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CRIMINAL CODE OF THE KYRGYZ REPUBLIC

of February 2, 2017 No. 19

(as amended on 13-11-2020)

Accepted by Jogorku Kenesh of the Kyrgyz Republic on December 22, 2016

General part

Section I. Penal statute

Chapter 1. Penal statute, its purposes and principles

Article 1. Penal statute and its purposes

1. The penal statute of the Kyrgyz Republic consists of of this Code based on the Constitution of the Kyrgyz Republic, the conventional principles of international law and regulations, and also the international treaties which came in the procedure established by the law into force whose participant is the Kyrgyz Republic (further - the international agreements).

2. Other legal acts,

providing criminal liability for crimes, are subject to application after their inclusion in this Code.

3. The purposes of this Code are protection of the rights and personal freedoms, societies, the states and safety of mankind from criminal encroachments, the prevention of crimes, and also recovery of the justice broken by crime.

Article 2. Principle of legality

Crime of act and its punishability, and also other criminal consequence in law are determined only by this Code.

Article 3. Principle of legal definiteness

1. Legal definiteness means possibility of exact establishment by this Code of the basis for criminal prosecution for crime, and also all signs of actus reus.

2. The penal statute shall determine accurately and clearly punishable offense (action or failure to act) and is not subject to extensive interpretation.

3. Application of the penal statute by analogy is forbidden.

Article 4. Principle of equality of citizens before the law

Persons who made the acts provided by this Code are equal before the law and races, language, disability, ethnic origin, religion, age, political or other convictions, education, origin, property or other status, and also other circumstances which can be the basis for discrimination are subject to criminal

liability irrespective of floor.

Article 5. Principle of fault

1. Person is subject to criminal liability only for those actions (failure to act) and the effects which were caused their making concerning which his guilt is ascertained.

2. Nobody can be found guilty of crime execution and will subject to criminal penalty until his guilt is proved legally and established by the conviction of court which took legal effect.

Article 6. Concept of justice

1. The punishment and other measures of criminal law action applied to person who made the act provided by this Code shall correspond to weight of crime, and also circumstances of its making.

2. Nobody can be repeatedly brought to trial for the same crime or offense.

Article 7. Principle of individualization of criminal liability and punishment

In case of the solution of question of criminal prosecution and assignment of punishment the court shall consider nature and severity of the committed crime, motives and the purposes of deeds, the identity of the guilty person, the extent of damage suffered, circumstance which commute and aggravate penalty, opinion of the victim and to motivate the chosen measure of punishment in sentence.

Article 8. Principle of personal nature of criminal liability and punishment

Only person who is intentional is subject to criminal liability and punishment for crime or on imprudence made the act provided by this Code.

Article 9. Principle of humanity

1. This Code provides protection of the personality, his life and health, honor and advantage, immunity and safety as the highest social values.

2. To person who committed crime, the court imposes the penalty necessary and sufficient for the purpose of its correction, resocialization and the prevention of making of new crimes, and also for the purpose of recovery of social justice. Punishment and other measures of criminal law action shall not inflict physical suffering or degrade human dignity.

3. Changes which unreasonably toughen punishability and other criminal consequence in law of the acts provided by it cannot be made to this Code.

Article 10. Principle of inevitability of criminal liability

Person who made the act provided by this Code is subject to punishment and (or) other measures of criminal law action. Release from criminal liability, punishment or its serving, and also replacement of punishment to softer are allowed only in the cases provided by this Code.

Chapter 2. Limits of action of the penal statute

Article 11. Action of the penal statute in time

1. Crime and punishability of act are determined by the law existing during making of this act.
2. Time of crime execution time of committing by person of the action provided by the law or failure to act is recognized.

Article 12. Retroactive effect of the penal statute in time

1. The law canceling crime of act or mitigating criminal consequence in law of criminal action has retroactive effect in time, that is extends to persons who made the corresponding act to the introduction of such law in force including to the persons serving sentence or who left it.
2. The law establishing crime of act or toughening criminal consequence in law of criminal action has no retroactive effect.
3. The law which is partially mitigating and partially toughening act criminal consequence in law has retroactive effect in time only in that part which mitigates these effects.
4. If since crime execution until adjudgement the penal statute changed repeatedly, the softest law is applied.
5. Enforcement powers of educational and medical nature are applied only based on the law existing during permission of case in court.

