm that no one shall be subjected to torture, violence, other cruel, inhuman, or degrading treatment or punishment; and Article 30 enshrines the legal norm that no one shall be convicted, punished, or deprived of property or any right on the basis of a law that has not been officially promulgated, and that no one shall be convicted twice for the same crime.

Scientific-Theoretical Definition and Essence of the "Ultima Ratio" Principle

As is well known, in the field of law, a principle represents a set of strict norms that define moral and legal actions. The criminal law of the Republic of Uzbekistan also has a number of

² Key indicators of courts on criminal cases for 2025, provided by the Supreme Court of the Republic of Uzbekistan. See: <https://stat.sud.uz/assets/uploads/criminal/pdf/criminal-2024-full.pdf>.

³ Key indicators of courts on criminal cases for 2025, provided by the Supreme Court of the Republic of Uzbekistan. See: <https://stat.sud.uz/assets/uploads/criminal/pdf/criminal-2024-full.pdf>.

⁴ Clause 87 of Annex 1 to Decree No. PF-158 of the President of the Republic of Uzbekistan dated September 11, 2023 on the "Uzbekistan – 2030" Strategy // National Database of Legislation, September 12, 2023, No. 06/23/158/0694.

strict guiding principles. However, to date, the term “ultima ratio” has not been used in national criminal legislation.

“Ultima ratio” is a rule expressing the constitutional norm of equality at the international level. The term ultima ratio has a long history. Some sources suggest that this phrase may have been used by Cardinal Richelieu, Chief Minister during the reign of French King Louis XIII, in the early 16th century, but there is no concrete evidence for this. According to reliable information, the term ultima ratio was first widely used during the reign of French King Louis XIV (1643–1715). He had the phrase “ultima ratio regum” inscribed on his war cannons, which was interpreted as “the king's last resort” — meaning that when diplomatic efforts failed, the king would resort to military force to resolve disputes⁵.

The term comes from the Latin ultimus — “last”, “final”, ratio — “method”, “means”, “measure”, and is traditionally translated into Uzbek as “the last means of resolving problems”.

In classical criminal law, the ultima ratio principle expresses the idea that criminal punishment is only a last resort, and that criminal law should be applied only when it is impossible to regulate a violation of morality or law through other means — that is, when this last resort is necessary⁶. In other words, it expresses that criminal law should be applied only when all other morally reasonable methods have been tried but have not yielded satisfactory results. This principle is based on the philosophy that criminal law should be the state's last resort against offenders, to be used only when all other civil and administrative legal tools have been exhausted or found to be ineffective.

The essence of this principle is that the penal system, which expresses criminal liability, must be applied only as a last resort. Because criminal law is the branch of law that consolidates the strictest rules at the state's disposal. This expresses, on one hand, the gravity of criminal sanctions, and on the other, that the coercive function of this branch is more serious than that of other branches of law. Indeed, after a person has committed a socially dangerous act, criminal law's interference in their social activities is firmly observed, and such interference is a universal characteristic of criminal law⁷.

If criminal law is applied on an equal footing with all other branches of law, this would lead to the loss of criminal law's fundamental essence and the formation of a negative repression in society⁸. In recent years, criminal law has become an instrument of excessive and absolute punishment by many legislators, a situation that has been ironically referred to in Italian legal doctrine⁹ as “total criminal law”. To prevent this, in problematic situations, methods with fewer coercive functions of criminal law should be used, or solutions should be

⁵ Rudolf Wendt. The principle of “ultima ratio” and/or the principle of proportionality. *Oñati Socio-Legal Series* Volume 3 No. 1 (2013), p. 81–94 at 84. See: <https://shorturl.at/7OC6l>.

⁶ Salayev N.S. Classical Ideas of the Ultima Ratio Principle in the Modern Criminal Law Paradigm. *Excellencia: international multi-disciplinary journal of education*. Volume 02, issue 07, 2024. p. 282–292. p. 283.

⁷ Piet Hein van Kempen. Introduction – Criminal Law and Human Rights, *Criminal Law and Human Rights, The International Library of Essays on Criminal Law*, England/USA: Ashgate, 2017, pp. 1–23 at p.1. See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953285.

⁸ Panu Minkkinen. “If Taken in Earnest”: Criminal Law Doctrine and the Last Resort. *45 The Howard Journal* 5 (2006), pp. 521–536 at p. 525. See: <https://shorturl.at/DzztA>

⁹ F. Sgubbi. *Il diritto penale totale. Punire senza legge, senza verità, senza colpa*. Italy, Il Mulino publ., 2019, p. 88, at p. 23.

provided using tools from other branches of law, and only when these tools do not yield sufficient results should criminal law emerge as a last resort. For example, in resolving a problem, administrative law, civil law, ordinary preventive measures, or even minimal methods within criminal law itself can serve as alternatives. For these reasons, we can view the last resort — *ultima ratio* principle — as a fundamental idea that criminal law must adopt.

