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# OPTIONAL CHARACTERISTICS RELATED TO THE CITIZENSHIP OF THE OFFENDER

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### **Abstract**

The article explores, from both theoretical and practical perspectives, the characteristics associated with an offender's citizenship. The author notes that the expansion of international migration, tourism, and labor mobility has led to an increase in crimes committed with the participation of foreign nationals and stateless persons. An analysis of judicial practice reveals that, in certain cases, courts in our country have imposed sentences guided by the principles of liberalism and humanism. At the same time, when determining punishment for foreign citizens, special significance is attached to the norms of international law, as well as to the principles of extraterritoriality and immunity. Having identified the existing challenges, the author emphasizes the need to address legislative gaps concerning the criminal liability of foreign nationals and stateless persons, and puts forward proposals aimed at improving a number of provisions of the Criminal Code.

**Keywords:** Subject of crime, citizenship, foreign national, stateless person, international law, criminal liability, immunity, extraterritoriality, judicial practice, liberal approach.

### **Introduction**

As Uzbekistan is becoming increasingly open to the international community and as favorable conditions are being created for the development of tourism, the number of foreign citizens visiting our country continues to grow. According



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to statistical data, in 2024, a total of 8.2 million foreign citizens visited Uzbekistan for tourism purposes[1].

In the global world, due to global migration, tourism, education, labor relations, and other factors, the presence of foreign nationals and stateless persons in foreign countries has become widespread. Naturally, these factors may also lead to an increase in the number of crimes committed by foreigners.

The presence of individuals abroad does not always involve lawful and exemplary behavior, nor adherence to local laws, rules, and traditions. When foreign citizens commit crimes, appropriate measures must be taken against them in accordance with national legislation.

According to Article 11 of the Criminal Code, “A person who commits a crime on the territory of Uzbekistan shall be held liable under this Code.

A deed:

- a) shall be considered committed in Uzbekistan if it is initiated, completed, or terminated within the territory of Uzbekistan;
- b) shall be considered committed in Uzbekistan if it is carried out abroad but its criminal consequence occurs within Uzbekistan;
- c) shall be considered committed in Uzbekistan if it is carried out in Uzbekistan but its criminal consequence occurs abroad;
- d) shall be considered committed in Uzbekistan if it consists of several acts or is committed together with other acts and at least one part of it occurs within Uzbekistan.

If a crime is committed outside Uzbekistan on an aircraft, sea, or river vessel operating under the flag of Uzbekistan or registered at a port of Uzbekistan and located in a place not considered the territory of a foreign state, liability shall be imposed under this Code.

If, in accordance with existing laws, international treaties, or agreements, the issue of the liability of foreign citizens does not fall under the jurisdiction of the courts of the Republic of Uzbekistan, but the crime is committed on the territory of Uzbekistan, the matter shall be resolved in accordance with international law norms[2].”



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Certain provisions of the Criminal Code specify that only foreign citizens may serve as subjects of certain crimes. For example, espionage (Article 160) may be committed by a foreign citizen or a stateless person.

Additionally, some norms of the Criminal Code contain special provisions regarding foreign citizens. For example, compulsory community service and restriction of liberty may not be imposed on foreign nationals.

Foreign citizens and stateless persons who enter Uzbekistan without properly completing entry documents for the purpose of seeking political asylum may be exempted from liability for illegal entry into or exit from Uzbekistan.

According to the Law “On the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Uzbekistan,”

“A foreign citizen is a person who is not a citizen of the Republic of Uzbekistan and possesses evidence of citizenship of another state.

A stateless person is a person who is not a citizen of Uzbekistan and does not possess evidence of citizenship of any foreign state”[3].

Foreign citizens and stateless persons located in Uzbekistan must:

- comply with the Constitution, laws, and other regulatory acts of the Republic of Uzbekistan;
- respect the rights, freedoms, honor, and dignity of citizens of Uzbekistan and other persons residing in Uzbekistan;
- preserve the historical, spiritual, and cultural heritage of the Uzbek people;
- treat the natural environment with care.