Article 13. Action of the penal statute concerning the crimes committed in the territory of the Kyrgyz Republic

1. Person who committed crime in the territory of the Kyrgyz Republic is subject to responsibility according to this Code.
2. The crime is recognized committed in the territory of the Kyrgyz Republic cases when it was:
 - 1) it is begun, ended or stopped in the territory of the Kyrgyz Republic;
 - 2) it is made in the territory of the Kyrgyz Republic, and effects came beyond its limits;
 - 3) is formed in total or along with other acts by crime, one of stages of which is made in the territory of the Kyrgyz Republic.
3. The question of criminal liability of diplomatic representatives of foreign states and other citizens who according to current laws and international treaties are incompetent to courts of the Kyrgyz Republic in case of making by these persons of crime in the territory of the Kyrgyz Republic, is allowed in the diplomatic way on the basis of rules of international law.

Article 14. Action of the penal statute concerning persons who committed crime outside the Kyrgyz Republic

The citizens of the Kyrgyz Republic and also who are constantly living in the Kyrgyz Republic of the stateless person, committed crime outside the Kyrgyz Republic are subject to responsibility according to this Code if they were not punished according to the court verdict of other state.

Article 15. Issue of persons who committed crime (extradition)

1. The citizens of the Kyrgyz Republic who committed crime in the territory of other state are not subject to issue.

2. The foreign citizens and persons without citizenship who committed crime outside the Kyrgyz Republic and being in its territory can be issued to other state for criminal prosecution or serving sentence if such issue is provided by the international treaty.

3. Cases when person cannot be issued to other state, are determined by the Code of penal procedure of the Kyrgyz Republic. The issue of criminal liability of such person is resolved according to this Code.

Article 16. Transfer of convicts for serving sentence

The foreign citizens who committed crime in the territory of the Kyrgyz Republic and condemned for it based on of this Code can be transferred for serving sentence to the state which citizens they are if such transfer is provided by the international treaty.

Article 17. Criminal consequence in law of condemnation of person outside the Kyrgyz Republic

Crime committing by person criminal consequence in law in the territory of other state have no criminal and legal value for the solution of question of criminal liability of this person for the act made in the territory of the Kyrgyz Republic if other is not provided by the international treaty or if the crime committed in the territory of other state did not infringe on interests of the Kyrgyz Republic.

Section II. Crime

Chapter 3. Concept and classification of crimes. Basis of responsibility for crime

Article 18. Concept of crime

1. Crime socially dangerous, guilty and punishable offense (action or failure to act) provided by the penal statute is recognized.

2. Action or failure to act though it is formal and falling under signs of the act provided by the Special part of this Code, but owing to insignificance not constituting public danger is not crime.

Article 19. Classification of crimes

1. Depending on the maximum term of deprivation of freedom, the punishment prescribed in quality are subdivided by Articles or parts of Articles of this Code, crime on less heavy, heavy and especially heavy.

2. Crimes for which the penalty which is not connected with imprisonment or in the form of imprisonment for the term of no more than five years can be imposed belong to less serious crimes.

3. Crimes for which custodial sanction for a period of five, but no more than ten years can be imposed belong to serious crimes.

4. Crimes for which custodial sanction for the term of over ten years or lifelong imprisonment can be imposed belong to especially serious crimes.

Article 20. The lasting crime

1. The lasting crime the act provided by the Special part of this Code whose making begins with action or failure to act which then is performed continuously is recognized.
2. The lasting crime is ended from the moment of cancellation or failure to act.

Article 21. Cumulative offenses

Cumulative offenses committing by person of two or more crimes is recognized. At the same time crimes for which person was already condemned based on the court verdict which took legal effect or for was justified or exempted from criminal liability, or for it is exempted from punishment are not considered.

