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# ISSUES OF THE TEMPORAL OPERATION OF THE CRIMINAL LAW IN CASES OF CHANGES IN THE BASIC CALCULATION QUANTITY

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## Abstract

This article examines problematic situations in the Criminal Code concerning the temporal (retroactive) operation of blank norms, that is, criminal law norms referring to other normative legal acts. The author notes that a change in the normative legal act determining the size of the basic calculation quantity does not entail retroactive operation of the criminal law. Moreover, it is noted that it is advisable to reflect in the Criminal Code the norm on the application of provisions on the retroactive operation of the criminal law, even in cases where a change or repeal of another normative legal act without changing the criminal law affects the content of the elements of the crime.

**Keywords** Retroactive operation of the criminal law, blank criminal-legal norms, basic calculation quantity.

## INTRODUCTION

Criminal Code of the Republic of Uzbekistan reflects the exclusion (the application of the law to acts committed before the entry into force of the law) from the general rule (the application of the law to acts committed after the entry into force of the law) of the operation of the Criminal Law in time, according to which the new law is retroactive, in cases where the law : 1) cancels the criminality of the act; 2) mitigates the punishment; 3) otherwise improves the condition of the person [1].

Such a law applies to persons who, prior to its entry into force: committed the relevant act; are serving their sentence; have served their sentence (if they still have a criminal record). And in part 3 of this article it is established that the law, which considers an act as a crime, increases punishment or otherwise worsens the condition of a person, has no retroactive effect.

When it comes to the abolition of criminality of an act, one of the methods of criminal law policy - decriminalization, i.e. not recognizing acts that were considered criminal under the old law as such in the new law is understood. Decriminalization is the exclusion, abolition of criminal liability for certain acts that were previously considered crimes, including the inclusion of these acts among less significant offenses (administrative, disciplinary, etc.). Decriminalization is criminalization with a "negative sign" [2].

In the case of complete decriminalization, a problematic situation does not arise in the matter of the retroactive power of the law, since the composition of the previously existing crime in the criminal law is completely excluded. For example, in the Article 120 (Concealment of found property), Article 131 (Concealment of found property), Article 175 (Speculation), Article 176 (Mediation in trade affairs), Article 2081 (Driving vehicles in a

drunken state) of the Criminal Code of 1959 criminal liability was provided for relevant acts [3], but in the Criminal Code of 1994 such criminal compositions were not reflected, that is, they were completely decriminalized.

Persons convicted before April 1, 1995 under the Criminal Code of the Republic of Uzbekistan dated May 21, 1959 for acts that, according to the Criminal Code of the Republic of Uzbekistan dated September 22, 1994, were not recognized as criminal have been released from all types of punishment (main and additional), the proceedings of the bodies of inquiry, preliminary investigation and courts on acts that were not recognized as criminal under the Criminal Code of the Republic of Uzbekistan dated September 22, 1994 have been terminated[4].

In addition, full decriminalization can also be carried out by abolishing the criminal law norm, this is indicated in the law. For example, by the law of the Republic of Uzbekistan "On amendments and additions, as well as the invalidation of certain legislative acts of the Republic of Uzbekistan", dated 12/15/2000, No. 175-II the composition of crime of "Deception of buyers or customers" (article 187) was excluded [5]. This Law also excludes the offense "Deceiving a buyer or customer" (article 165) from the Code of the Republic of Uzbekistan on Administrative responsibility[5]. In addition, by the Law of the Republic of Uzbekistan, dated 05.11.2019. No. ZRU-579 "On Amendments to certain Legislative Acts of the Republic of Uzbekistan in connection with the liberalization of liability of foreign citizens and stateless persons for violation of the rules of temporary stay in the Republic of Uzbekistan" the composition of crime of "Violation of the rules of stay in the Republic of Uzbekistan" (article 224) was excluded[6].

As noted above, in the case of complete decriminalization, there are practically no problems with the retroactive effect of the criminal law. Since full decriminalization does not create problems with the retroactivity of the new law, "in the case of partial decriminalization of an act, a thorough and qualified analysis will be required to solve the issue of retroactivity of the law" [7]. In

particular, article 13 of the Criminal Code does not cover the issue of the operation of reference and blank criminal law norms. For example, in crimes such as murder in order to conceal another crime or facilitate its commission (paragraph "o", part 2, Article 97), involvement of a minor in a crime (part 3, Article 127), acquisition or sale of property obtained by criminal means (Article 171), failure to report a crime or conceal it (article 241), intentional concealment of a crime from accounting (Article 2411), legalization of proceeds from criminal activity (article 243) there is a reference to "another crime", "crime", "criminal means", "criminal activity" and they are interrelated, and the criminal law assessment given by the legislator or law enforcement officer to the first affects the second. That's when the question arises about the retroactive effect of the criminal law when changing the signs of the crime where the reference is made. For example, criminal law may be applied retroactively or not retroactively when the composition of crime which is unreported or concealed is decriminalized. In our opinion, in the above cases, the provisions of criminal law on retroactive force should also be applied, since, because of a change in the sign of an interconnected composition of crime, the condition of the person who committed the crime improves.