The idea of conserving criminal justice resources has always been the subject of heated debate. For this reason, over many years, European scholars have defended the idea of narrowing the scope of criminal legislation as much as possible. In their view, criminal-legal intervention should be carried out only when the most valuable interests are threatened; otherwise, excessive expansion of criminal law would bring a number of negative consequences for society¹⁰. N.S. Tagantsev¹¹ defined the concept of crime as follows: “A crime is an action that encroaches upon a vital interest protected by a norm in a given state at a certain time, and is recognized as so important that the state threatens the offender with punishment due to the insufficiency of other protective measures”.

Agreeing with the above view, it can be said that a harmful act must be serious enough to fall within the scope of criminal justice¹². That is, this scope includes the stages of criminal procedure legislation, sentencing, and execution, and it is appropriate that the methods and means at these stages also be applied only as a last resort. For example, the fact that a person has committed a socially dangerous act does not serve as a final rule determining that they deserve punishment. Even if a person is legally deserving of punishment, criminal law must first “offer” lighter punitive measures to the person — this expresses the philosophical idea of the *ultima ratio* principle.

It should be noted that the first axiom of *ultima ratio* is that criminal law must be applied only as a last resort in determining whether an act deserves criminal punishment. The specific thing that must be given attention here is the sign of necessity. That is, criminal law must be applied as a last resort only when the goal cannot be achieved through other branches of law. Expressing this concept positively: if the necessity arises to apply measures restricting social activity against an offender, the least intrusive measure that can achieve results must be applied.

The second axiom of this principle creates a positive legal basis for *ultima ratio*. That is, a harmful act, action, or inaction must be sufficiently serious to justify its criminalization. This concept is also supported by another legal theory, the *stricto sensu* theory. *Stricto sensu* is a principle of criminal law based on proportionality, meaning “strictly speaking”, “equality”, “balance”. The connection between *stricto sensu* and *ultima ratio*¹³ is that while *stricto sensu* emphasizes equality in the application of law, *ultima ratio* reflects the proportionality between

¹⁰ Stojanović Z. Granice, possibilities and legitimacy of criminal protection. Beograd: Savremena administracija, 1987. 115 p.; Garland D. Kultur der Kontrolle: Verbrechensbekämpfung und soziale Ordnung in der Gegenwart. Frankfurt: Campus-Verlag, 2008. P. 394; Schünemann B. Das Strafrecht im Zeichen der Globalisierung. Goltammer's Archiv für Strafrecht, 150, no. 5 (2023): 299–313; Albrecht P.-A. Spezialprävention angesichts neuer Tätergruppen. Zeitschrift für die gesamte Strafrechtswissenschaft, 97, no. 4 (2019): 831–870.

¹¹ Tagantsev N.S. Russian Criminal Law. In 2 parts. Part 2. — Moscow: Yurayt, 2020. — 446 p.

¹² European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)), Official Journal of the European Union C 264 E/7, para I. 2025. European Parliament. See: <https://shorturl.at/PesJh>.

¹³ Rudolf Wendt. The principle of “ultima ratio” and/or the principle of proportionality. Oñati Socio-Legal Series Volume 3 No. 1 (2013), p. 81–94 at 84. See: <https://shorturl.at/7OC6l>.

punishment and the act. This shows that the restriction of rights must be proportionate and lawful in relation to the purpose or requirement set.

It should be emphasized here that *ultima ratio* as a principle does not define whether an act is serious or minor, whether it can be declared a crime, or when a person should be held responsible. According to D. Husak¹⁴, the *ultima ratio* principle calls on legislators and criminal justice bodies to use only the most severe methods of criminal law as a last resort. For this reason, this principle serves as a moral norm¹⁵. According to Dworkin¹⁶, principles or doctrines contain a requirement for some measure of morality. Their scope and content are variable and unclear, and their structure is open. Principles indicate direction rather than demanding specific results or imposing absolute restrictions. Thus, *ultima ratio* can also serve as a guiding factor in criminal justice activities. Because if a means of protection or safeguard in the criminal justice system is not proportionate to the act or is not carried out of necessity, we can consider such intervention as a legal error or legal immorality.

The ideas of criminalization within the framework of the *ultima ratio* principle are reflected in the scientific work of a number of scholars who view criminal law as the extreme last resort for maintaining order in society. H.H. Jescheck, one of the prominent researchers in this field, emphasizes in his works that criminal law should be applied only when necessary social results cannot be achieved through other means. In his view¹⁷, criminal law regulation expresses the *ultima ratio* principle and expresses the need for restriction in applying criminal law.