Article 22. Rules of criminal and legal qualification in case of the competition of general and special regulations and the competition whole and parts

1. The regulation which provides responsibility for the same act is special, as general, but contains additional signs of actus reus which are not in general regulation.

2. If the act provided by Articles (parts of Articles) of this Code creates the competition of general and special regulations, then only Article (part of Article) of this Code containing special regulation is applied. Simultaneous application of Articles (parts of Articles) of this Code which provide general and corresponding special regulations is not allowed.

3. Article (part of Article) of this Code containing regulation which covers committed act in general has advantage in application before Article (part of Article) of this Code containing regulation which covers part of committed act. The regulation about completed crime over regulation about unfinished crime, regulation about execution of crime over regulation about partnership in it of the organizer, instigator or helper, regulation about divisible crime (the cumulative offenses considered by the law) over the regulation providing component of such crime has such advantage.

Article 23. Rules of criminal and legal qualification in case of the competition of two special regulations

1. Article (part of Article) of this Code which provides special regulation about crime with the mitigating signs has advantage in application before Article (part of Article) providing special regulation about crime with the aggravating (qualifying) signs.

2. From several Articles (parts of Articles) of this Code containing special regulations with the mitigating signs, in application Article (part of Article) which prescribes the mildest punishment has advantage.

3. From several Articles (parts of Articles) of this Code containing special regulations with the aggravating (qualifying) signs, in application Article (part of Article) of the Special part of this Code which prescribes the most stiff punishment has advantage.

4. In all other cases, except the cases provided by parts 1, 2 and 3 these Articles in case of the competition of two special regulations the regulation prescribing less stiff punishment, and in case of equal measures of punishment - regulation which application otherwise improves provision of person is applied.

Article 24. Special rules of criminal and legal qualification

1. In case as a result of the committed by person intentional or careless crime there came especially severe harm which is directly not specified as actus reus sign, qualification is performed under Article (part of Article) of the Special part of this Code providing the committed by person act and under the relevant article (part of Article) of Chapter of 21 of this Code providing responsibility for murder or negligent homicide, bringing to suicide or inducement to suicide. At the same time penalty is imposed taking into account rules, stipulated in Article the 78th of this Code.

2. In case act is committed by person in structure or for the benefit of organized group or the criminal organization, then taking into account provisions, stipulated in Article the 46th of this Code, qualification is performed under Article (part of Article) of the Special part of this Code providing the committed by person act and by the corresponding part of Articles 248 or 249 of this Code. At the same time penalty is imposed taking into account rules, stipulated in Article the 78th of this Code.

This provision is not applied in cases of attraction of person to criminal liability for the organization (creation) of illegal religious group, organized group, the criminal organization, paramilitary group, the extremist organization, and also for management by them or participation in them.

3. In case the crime is committed by the official with use of the official position, qualification is performed under Article (part of Article) of the Special part of this Code providing the committed by person act and by the corresponding part of article 320 of this Code. At the same time penalty is imposed taking into account rules, stipulated in Article the 78th of this Code.

This provision is not applied in cases when crime execution by the official as the special subject is directly specified as actus reus sign.

Article 25. Basis of criminal liability for crime

The basis of criminal liability for crime is making of the illegal act containing all signs of the actus reus provided by this Code.

Chapter 4. Person which is subject to criminal liability (the subject of crime)

Article 26. Subject of crime

1. Subject of crime is the physical responsible person who committed crime aged from whom according to this Code there comes criminal liability.

2. Special subject is person having the signs specified regarding 1 this Article and the committed crime which subject can be only certain person.

3. The legal entity is not subject of crime, criminal liability and punishment. Enforcement powers of criminal law action on the bases and in the limits provided by this Code can be applied to the legal entity.

Article 27. Diminished responsibility

1. Person who during making of the act provided by this Code was in diminished responsibility condition is not subject to criminal liability, that is could not realize the actual nature and harm of the action (failure to act) or to direct it owing to chronic sincere disease, temporary mental disturbance, weak-mindedness or other disease state of mentality.

