INSTITUTE OF JUSTICE IN VARIOUS COUNTRIES: COMPARATIVE LEGAL ANALYSIS

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ABSTRACT

This article examines the legal essence, regulatory frameworks, procedure for calculating criminal records, and mechanisms for their removal in the criminal law systems of four countries the Republic of Uzbekistan, Italy, Germany, and Australia through comparative legal analysis. Based on the fact that countries belong to different legal families, a comparative analysis of the institution of criminal record is carried out and conclusions and proposals for improving national legislation are presented..

An important component of building a state governed by the rule of law is the issue of how a person's legal status is restored after serving their sentence for a crime. In this regard, the institution of "conviction" serves as the primary tool for determining the subsequent legal status of a person who has committed a crime but served their sentence. Chapter XIV of the Criminal Code of the Republic of Uzbekistan (Articles 77-80) regulates the institution of a criminal record. These norms define the legal status arising from a person's conviction for a crime and indicate the mechanisms for its termination and removal. However, in world legal practice, particularly in Italy and Germany, which belong to the Romano-Germanic legal family, and in Australia, which belongs to the Anglo-Saxon common law system, this issue is resolved based on fundamentally different approaches.

The purpose of this article is to conduct a comparative legal analysis of the institution of criminal records in four countries, identify their similarities and differences, and demonstrate the possibilities of utilizing foreign experience for Uzbek legislation. According to Article 77 of the Criminal Code of the Republic of Uzbekistan, a criminal record is a "legal status arising from a person's conviction for a committed crime." From the date the conviction for which the punishment was imposed enters into legal force, the person is considered convicted, and the person released from punishment by the court is considered not to have been convicted. Rustambaev M.H. notes that "criminal punishment that entails a criminal record can only be applied when a crime is committed, while legal sanctions for other offenses never result in a criminal record."[1] the criminal-legal significance of a criminal record is expressed in the following: if a person commits a new crime during the period of conviction, the punishment may be aggravated, recidivism qualified as a crime, and the institutions of

[1] Rustambaev M.Kh. Criminal Law. General part. — Tashkent: Ilm-Ziyo, 2006. — ISBN 1542-2255-8.

exemption from liability or punishment may be restricted. Article 78 of the Criminal Code of the Republic of Uzbekistan provides for the completion of a criminal record automatic time limits:

a) for probationers on the day the probationary period expires

b) after serving mandatory community service, service restriction, or a disciplinary measure on the day the sentence expires

c) after serving a fine, deprivation of a certain right, or correctional labor after 1 year

d) after serving a sentence of restriction of liberty after 2 years

d) after serving up to 5 years of imprisonment after 4 years

e) after serving a sentence of imprisonment for a term of more than 5 years, but not more than 10 years — after 7 years

g) after serving a sentence of imprisonment for a term of more than 10 years, but not more than 15 years — after 10 years.

The textbook emphasizes that the conviction of persons who have served a sentence of imprisonment for 15 years or more, as well as especially dangerous recidivists, is not automatically overturned but is removed only by a court. **Conditions**: not to commit a new crime for 15 years from the date of serving the sentence.

Italy criminal law justice: The basis of Italian criminal law was the Codice Rocco Code of Punishments of 1930, which subsequently underwent numerous amendments. The Italian Constitution (1948) introduced the principles of re-socialization of humanity and recidivism into criminal policy. The Italian legal system belongs to the Romano-Germanic legal family, and the criminal process was changed by the 1989 reform and elements of the adversarial system were introduced. In the Italian criminal justice system, the Court of Cassation Corte di Cassazione, as the highest instance, ensures a uniform interpretation of the law. The system of appellate courts and courts of first instance will be merged, and courts and prosecutors will enter the same civil service. [2]In Italy, the institution of removal of a criminal record riabilitzione penale is regulated by Articles 178 and 179 of the Code of Penalties

1) at least 3 years have passed since the serving of the sentence 8 years for repeat offenders, 10 years for habitual, professional, or habitual offenders

2) the person must have demonstrated good conduct since the day of serving the sentence

3) the damage caused to the victim must be compensated or the impossibility of compensating for the damage must be proven

4) safety measures have not been applied or have been canceled.

Unlike the Uzbek system, in Italy, a criminal record does not expire automatically it must always be appealed to court and a decision made by the Court of Supervision. When the Riabilitzione is carried out, the record is deleted from the criminal record and additional punishments are also canceled. The Italian criminal records system, the Certificato del Casellario Giudiziale, includes a list of all of an individual's legally binding criminal convictions. These recordings will be retained until Riabilitzione is obtained. **A key feature of the Italian system** is that the Italian Constitution defined resocialization as a central principle. The 1975 reform expanded the possibilities of release from punishment and parole. The Mani Pulite

[2] Code penale della Republica Italiana

practice of the 1980s and 1990s changed the political climate and led to stricter criminal penalties, but the principle of resocialization remained in force. In Italy, there are no specific rules for removing a criminal record for economic crimes articles 178-184, 189-192 a preferential procedure similar to Part 2 of Article 79 of the Criminal Code of Uzbekistan is not provided for in this country.

