



Research Article

ISSUES OF DEVELOPMENT OF THE AMNESTY INSTITUTION IN UZBEKISTAN

Submission Date: July 15, 2022, **Accepted Date:** July 25, 2022,

Published Date: July 30, 2022 |

Crossref doi: <https://doi.org/10.37547/tajpslc/volume04issue07-04>

Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Bektursun Murodkosimov

Senior Consultant, Research Institute of Legal Policy under the Ministry of Justice of the Republic of Uzbekistan

ABSTRACT

The author of this article examines the historical progression of the pardon and amnesty system in Uzbekistan. On the basis of the experience of other countries, its distinctive features are compared and recommendations are given for enhancing the amnesty institution.

KEYWORDS

Amnesty and pardon, general amnesty, amnesty procedure, amnesty act, a political crime, complete and partial amnesty, prosecutor's request, amnesty subjects.

INTRODUCTION

The practical provision of universal and constitutional principles, such as the recognition of the highest value of life, freedom, honor, dignity, and other inalienable

human rights, is the basis of all reforms and renovations carried out in Uzbekistan.



Releasing convicts from punishment by means of amnesty or pardon, or replacing the punishment imposed on them with a lighter one, appears as a manifestation of the above traditions.

The Senate of the Oliy Majlis of the Republic of Uzbekistan has the sole jurisdiction to approve amnesty documents upon the presentation of the President of the Republic of Uzbekistan, in accordance with Clause 10 of Article 80 of the Constitution of the Republic of Uzbekistan.

*A total of 25 amnesty acts were announced, including 1 in 1991, 2 in 1992, 1 in 1995–2016, and 1 in 2017. From this point on, amnesty actions were proclaimed based on presidential decrees from 1991 to 2004 and based on judgments by the Oliy Majlis Senate from 2005 to 2016.

Likewise, according to the Republic of Uzbekistan's Constitution Article 93, paragraph 23, the President of the Republic of Uzbekistan has the authority to ask the Oliy Majlis Senate to approve papers granting amnesty and to pardon those who have been found guilty by a court.

More than a thousand prisoners have been released from their sentences in Uzbekistan during the past five years as a result of 14 amnesty decrees, and they now have the chance to rejoin their families and actively participate in the continuing changes. There were just 2 amnesty orders granted up till 2016.

Amnesty and pardon: on the example of the legislation of Uzbekistan

An amnesty act, which often offers complete or partial exemption from penalty once a year on a specific day, is known as a general pardon document for some categories of offences.

The amnesty act, on the other hand, is extremely helpful for people who have committed various crimes to avoid punishment or responsibility, but it is applied generally without taking into account the interests of the victims, that is, the material and moral harm caused to the victim, as well as other aspects. This may present possibilities to commit a crime, escape without doing any time in prison, show no remorse for one's conduct, pay no damages, and then carry on with committing crimes.

Additionally, a pardon is a decree issued by the President at any moment that allows for the release from punishment or other relief of prisoners who are serving out their terms and who honestly regret their acts and are resolved to turn their lives around.

The sorts of liability exemptions are listed in Chapter XII of the Criminal Code of the Republic of Uzbekistan, and Article 68 of this Code specifies that a person who has committed a crime may be excused from liability based on an amnesty act.

As a result, the specifics of applying the amnesty act at the trial stage are covered in great depth in Chapter 63 of the Criminal Procedure Code of the Republic of Uzbekistan.

A submission to the court on the application of the amnesty act to the person covered by the amnesty act is sent by the official of the responsible authority to the prosecutor, in accordance with Article 587 of the Criminal Procedure Code, if there are reasons for applying the amnesty act.

According to the Amnesty Act, the prosecutor must submit the petition to the court together with the evidence from the pre-investigation or the criminal case no later than five days after verifying the



reasonableness of the investigator's presentation and agreeing with it.

The district (city) court judge presiding over criminal cases must take the prosecutor's request into consideration no later than ten days after the criminal case was placed before the court.

Additionally, factors including how the amnesty act applies to a particular inmate, the repercussions of the crime the convict committed, the end of the correctional facility, his resolve to become better, and the payment of material and moral damages are considered.

International experience

Foreign nations also have amnesty and pardon institutions, which were decided based on the historical development of these nations and the requirement to construct these institutions.

In the Federal Republic of Germany, for instance, amnesty refers to a general release from the penalty for a number of offences. Amnesty must be enacted by a separate statute. In particular, the penalties for crimes and administrative offences committed prior to January 1, 1953, were repealed on the basis of the Law "On Exemption from Criminal Punishment" established in 1954.

Unlike a pardon, an amnesty can be given to anybody and is not conditional on a criminal conviction. Amnesty is a legal concept that is approved by the French Parliament but has no particular meaning in the French Republic. Every individual to whom the legislation applies is given amnesty[1].

In the Republic of Italy, the Parliament is responsible for granting amnesty. A statute must be approved by two-thirds of the members of both chambers of the

Italian Parliament in order to grant amnesty, as stated in Article 79 of the country's constitution[2].