2. Person who committed crime in sanity condition is not subject to punishment, but before removal of sentence by court got sick with the sincere disease depriving of it opportunity to realize the action (failure to act) or to direct it. Enforcement powers of medical nature by a court decision can be applied to such person, and after recovery such person can be subject to punishment.

Article 28. Limited sanity

1. Person can be recognized as limited imputed if owing to the mental disturbance which is available for it during crime execution could not realize fully the actual nature and public harm of the actions (failure to act) or direct them.

2. Recognition of person is limited by responsible can be the basis for application to its enforcement powers of medical nature, but does not exempt it from punishment.

Article 29. Criminal liability for the crime committed in state of intoxication

Person who committed crime in the state of intoxication caused by alcohol intake, drugs or other stupefying substances is subject to criminal liability.

Article 30. Age from which there comes criminal liability

1. Person to whom before crime execution sixteen years were performed is subject to criminal liability.

2. Person to whom before crime execution fourteen years were performed is subject to criminal liability according to this Code for murder (Article 130), causing severe harm to health (Article 138), causing less severe harm to health (Article 139), rape (Article 161), violent acts of sexual nature (Article 162), kidnapping (Article 170), human trafficking (Article 171), theft (Article 200), robbery (Article 201), robbery (Article 202), racketing (Article 203), stealing of the automotor-vehicle (Article 206), destruction or damage of alien property (part 2 Articles 210), the act of terrorism (parts 2 and 3 of Article 239), taking of the hostage (Article 244), plunder or racketing of firearms (Article 257), hooliganism (Article 266), illegal manufacture of drugs, psychotropic substances and their analogs with sales objective (Article 267), plunder or racketing of drugs or psychotropic substances (Article 271), reduction in worthlessness of vehicles or means of communication (Article 299).

Chapter 5. Wine

Article 31. Wine

1. Fault is the mental relation of person to the act (action or failure to act) provided by this Code made by it and its illegal effects. The intention or imprudence can be forms of fault.

2. Harmful effects are recognized harm of the personality, to society, the state or safety of mankind, and also creation of threat of its causing.

3. If in Article (part of Article) of the Special part of this Code it is directly not specified making of act on imprudence (levity or negligence), then responsibility comes only for intentional making of such act.

4. If in Article (part of Article) of the Special part of this Code it is directly not specified damnification on imprudence, then responsibility comes only for intentional damnification.

Article 32. Intentional crime

1. Intentional crime the illegal act made with direct or indirect intent is recognized.

2. The crime is recognized committed with direct intention if person realized criminal illegality of the act, expected possibility of damnification and wished its causing or provided inevitability of its causing.

3. The crime is recognized committed with indirect intent if person realized criminal illegality of the act, expected possibility of damnification, did not wish, but consciously allowed its causing (was indifferent to its causing).

Article 33. Careless crime

1. Careless crime the illegal act made by levity or negligence is recognized.

2. The crime is recognized committed by levity if person, without regarding the act as criminally illegal, nevertheless realized need to show care and expected possibility of damnification, but is groundless hoped that harm will not be done.

3. The crime is recognized committed due to negligence if person, because of negligence to need to show care, did not realize such need and did not expect possibility of damnification though it shall and could realize and expect them.

4. Need to show care can be caused by requirements of regulatory legal acts and (or) interests of other persons.

Article 34. Innocent damnification (case)

Harm is considered caused without fault if person did not realize nature and value of the action or failure to act, did not expect possibility of damnification and based on the circumstances of a matter shall not and (or) could not expect it.

Chapter 6. The ended and unfinished crime (crime execution stage)

Article 35. Completed crime

The crime having all signs of structure of the act provided by this Code is recognized ended.

Article 36. The continued crime

1. The crime provided by one of Articles (one of parts of Article) of this Code, including two or more homogeneous acts made with single intention is continued.

2. The continued crime is considered ended from the moment of making of the last act.

Article 37. Unfinished crime

Unfinished crime preparation for crime and attempted crime are recognized.

Article 38. Preparation for crime

1. Preparation for crime the committed by person finding or adaptation of means or crime instruments, finding of accomplices, collusion on crime execution or other intentional creation of conditions for crime execution are recognized intentionally if at the same time the crime was not finished by person for the reasons which are not depending on its will.