In Germany, the removal of a criminal record is regulated under the Federal Central Criminal Registry Act Bundeszentralregistergeset. This law, adopted in 1971, fully defines the German criminal registry system. In Germany, the current Criminal Code the Strafgesetzbuch defines the criminal articles, while the BZRG establishes the procedure for managing the data register. The timeframes for removing a criminal record under the BPRG are distributed as follows:

➢ 3 years — for a fine of 90 days or imprisonment for up to 3 months if there is no other punishment on the register

➢ 5 years - for imprisonment with probation for up to 1 year or for a combination of fines;

➢ 10 years - for more than 1 year, but up to 3 years of imprisonment;

➢ 20 years - for imprisonment for more than 3 years; for sexual crimes (even if the sentence is more than 1 year - 20 years.

In Germany, removal is done automatically the Bundesamt für Justiz deletes the recording after the deadline. Unlike in Uzbekistan, a person is not required to submit an application.[3]The SRB also provides for early deletion: if the recording hinders the person's resocialization and does not contradict the public interest, it can be deleted prematurely upon application. This is similar to the "removal halfway through" mechanism in Article 79 of the Criminal Code of Uzbekistan.An important feature of the German system is a two-stage approach: after a certain period of time, the verdict is issued from a "certificate of good conduct" at the expiration of another period, it is permanently removed from the list. This is a relatively complex step-by-step mechanism, unlike the system of Uzbekistan or Italy.

Australia belongs to the Anglo-Saxon legal tradition and is organized under a federal system. At the federal level, the institution of conviction is governed by the Spent Convictions Scheme, Part VIIC of the Crimes Act 1914. Each state and territory also adopted its own laws Criminal Records Act 1991 for NSW; Spent Convictions Act 2021 for Victoria Separate laws for Queensland, SA, WA. Unlike in Uzbekistan and European countries, the Australian system does not use the phrase "a criminal record is expunged" instead, the sentence is declared "spent" and removed from public investigations, but remains in the administrative framework. Under the Crimes Act 1914 section VIIC, three conditions must be met for a sentence to be considered "spent": 1) Term: 10 years from the date of conviction for adults, 5 years for minors. [4]2) severity of punishment: imprisonment is not imposed or for a term not exceeding 30 months. 3) Period of criminal absence: must not have committed a new crime within 10 years otherwise, the term begins anew.In the Uzbek system, the term varies from 1 to 10

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[3] Bundeszentralregistergesetz (BZRG) dated 18. März 1971 (BGBl. I, p. 243), §§ 45-49. [German Federal Law on the Central Criminal Registry]

[4] Gallo Z. The penal implications of austerity: Italian punishment in the wake of the Eurozone crisis // European Journal of Criminology.2018.

years, depending on the duration of the sentence. In Australia, however, regardless of the type of punishment, the basic term is set at 10 years representing a simplified yet unified approach.

Based on this comparative legal analysis, the following conclusions can be drawn: Firstly, the institution of a criminal record serves to balance two opposing goals in every legal system: on the one hand, the resocialization of the individual and protection from discrimination, and on the other hand, public safety and the retention of information about crimes in state bodies. Secondly, although the legislation of Uzbekistan, which belongs to the Romano-Germanic legal family, is based on common principles with other continental countries in this area, there are significant differences in terms of the mechanism for automatic calculation of deadlines and the procedure for early removal. Third, the Australian system of spent convictions is noteworthy in terms of its simplicity and the clarity of establishing restrictions on individual job categories. Fourth, in all four countries, the complete removal of convictions for sex crimes, violent crimes, and other serious crimes is limited this aligns with international standards.

Based on the experience of Germany, it is also advisable to simplify the process of early removal of a criminal record upon a person's request in Uzbekistan - requiring a petition from a public association or mahalla under the current procedure creates additional barriers in the system. Inspired by the Italian experience, it is possible to introduce more incentives and control mechanisms for compensation for damages when removing a criminal record. A two-stage mechanism similar to the concept of "spent convictions" in the Australian model namely the "information is not disclosed" stage and the "complete deletion" stage - can be considered as an additional layer for Uzbekistan's practice. Finally, electronic registers and automation in the management of conviction data as in Germany and Australia reduce the burden on the court and administration and increase the transparency of the system..

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4.Code penale della Republica Italiana

5.Bundeszentralregistergesetz (BZRG) dated 18. März 1971 (BGBl. I, p. 243), §§ 45-49. [German Federal Law on the Central Criminal Registry]

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