These views are also supported by other scholars. For example, British legal scholar Hart also emphasizes the necessity of using criminal law only as a last resort in his research. In his work "The Concept of Law", he states that "criminalization should only be applied when other forms of legal action have not produced the required result".

Michael Moore also supports the "Ultima Ratio" principle in his works, stating that "criminal law should be a measure applied only after all other available and sufficient tools have been exhausted¹⁸".

Western criminologist D. Husak calls the idea of the *ultima ratio* principle "criminal law minimalism¹⁹". In his view, the important function of this theory is always to develop issues related to defining the boundaries of criminal law.

From the views of the above scholars, it can be said that the *ultima ratio* principle is aimed at the rational application and conservation of criminal law or, generally speaking, criminal justice resources.

¹⁴ Douglas Husak. Applying Ultima Ratio: A Skeptical Assessment, *Ohio State Journal of Criminal Law* (2005), p. 535–545 at 536–540. See: <https://shorturl.at/nF7R1>.

¹⁵ Panu Minkkinen. The "Last Resort": A Moral and/or Legal Principle? *3 Oñati Socio-legal Series 1* (2013), pp. 21–30, at p. 23. See: <https://shorturl.at/mpbJn>.

¹⁶ Ronald M. Dworkin. The Model of Rules, *35 The University of Chicago Law Review new edition*, 2022, pp. 14–46 at p. 22–29.

¹⁷ Jescheck H.H. *Lehrbuch des Strafrechts: Allgemeiner Teil. 5. Auflage*, Berlin, last edition by Duncker & Humblot, 2016, pp. 1029, at p. 3.

¹⁸ Moore M. *Placing Blame: A Theory of the Criminal Law*, Oxford, new edition by Clarendon Press, 2019, pp. 849, at 595–609. <https://doi.org/10.1093/acprof:oso/9780199599493.003.0014>

¹⁹ Husak D. *Overcriminalization: The Limits of the Criminal Law*. Oxford, Oxford University Press, 2009, pp. 248, at p. 231.

Although the function of ultima ratio is aimed at imposing restrictions on criminalization of actions and the application of criminal procedural legislation, it does not generally oppose the criminal justice system. The idea of ultima ratio cannot and should not be equated with the idea of "abolition." Because the principle does not deny that criminal legislation has certain importance. Nevertheless, we cannot call the ultima ratio principle completely problem-free and ideal. It also has problematic aspects, like other normative concepts.

First, its main logic is aimed at treating persons subject to punishment or their accomplices more fairly and humanely, alongside the criminal justice system's goal of fighting crime and protecting society. However, if excessive criminalization and persecution causes social harm to society and the individual, insufficient use of criminal law or criminal procedural law can also cause such harm. According to American scholar Rotman²⁰, insufficient use of the system undermines justice, increases dissatisfaction and disrespect toward the law, and can have a corrosive effect on the foundations of democracy and equality.

Second, the call of the ultima ratio principle to apply only as a last resort can also undermine criminal law's purpose of preventing and combating violations²¹. Because influential tools such as criminal law are less developed in other branches of law. Therefore, it can be said that there are also scholarly debates among academics about this principle.

In our view, what is important in criminal law is not the severity or leniency of punishment measures, but the inevitability of punishment. Because no matter how perfect the punishment system is, if there is no possibility of applying it at an ideal level, the goal of criminal punishment and the protective force can be harmed as a result. At the same time, criminal law should serve not as a tool defining punitive measures against an offender, but as a red light for the individual. Because, looking back at history, preventing crime has always been considered the primary function of jurisprudence. In particular, Sh. Montesquieu stated in his work "The Spirit of the Laws" that "a good legislator is more concerned with preventing crimes than with punishing them; he tries not to punish but to change people's morals²²".

In conclusion, ultima ratio is a constitutional norm that defines the boundaries of criminal law. Looking at the experience of foreign states, today this theoretical principle is increasingly moving into practice day by day. Although this principle has been researched by a number of legal scholars, this principle may be new for the national criminal legislation of the Republic of Uzbekistan. Taking these factors into account, an authorial definition of the ultima ratio principle has been developed: "Ultima ratio is a legal principle expressing that the tools of criminal law may be applied only as a last resort when there is no possibility of regulating an action or inaction that causes harm to social relations through other branches of law". The main essence of ultima ratio is that it indicates that criminal law must be applied as a last resort — criminalization as a last resort — when other legal means of influence do not yield results or when it is impossible to achieve the intended goal. Therefore, it can be said that although criminal law or criminal legislation is the branch of law with the most severe characteristics

²⁰ Edgardo Rotman. *Beyond Punishment: A New View on the Rehabilitation of Criminal Offenders*, USA, Greenwood Press, 1990, pp. 227.

²¹ Piet van Kempen, M. Jendly. *Criminal Justice and the Ultima ratio principle: Need for limitation, Exploration and Consideration*. UK, Cambridge, Intersentia publish, 2019, pp. 49, p. 14. See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3499004.