The institution of amnesty, which is split into general and particular forms, is present in the Republic of Korea's legal system. Persons who have committed a crime but have not been charged may be awarded a general amnesty.

People who have been convicted of a crime are given a special amnesty. The President may pardon, lessen the severity of the sentence, or restore rights in instances specified by law, as per Article 79 of the Constitution of the Republic of Korea[3]. A universal amnesty cannot be given by the president without the National Assembly's (the Republic of Korea's parliament) consent.

Additionally, in accordance with Article 9 of the Law of the Republic of Korea "On Amnesty" the President grants a special amnesty upon the Minister of Justice's request[4].

A special pardon (pardon) is a legal concept recognized by the People's Republic of China, and under Article 80 of its Constitution, the President is authorized to issue special pardon decrees[5]. The question of a special amnesty will be discussed by the National People's Congress Standing Committee.

According to Philippine law, the president has the authority to pardon and grant amnesty. In particular, the President may grant amnesty with the support of the majority of Congress members in accordance with Article 7, Section 19 of the Constitution of the Republic of the Philippines[6].

A group of people who have committed a political crime may be given amnesty before or after being charged.



The State Duma's decision governs the Russian Federation's implementation of amnesty for citizens of the CIS (Commonwealth of Independent States) nations (Article 93 of the Constitution).

In the Russian Federation, the amnesty act is well publicized, although it is only proclaimed every 4-5 years, not annually. The most well-known one, which belonged to 35,000 prisoners, was made public in 2015 on the occasion of Patriotic War Victory Day[7].

The House of Representatives of Belarus has the authority to grant amnesty. The unique statute “On Amnesty” governs the amnesty process and its legal ramifications.

The most recent action taken by the Amnesty Institute in Belarus was revealed in 2020 on the occasion of the 75th anniversary of the Patriotic War's victory and involved some 11,500 convicts[8].

The Ukrainian Verkhovna Rada has the authority to grant amnesty. Whom amnesty is applied to and who it is not applied to is specified in the law on the creation of amnesty. The court makes individualized decisions regarding amnesty applications. The most recent development in Ukrainian media is The Amnesty Institute. On the occasion of the 30th anniversary of Ukraine's independence, 2021 was announced[9].

In Ukraine, the special legislation of October 1, 1996, “On the Application of Amnesty in Ukraine” is in effect[10]. Both complete and partial amnesty are mentioned in this statute. The entire discharge of the sentence imposed by the court on the individuals named in the applicable statute is referred to as full amnesty. The sentence imposed by the court is only partially lifted for the individuals included in the partial amnesty. Individual amnesty may be granted in conformity with this Law. Additionally, the Law

outlines the group of people to whom amnesty is not applicable. They specifically include those who have had their death sentence commuted to life in prison during the amnesty process and those who have been given that sentence;

- Those who have been convicted of serious and/or extremely serious intentional crimes, with the exception of cases of individual amnesty;
- And those who have been sentenced to life in prison;
- Persons found guilty of crimes that resulted in the deaths of two or more people;
- Persons convicted of intentional crimes;
- Persons found guilty of extremely serious crimes, provided they have not served two-thirds of the main sentence imposed by the court; persons found guilty of failing to make amends for the harm caused by the crime;
- Persons found guilty of failing to remove the harm brought about by the crime.

According to Article 92 of the Ukrainian Constitution, amnesty is declared by a statute passed by the Ukrainian Parliament (Ukrainian Rada).

Following the publication of the applicable amnesty announcement legislation and in accordance with its criteria and requirements, the court applies the amnesty act on an individual basis.

The court will consider any appeals made by the prisoner or his attorney on how the amnesty act is being applied.

Based on the prisoner's personal information obtained from the prison administration, the court decides whether or not to apply the amnesty act.



In the Kyrgyz Republic, a comparable special legal instrument is in effect. The terms "amnesty" and "amnesty procedure" are specifically defined in two laws from June 14, 2002, titled "On the general principles of amnesty and pardon" [11], and "On the principles of amnesty and the method for its application" [12] from January 20, 2017, respectively (the amnesty provisions of the first law have become invalid).

The Kyrgyz Republic's special legislation describes the idea of an amnesty act, its kinds (full and partial), the scope of its application, and the scope of inmates to whom it cannot be applied, similarly to the special law of Ukraine.

The following groups of people are specifically exempt from the amnesty act:

- 1) Those to whom the previous amnesty act or amnesty was applied;
- 2) Those who have been given life sentences;
- 3) Those who have committed two or more crimes, provided that at least one of them does not fall under the amnesty law;
- 4) Those who have been subject to coercive educational or medical measures;
- 5) Serious violators of the punishment system.

The statute itself specifies the sorts of offenses that do not qualify for amnesty (42 types of crimes in total).

The court is the sole entity to whom the amnesty statute will be applied. The prosecutor is required to attend the court hearing for the amnesty act application case.

There are no particular amnesty laws in force in Turkmenistan, Tajikistan, Kazakhstan, or Azerbaijan. Nevertheless, the proclamation of amnesty is only

made in connection with a momentous occasion and is approved as part of the pertinent statute.