Citizenship refers to a person’s legal affiliation with a state and encompasses both rights and obligations. International law ensures a person’s inherent connection with the state of their citizenship, including their rights and obligations while present in another country, primarily the right to receive assistance from their home state. This is reflected in consular treaties and conventions that grant foreign citizens the right to meet with diplomatic and consular representatives. The fact that a foreign citizen resides in Uzbekistan does not make them stateless; they remain citizens of their home country. Furthermore, regardless of their level of knowledge of Uzbekistan’s legal system, all foreign citizens within the territory of Uzbekistan must obey the laws of the country[4].



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According to Article 6 of the Universal Declaration of Human Rights, everyone has the right to recognition everywhere as a person before the law[5].

Scholars of criminal law in Uzbekistan have not studied the issue of criminal liability of foreign nationals and stateless persons as a separate scientific subject. Therefore, to explore this matter, we primarily refer to the works of foreign scholars.

Gerhard Werle analyzes the principles and practices of international criminal law by comparing the criminal law systems of various countries. His work explores the historical development of international criminal law, the definitions and legal foundations of genocide, crimes against humanity, war crimes, aggression, individual criminal responsibility, issues related to superior orders, and the interaction of national and international legal systems[6].

Italian scholar Antonio Cassese analyzes the principle of complementarity and the relationship between national and international law, especially in the context of the jurisdiction of the International Criminal Court, while focusing on cooperation between national legal systems and international bodies[7].

According to V.I. Pikin, the main problem in determining the criminal liability of foreign citizens and stateless persons is the insufficient level of research in this area, as well as the lack of a clear position in legislation and international law. This necessitates further thorough study of numerous aspects related to the liability of foreigners and stateless individuals[8].

A.A. Lakeyev classifies subjects of criminal law into three categories: “general, special, and individual. The general status includes rights and duties established by law; the special status includes offenders and victims; the individual status contains norms applicable only to specific subjects (e.g., foreign citizens and stateless persons)”[9].

I.N. Arkhiptsev identifies several factors contributing to crimes committed by foreign nationals and stateless persons, such as:

- political and interethnic conflicts in CIS countries leading to mass migration;
- inadequate legal regulation of market relations;
- insufficient legislative regulation of relations between the state and foreign nationals;
- lack of psychological preparedness for conflict situations;



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- weak state control over migration processes;
- demographic and social characteristics of foreign nationals;
- lack of optimal conditions for their adaptation[10].

According to M. Usmonaliyev, individuals who enjoy personal inviolability and criminal jurisdiction immunity include heads of diplomatic missions, counselors, trade representatives, military attachés, and their family members who are not citizens of Uzbekistan. Consuls, diplomatic staff, service personnel, representatives of international organizations, and government delegations also enjoy immunity. However, this immunity applies only to official duties; it does not exempt them from liability for acts outside their official functions[11].

Although literature often claims that foreign citizens mainly commit espionage (Art. 160) and illegal entry crimes, judicial practice shows that the range of crimes committed by foreigners in Uzbekistan is much broader.

A study of 500 criminal cases found that optional characteristics related to the offender's citizenship appeared in 7.3% of cases. We examined not espionage cases, but crimes committed by foreign nationals and stateless persons charged under other articles of the Criminal Code. Their distribution by articles was:

- Illegal exit from or entry into Uzbekistan (Art. 223): 50%
- Smuggling (Art. 246): 20%
- Illegal actions involving unmanned aerial vehicles (Art. 2444): 20%
- Illegal drug-related activities (Art. 273): 10%

All convicted individuals were men: 90% foreign citizens, 10% stateless persons.

Citizenship breakdown:

- Tajikistan: 22%
- Afghanistan: 20%
- Kyrgyzstan: 17%
- Kazakhstan: 12%
- Russia: 15%
- Others: 14%

Age breakdown:

- 18–30: 10%
- 31–40: 20%



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- 41–50: 40%
- 51–60: 20%
- 60+: 10%

**Penalties imposed:**

- release from punishment under Article 70: 20%
- fine under Article 57 (not stipulated by sanction): 50%
- fine within the sanction: 20%
- imprisonment below the minimum (Art. 57): 10%

These figures demonstrate a more liberal and humane approach in assigning penalties to foreign nationals compared to citizens of Uzbekistan. However, cases where fines were imposed for crimes such as smuggling (Art. 246 part 2) and large-scale drug trafficking attempts (Art. 273 part 5), despite sanctions requiring long-term imprisonment, should be critically reviewed.

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