²² Montesquieu Ch. *The Spirit of the Laws*. — M. Rebirth Publishing. Tashkent-2024. — p.288, p. 231.

and consequences in the system of branches of law, humanistic ideas are inherent in the fundamental foundations of criminal law.

Adabiyotlar, References, Литературы:

1. World Population Review Database 2025. See: <https://worldpopulationreview.com/country-rankings/crime-rate-by-country>.
2. Key indicators of courts on criminal cases for 2025, provided by the Supreme Court of the Republic of Uzbekistan. See: <https://stat.sud.uz/assets/uploads/criminal/pdf/criminal-2025-full.pdf>.
3. Clause 87 of Annex 1 to Decree No. PF-158 of the President of the Republic of Uzbekistan dated September 11, 2023 on the "Uzbekistan – 2030" Strategy // National Database of Legislation, September 12, 2023, No. 06/23/158/0694.
4. Rudolf Wendt. The principle of "ultima ratio" and/or the principle of proportionality. Oñati Socio-Legal Series Volume 3 No. 1 (2013), p. 81–94 at 84. See: <https://shorturl.at/7OC6I>.
5. Salayev N.S. Classical Ideas of the Ultima Ratio Principle in the Modern Criminal Law Paradigm. Excellencia: international multi-disciplinary journal of education. Volume 02, issue 07, 2024. p. 282–292. p. 283.
6. Piet Hein van Kempen. Introduction – Criminal Law and Human Rights, Criminal Law and Human Rights, The International Library of Essays on Criminal Law, England/USA: Ashgate, 2017, pp. 1–23 at p.1. See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2953285.
7. Panu Minkkinen. "If Taken in Earnest": Criminal Law Doctrine and the Last Resort. 45 The Howard Journal 5 (2006), pp. 521–536 at p. 525. See: <https://shorturl.at/DzztA>.
8. F. Sgubbi. Il diritto penale totale. Punire senza legge, senza verità, senza colpa. Italy, Il Mulino publ., 2019, p. 88, at p. 23.
9. Stojanović Z. Granice, possibilities and legitimacy of criminal protection. Beograd: Savremena administracija, 1987. 115 p.; Garland D. Kultur der Kontrolle: Verbrechensbekämpfung und soziale Ordnung in der Gegenwart. Frankfurt: Campus-Verlag, 2008. P. 394; Schünemann B. Das Strafrecht im Zeichen der Globalisierung. Goldammer's Archiv für Strafrecht, 150, no. 5 (2023): 299–313; Albrecht P.-A. Spezialprävention angesichts neuer Tätergruppen. Zeitschrift für die gesamte Strafrechtswissenschaft, 97, no. 4 (2019): 831–870.
10. Tagantsev N.S. Russian Criminal Law. In 2 parts. Part 2. — Moscow: Yurayt, 2020. — 446 p.
11. European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)), Official Journal of the European Union C 264 E/7, para I. 2025. European Parliament. See: <https://shorturl.at/PesJh>.
12. Douglas Husak. Applying Ultima Ratio: A Skeptical Assessment, Ohio State Journal of Criminal Law (2005), p. 535–545 at 536–540. See: <https://shorturl.at/nF7R1>.
13. Panu Minkkinen. The "Last Resort": A Moral and/or Legal Principle? 3 Oñati Socio-legal Series 1 (2013), pp. 21–30, at p. 23. See: <https://shorturl.at/mpbJn>.
14. Ronald M. Dworkin. The Model of Rules, 35 The University of Chicago Law Review new edition, 2022, pp. 14–46 at p. 22–29.
15. Jescheck H.H. Lehrbuch des Strafrechts: Allgemeiner Teil. 5. Auflage, Berlin, last edition by Duncker & Humblot, 2016, pp. 1029, at p. 3.

16. Moore M. Placing Blame: A Theory of the Criminal Law, Oxford, new edition by Clarendon Press, 2019, pp. 849, at 595–609. <https://doi.org/10.1093/acprof:oso/9780199599493.003.0014>.
17. Husak D. Overcriminalization: The Limits of the Criminal Law. Oxford, Oxford University Press, 2009, pp. 248, at p. 231.
18. Edgardo Rotman. Beyond Punishment: A New View on the Rehabilitation of Criminal Offenders, USA, Greenwood Press, 1990, pp. 227.
19. Piet van Kempen, M. Jendly. Criminal Justice and the Ultima ratio principle: Need for limitation, Exploration and Consideration. UK, Cambridge, Intersentia publish, 2019, pp. 49, p. 14. See: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3499004.
20. Montesquieu Ch. The Spirit of the Laws. — M. Rebirth Publishing. Tashkent-2024. — p.288, p. 231.