Another case, for example, from the content of the principle of legality (article 4) we can understand that the criminality, punishability of an act and other legal consequences of its commission are determined only by the Criminal Code. So, the norms on these three issues are not officially determined by other regulatory legal acts. At first glance, this principle rule seems simple and understandable. However, naturally, a problematic situation arises when it comes to the operation of blank norms in the Criminal Code, that is, criminal law norms referring to other normative legal acts, since in cases where criminal law norms do not change, but their content changes, that is, concepts (for example, the basic calculation the quantity) provided for in them are changed, the question arises of how to resolve the issue of the operation of the law in time in law enforcement practice.

In fact, if the amount of the basic calculated quantity changes (usually the amount increases),

the content of the damage associated with the BCQ in section 8 of the Criminal Code and the content of qualifying signs in the relevant parts of the articles of the Special Part of the Criminal Code also change accordingly. Macalan, By the Decree of the President of the Republic of Uzbekistan dated November 17, 2023, it was established that the size of the basic calculation quantity in the territory of the Republic of Uzbekistan from December 1, 2023 is 340,000 soums per month [8]. Before that, for example, 330,000 (from 1 April 2023)[9], 300,000 (from 1 June 2022)[10], 270,000 (from 1 September 2021)[11], 245,000 (from 1 February 2021)[12], 223,000 (from 1 August 2019)[13].

Hence, different BCQ were in effect at different time intervals.

Based on the above situation, for example, if in January 2021 crimes related to the theft of other people's property were committed in the amounts listed in the table below, and if these cases were identified in December 2023, what will the law enforcement officer be guided by when deciding on the responsibility of the perpetrator of the act? Because during this time, the BCQ has changed several times. In this case, does the retroactive rule contained in article 13 of the CC apply or not?

№	Dates of change	Basic Calculation Quantity (soun)	The amount of property (soun)	Dimension	
situation 1					
1	December 1, 2023	340 000	75 000 000	220,6	considerable quantity
2	April 1, 2023	330 000	75 000 000	227,3	
3	June 1, 2022	300 000	75 000 000	250	
4	September 1, 2021	270 000	75 000 000	277,8	
5	February 1, 2021	245 000	75 000 000	306,1	large quantity
6	August 1, 2019	223 000	75 000 000	336,3	
situation 2					
1	December 1, 2023	340 000	100 000 000	294,1	considerable quantity
2	April 1, 2023	330 000	100 000 000	303,03	large quantity
3	June 1, 2022	300 000	100 000 000	333,3	
4	September 1, 2021	270 000	100 000 000	370,4	
5	February 1, 2021	245 000	100 000 000	408,2	
6	August 1, 2019	223 000	100 000 000	448,4	
situation 3					
1	December 1, 2023	340 000	125 000 000	367,6	large quantity
2	April 1, 2023	330 000	125 000 000	378,8	
3	June 1, 2022	300 000	125 000 000	416,7	
4	September 1, 2021	270 000	125 000 000	463	
5	February 1, 2021	245 000	125 000 000	510,2	very large quantity
6	August 1, 2019	223 000	125 000 000	560,5	
situation 4					
1	December 1, 2023	340 000	150 000 000	441,2	large quantity
2	April 1, 2023	330 000	150 000 000	454,5	
3	June 1, 2022	300 000	150 000 000	500	very large quantity
4	September 1, 2021	270 000	150 000 000	555,6	
5	February 1, 2021	245 000	150 000 000	612,2	
6	August 1, 2019	223 000	150 000 000	672,6	

If we apply the rule of the reverse effect of the mitigating law, a change in “quantity” in the above cases will lead to a change in “quality”, that is, a change in the BCQ will lead to a change in the qualifying sign, respectively, from “large quantity” to “considerable quantity”, from “very large quantity” to “large quantity”, and this, in turn, it may lead to a change in the parts of the article according to which the act is qualified and to an improvement in the condition of the person who committed the act.

In this issue, A.E.Yakubov noted that the increase in the minimum wage is associated with constant inflation, in this regard, the value of previously looted property increases in proportion to inflation and the minimum wage, and the damage to the victim does not decrease with an increase in the minimum wage. Consequently, in such cases, the retroactive force of the criminal law cannot be applied[14]. At the same time, supporting the opinion of the author in question that a change in the normative legal act defining the minimum wage or the amount of the basic calculation quantity does not lead to the retroactive effect of the criminal law.

However, this does not mean that in the case of blankness, that is, changes in normative legal acts relating to another area of law to which reference is made do not affect the retroactive effect of the criminal law. The retroactive force of the criminal law should be applied if a change in normative legal acts relating to another area of law referred to improves the situation of the person who committed the crime, as a result of recognizing the act as not a crime.

Therefore, it is reasonable for the Criminal Code to reflect the norm on the application of provisions on the retroactive effect of the criminal law, even in cases where a change or termination of another normative legal act without changing the Criminal Law affected the content of the signs of the composition of the crime.

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