For instance, an amnesty was declared in accordance with the statute of the Republic of Tajikistan "On General Amnesty" [13] of August 29, 2001, in honor of the 10th anniversary of the Republic's Independence. The law's paragraphs 1 through 5 are entirely devoted to the categories of inmates that are subject to the amnesty act, while paragraphs 6 and 7 describe the categories of convicts whose criminal cases are terminated and the amount of their sentences that are reduced as a result of the amnesty.

The kinds of inmates who are not eligible for amnesty are listed in the statute itself. Investigative, preliminary inquiry, enforcement, judicial, and non-custodial enforcement organizations are all tasked with upholding the law. The application of amnesty does not relieve a person from liability for damages brought on by a crime, according to clause 19 of the statute. Similar to this, whenever an amnesty is announced, special laws are also passed in Azerbaijan, Tajikistan, and Turkmenistan.

CONCLUSION

The following suggestions are made to enhance how the Amnesty Act is used based on the experiences of other nations:

1. The application of an amnesty institution with general and particular categories is recommended. It is suggested that those who have committed crimes but have not been put on trial receive a general amnesty, and that those who have been found guilty of crimes and received court sentences receive a specific amnesty.
2. In order to control this field when our nation adopts the amnesty act, a separate draft legislation



“On the application of amnesty” must be created. It is suitable to include the following in the framework of this law:

- a) The exclusion of the amnesty act from applying to specific individuals, such as the exclusion of the amnesty act from applying to those who have committed crimes against officialdom, corruption, the state, and victims who have not paid for the harm caused by the crime;
 - b) It is recommended that certain categories (types) of crimes, such as those that resulted in human death, deliberate homicide in aggravated conditions, and categories of crimes relating to public safety, not be subject to the amnesty act.
3. A comprehensive legal framework for the application of amnesty should be defined in a separate statute. In this situation, it is important to understand the amnesty act's duration, the rights and responsibilities of the organizations in charge of carrying it out (such as the inquiry, investigation, court, prisons, and military facilities), as well as procedural terms and the process for creating and submitting pertinent procedural documents.
4. In order to prevent corruption and arbitrariness in the application of the amnesty act and to conduct the amnesty process objectively and transparently, it is preferable that the Ombudsman, the media, the public, and representatives of international organizations have the right to independently monitor the application of the amnesty document.
5. The act of amnesty shall only be made public by a separate statute passed by the Oliy Majlis' Legislative Chamber. The statute must also be a direct (direct) implementation act and free of unclear provisions that might be construed in different ways by the Supreme Court Plenary, attorneys, or other jurists.

Amnesty subjects (convicts, those who defend their interests in criminal cases, procedural status rights and obligations, regulatory measures, and other issues in the event of a dispute arising from the amnesty act should be disclosed) and amnesty-applying agencies, their rights and obligations, are all clearly stated in the amnesty act in the form of a law. It also states its type, validity period, categories of crimes to which it is applied, situations in which amnesty.

6. It is appropriate to create a specific draft legislation “On the Basis and Principles of Amnesty” and specify in detail the concerns comparable to the content of the aforementioned suggested “Amnesty Application” law in order to legally govern the amnesty process in our nation.

REFERENCES

1. <https://www.service-public.fr/particuliers/vosdroits/F779>
2. https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf
3. https://elaw.klri.re.kr/eng_service/lawView.do?hseq=1&lang=KOR
4. https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=46755&type=part&key=9
5. <http://www.npc.gov.cn/englishnpc/constitutionn2019/201911/1f65146fb6104dd3a2793875d19b5b29.shtml>
6. <https://www.officialgazette.gov.ph/constitutions/1987constitution/#article-vii>
7. <https://www.dissercat.com/content/pravovoi-mekhanizm-realizatsii-amnistii-v-rossiiskoi-federatsii-i-sotsialnye-posledstviya>
8. <https://www.belta.by/society/view/v-belarusi-bolee-11-tys-chelovek-popali-pod-amnistiju-v-svjazi-s-75-letiem-pobedy-418542-2020/>



9. https://jurliga.ligazakon.net/ru/news/209519_a_mnistiya-po-sluchayu-30-y-godovshchiny-nezavisimosti-ukrainy-proekt-prinyat-za-osnovu
10. Criminal Code of Ukraine dated April 5, 2001 No. 2341-III. Access mode: <http://meget.kiev.ua/kodeks/ugolovniy-kodeks/razdel-9/> (accessed 15.09.2017). Law of Ukraine dated October 1, 1996 No. 392/96-BP “On the application of amnesty in Ukraine”. Access mode: http://base.spinform.ru/show_doc.fwx?rgn=9415 (accessed 09/15/2017)
11. <http://cbd.minjust.gov.kg/act/view/ru-ru/1057?cl=ru-ru>
12. <http://cbd.minjust.gov.kg/act/view/ru-ru/111514?cl=ru-ru>
13. <http://ncz.tj/content>