2. Criminal liability comes only for preparation for heavy or especially serious crime.

3. Criminal liability for preparation for crime comes under the same Article of this Code, as for completed crime, with reference to this Article.

Article 39. Attempted crime

1. Attempted crime committing by person with direct intention of the act (actions or failure to act) which is directly directed to crime execution, provided by the relevant article of the Special part of this Code is recognized if at the same time the crime was not finished by person for the reasons which are not depending on its will.

2. The attempted crime is considered ended if person performed all operations which considered necessary for finishing crime up to the end, but the crime was not ended for the reasons which are not depending on its will.

3. The attempted crime is unfinished if person did not make all actions which it considered necessary for finishing crime up to the end, for the reasons which are not depending on its will.

4. Criminal liability for attempted crime is determined by the relevant article of this Code providing responsibility for completed crime with reference to this Article.

Article 40. Voluntary refusal of crime execution

1. Voluntary refusal of crime the final termination-faced voluntarily preparations for crime or attempted crimes is recognized if at the same time it realized possibility of finishing crime up to the end.

2. Person who voluntarily refused crime execution is not subject to criminal liability. Person bears criminal liability only if the act which is actually made by it contains signs of other actus reus.

Chapter 7. Partnership in crime**Article 41. Concept of partnership**

Partnership in crime intentional joint participation in making of intentional crime of two or more subjects of crime is recognized.

Article 42. Performance of crime

Contractor is the person who directly committed crime or directly participating in its making together with other person (collaborator), and person who committed crime by means of other person which is not subject according to this Code of criminal liability owing to age, diminished responsibility or other circumstances is equal.

Article 43. Types of assisting offenders

1. Assisting offenders along with contractors organizers, instigators and helpers are recognized.

2. The organizer the person who organized crime execution or directing its execution is recognized, and the person who created organized group or the criminal organization or directing her is equal.

3. The instigator person which inclined other accomplice to crime execution is recognized.

4. The helper person which was consciously promoting councils, instructions, provision of means or removal of obstacles to crime execution by other accomplices is recognized, and person who was in advance promising to hide the criminal the tools or means of crime execution, traces of crime or objects got in the criminal way to acquire or sell such objects or to otherwise promote concealment of crime is equal.

5. In advance not promised concealment of the criminal, the tools or means of crime execution, traces of crime or objects got in the criminal way, either acquisition or sale of such objects is not partnership. Persons who made these acts are subject to criminal liability only in cases, stipulated in Article the 348th of this Code.

Article 44. Forms of partnership in crime

1. Group of persons are two or more persons who jointly committed crime without previous concert.

2. Group of persons by previous concert are two or more persons who jointly committed crime and at the same time in advance, that is prior to crime execution, agreed about its joint making.

3. Organized group is the group which is characterized by the following signs:

- 1) consists of several persons (three and more);
- 2) between all her participants there is previous concert about crime execution (crimes);
- 3) is steady consolidation;
- 4) the purpose is making of one or several crimes;
- 5) functions between participants are previously distributed.

4. The criminal organization is the group which is characterized by the following signs:

- 1) consists of several persons (four and more);
- 2) between all her participants there is previous concert about crime execution (crimes);
- 3) is steady and hierarchical consolidation;

- 4) the purpose is making of several heavy or especially serious crimes;
- 5) functions between participants are previously distributed.

Article 45. Responsibility of contractors and assisting offenders, made by group of persons and group of persons by previous concert

1. The contractor and other assisting offenders, made by group of persons and group of persons by previous concert, are subject to criminal liability only based on their personal fault in joint illegal act, taking into account nature and extent of participation of each of them in crime execution.

2. The contractor (collaborator) is subject to criminal liability under Article (part of Article) of the Special part of this Code providing the crime committed by him.

3. The organizer, the instigator and the helper are subject to criminal liability by the corresponding part of Article 43 and Article (part of Article) of the Special part of this Code which provide the crime committed by the contractor.

