

# The Concept Of Amnesty Act And Its Difference From Pardon

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**Annotation:** Amnesty Act is to provide an opportunity for a certain category of persons who have committed a crime to recover morally without the use of criminal justice measures, or to alleviate the condition of persons for whom such measures have been applied. The goal envisaged from the adoption of the amnesty act is, above all, the implementation of the expression of the principle of humanism in the state and society. Misapplication of amnesty can cause severe consequences for the individual and society. The insufficient legal regulation of this institution presents various difficulties in the practical application of the Amnesty Act. The article contains opinions on the concept of the amnesty act, its aspects different from pardons.

**Keywords:** concept of amnesty act, pardon, crime, institution, law, legal order, category, sentence, punishment, policy, person

Amnesty and pardon are considered to be among the institutions that cause controversy in criminal professorial law<sup>1</sup>.

Amnesty and pardon are different categories. Some scientists attribute the main difference between the amnesty and avf categories to their normative character<sup>2</sup>.

A.M.Balafendiev, K.Mirzadzhanov, on the other hand, believe that Amnesty is an organizational measure used by the state based on regulatory documents<sup>3</sup>. The application of amnesty acts is in accordance with the objectives of criminal court proceedings<sup>4</sup>.

Legal scholar Q.Mirzazhonov believes that pardons and amnesty are seen as a means of influencing the Hulk, which leads to the fact that people in the future refuse

<sup>1</sup> <https://www.penalreform.org/blog>.

<sup>2</sup> Азимова Г.А. Ишмухаметов Я.М. Юридическая природа амнистии и помилования. Их место и структура в Российского права. Экономика и социум. №12 (31) 2016.

<sup>3</sup> Балафендиев А.М. Социально-правовое назначение института амнистии. Вестник экономики, права и социологии, 2012, № 1, Право. <http://vestnykeps.ru/0112/38.pdf>.

<sup>4</sup> Миразов Д.М. Обеспечение и защита конституционных прав личности при воспроизведении обстановки совершения преступления//Конституция ва фуқаролик жамиятини шакллантиришнинг долзарб муаммолари: Республика илмий-назарий конференция материаллари (2002 йил 14 ноябрь). –Т., 2003.– С.215.

to commit a crime, regret, lose as much as possible the negative consequences of criminal activity, as well as go on the path of respect for law and society<sup>5</sup>.

S.V. Avdeev believes that the application of amnesty is considered the authority of the supreme body of the government, amnesty is the attitude of criminal law for crimes committed by certain persons until it is adopted, by its application the state considers criminal punishment for persons who committed a particular crime, abolishing criminal harassment<sup>6</sup>.

Similar opinions were expressed by jurist Sh. It is also promoted by Gayberdiev. It classifies the difference between amnesty and pardon by the following criteria:

First of all, a pardon is an exemption from punishment for certain individuals, taking into account the information that characterizes their personality (age, State of health, marital status). Amnesty is declared to general categories, not specific individuals.

Secondly, a pardon - only a sentence is issued to convicts who have been sentenced by a court verdict. Amnesty - can be applied at any stage of the criminal process - at the initial stage of Investigation, inquiry, pre-investigation examination, and even at the stage of triggering a criminal case.

Thirdly, according to Article 93 of the Constitution of the Republic of Uzbekistan, pardons are declared only by the President. Amnesty Act - promulgated by the Senate of the Supreme Assembly according to the presentation of the President.

Fourth, the issue of the application of amnesty acts is considered by law enforcement agencies and penal institutions and courts. As of 2008, the final decision regarding the application of the amnesty act has only been set by the courts to issue. The application of pardons is decided by the special commission on pardons under the president of the Republic of Uzbekistan.

Fifth, who will apply it to after the release of the amnesty act will be far to resolve the issue and will involve many organizational processes. The use of pardons, however, does not require much time and order. It is performed immediately upon admission, for which it is not necessary to go through separate stages again<sup>7</sup>.

In interpreting the concept of Amnesty, different scholars have articulated different concepts.

Amnesty (greek *αμνηστια* - forget, forgive may refer to) - applies to persons who have committed a crime by a decision of the state body, in essence means a complete or partial release from punishment, replacement of punishment with a lighter one, or termination of criminal prosecution<sup>8</sup>.

<sup>5</sup> Мирзажонов К. Амнистия, помилование и уголовно-правовая политика Республики Узбекистан. –Т.: Изд. “Адолат”. 2015.

<sup>6</sup> Авдеев С.В. Правая природа акта об амнистии. Вестник Самарской гуманитарной академии. Серия “Право” 2017 № 1-2 (19).

<sup>7</sup> Гайбердиев Ш. Мустақиллик ва афв. Афвнинг амнистиядан фарқли жиҳатлари. 2018. <http://sud.uz/mustaqillik>.

<sup>8</sup> Додонов В. Н. Сравнительное уголовное право. Общая часть / под общ. ред. С. П. Щербы. — М.: Юрлитинформ, 2009. — С. 401. — 448 с.

Amnesty is an act produced by the supreme authority, partially or completely exempting certain categories of persons from judicial punishment<sup>9</sup>.

Amnesty is an act adopted for the purpose of implementing the principle of humanism and compassion, in which a certain circle of persons is applied and provides for the release from criminal punishment<sup>10</sup>.

The concept of Amnesty: A) if amnesty provides for legal measures leading to the Prohibition of further criminal prosecution of a crime committed before the announcement and, in some cases, to the ban of civil proceedings against certain categories of persons or persons; B) the abolition of criminal liability established before it.<sup>11</sup>

Based on the above, we believe that the amnesty act is to give a chance for a certain category of persons who have committed a crime to recover morally without the use of criminal justice measures, or to alleviate the condition of persons for whom such measures have been applied.

The goal envisaged from the adoption of the amnesty act is, above all, the implementation of the expression of the principle of humanism in the state and society.

The ideas mentioned above are directed towards noble goals, such as knowing the self-worth of individuals who commit a certain type of wrongdoing and self-control so that they do not commit any further wrongdoing.

With the help of amnesty, the state can in any case quickly manage the situation that is happening in the country. Finally, the application of amnesty acts is in accordance with the objectives of criminal court proceedings.

The concept of Amnesty Institute is not fully revealed in the Criminal Procedure legislation of the Republic of Uzbekistan. In this case, the issue of accepting the Amnesty Act covers the adoption of a conviction or the termination of a criminal case in accordance with the CPC of the Republic of Uzbekistan in determining its procedural actions.

The amnesty act is the highest form of manifestation of humanitarian principles in relation to a person who is actually found guilty of committing a crime<sup>12</sup>.

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<sup>9</sup> Мокина М.Н. Амнистия. «Молодой учёный». № 6 (86). Март, 2015 г. С. 499-500

<sup>10</sup> Закон Кыргызской Республики. Об основах амнистии и порядке ее применения. от 20 января 2017 года № 7. <http://cbd.minjust.gov.kg/act/view/ru-ru/111514>.

<sup>11</sup> Механизмы обеспечения верховенства права для постконфликтных государств Амнистии. Организация Объединенных Наций. Нью-Йорк и Женева, 2009 год. С.43.

<sup>12</sup> Е.Авдеева. Правовая природа помилования: как ее правильно толковать? Статья. 2016. <https://www.advgazeta.ru/mneniya/pravovaya-priroda-pomilovaniya-kak-ee-pravilno-tolkovat/>

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