4. In case of making by the contractor of unfinished crime other accomplices are subject to criminal liability for partnership in unfinished crime.

5. Person who on the circumstances which are not depending on it did not manage to incline other persons to crime execution is subject to criminal liability for preparation for crime.

Article 46. Responsibility of organizers and participants of organized group and criminal organization

1. The person who created organized group or criminal society (the criminal organization) or directing them is subject to criminal liability for all crimes committed by organized group or the criminal organization if they were covered by its intention.

2. Other participants of organized group or the criminal organization are subject to criminal liability for crimes, in preparation or making of which they participated, irrespective of role which was carried out in crime by each of them if they were covered by their intention and entered circle of the purposes of creation of organized group or the criminal organization.

3. Special rules of qualification of the crimes committed in structure or for the benefit of organized group or the criminal organization are stipulated in Clause 24 of this Code.

Article 47. Excess of the principal offender

Excess of the contractor making by the principal offender which goes beyond the arrangement of accomplices and is not covered by their intention is recognized.

Article 48. Voluntary refusal of assisting offenders

1. In case of voluntary refusal of crime execution the contractor (collaborator) is not subject to criminal liability in the presence of conditions, stipulated in Article the 40th of this Code. In this case other accomplices are subject to criminal liability for preparation for that crime or attempt at that crime which making the contractor voluntarily refused.

2. The organizer, the instigator or the helper are not exposed to criminal prosecution in case of voluntary refusal if they prevented crime execution or timely notified relevant organs of the government on the preparing or committed crime. Voluntary refusal of the helper is also non-presentation by it of means or tools of crime execution or not removal of obstacles to crime execution.

3. In case of voluntary refusal any of accomplices the contractor is subject to criminal liability for preparation for crime or attempted crime, depending on on what of these stages its act was interrupted.

Section III. The acts which are not crime

Chapter 8. The circumstances excluding criminal illegality of act

Article 49. Justifiable defense

1. Damnification to the encroaching person in condition of justifiable defense is not crime, that is in case of protection of the personality, property and the rights of defending or other persons protected by the law of interests of society or state from socially dangerous encroachment if this encroachment was integrated to violence, life-threatening and health of the defending or other person, or to direct threat of application of such violence.

2. Protection against the encroachment which is not integrated to violence, life-threatening and health of the defending or other person or with direct threat of application of such violence, and also protection against infringement of occupancy of someone else's property are lawful if at the same time exceeding of limits of justifiable defense, that is the intentional actions obviously not corresponding to nature and danger of encroachment was not allowed.

3. Exceeding of limits of justifiable defense obvious discrepancy of protection to nature and degree of public danger of encroachment therefore encroaching obviously excessive, not caused by situation, severe harm is caused is recognized.

4. Are not exceeding of limits of justifiable defense of action of the defending person if this person owing to unexpectedness of encroachment could not estimate objectively degree and nature of danger of attack. Causing at the same time to the encroaching person of the bodily harms including which entailed his death in connection with unexpected attack or because of imprudence does not attract criminal liability.

5. Are not exceeding of limits of justifiable defense of action of the defending person in case of protection against illegal and violent penetration of the encroaching face into the dwelling made against the will of living (staying) in it on legal causes person, with causing to the forward of the bodily harms including which entailed his death.

6. Irrespective of weight of the harm done encroaching is also not exceeding of limits of justifiable defense and does not attract criminal liability use of weapons or any other means or the tool for:

- 1) protection against attack of the armed individual;
- 2) protection against group attack.

Group attack in this Article attack of two and more persons, except for attacks of women with strong indications of pregnancy or persons who are obviously juveniles is considered.

7. Provisions of this Article equally extend to all persons irrespective of their professional or other special training and official position, and also irrespective of opportunity to avoid socially dangerous encroachment or to ask for the help other persons or authorities.

Article 50. Emergency

1. Causing-faced harm to the right protected interests in emergency condition, that is for elimination of the danger menacing to the personality and the rights of this person or other persons, to interests of society, state or mankind if this danger could not be under these circumstances eliminated with other means and if the damage suffered is less considerable, than prevented is not crime.