

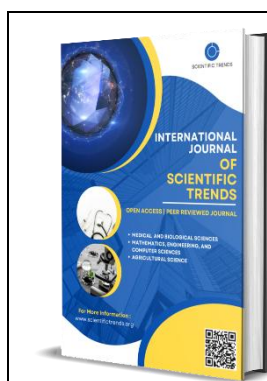
The Significance of The Titles of Laws in Enhancing Legal Consciousness and Legal Culture

Shuhrat Kochimov

Professor, Tashkent State University of Law,

Doctor of Philological Sciences

Tel.: +998 90 920 47 45



Abstract

The formation of legal consciousness and legal culture in any society depends on a number of factors. In this regard, it is particularly important that the title of a law correspond to its substance, that it be derived from the content of the law, and that it be formulated in simple and comprehensible language accessible to the public. Legal scholar V. M. Savitskiy emphasizes: “The full perfection of laws begins, first and foremost, with the very first letter of their title. The title of a law—its ‘face’—must fully satisfy this requirement, because it serves as a signpost guiding citizens.”

Keywords:

Introduction

Indeed, as V. M. Savitskiy observes, essential conditions for building a law-governed society can be created only when every citizen living in that society clearly understands what each law concerns, its content and substance, and the types of social relations it regulates.

Accordingly, laws adopted in a country are binding on everyone living in that society, regardless of nationality, age, sex, or occupation. When an ordinary person encounters a complex legal issue in everyday life, the first question is usually which law addresses the matter, and the search therefore begins with the title of the relevant law. If the required information cannot be found in the law selected on the basis of its title, various difficulties arise. For example, when a citizen seeks information on who may be admitted to citizenship of the Republic of Uzbekistan and under what conditions, many people may instinctively turn to the Civil Code. In fact, these matters are regulated not by the Civil Code but by the Law “On Citizenship of the Republic of Uzbekistan.” Such discrepancies may weaken citizens’ confidence in and positive attitude toward the law and, to a certain extent, impede the development of legal consciousness.

Therefore, in any society, it is of considerable socio-political importance that laws be given precise, simple, and clear titles that reflect their content and substance and take public interests into account. For this reason, developed foreign jurisdictions pay particular attention to the naming of legislation. In England, for example, a special law providing for the assignment of short titles

to statutes on the basis of their content was adopted as early as 1896. It provided for the official designation of legislative acts by short titles.

At a time when the national legal system is developing and legislative drafting is acquiring increasing importance, the proper naming of laws has likewise become a significant issue.

The titles of most laws appropriately reflect their content and substance. In particular, the designation “Constitution of the Republic of Uzbekistan” for the fundamental charter of our independence is fully justified, given Uzbekistan’s integration into the international community, the widespread use of the term “Constitution” in many developed countries, and the international acceptance of this term.

Moreover, today in Uzbekistan, people of all ages—from children to the elderly—understand that the Constitution is the fundamental law of the country and that it represents the face and pride of the state.

Historically, this law was referred to in the 1920s and 1930s by such titles as “Fundamental Law,” “Principal Law,” and “Qonuni asosiy” (“Fundamental Law”), while from 1936 onward it came to be called the “Constitution.” The term “Constitution” fully conveys the content and substance of this law.

In general, the majority of contemporary laws adequately reflect their content and substance through their titles. Examples include the Labor Code, the Tax Code, the Housing Code, and the Family Code.

Following independence, a number of positive changes occurred in the naming of legislation, just as they did throughout the legal system as a whole. Certain titles that failed to accurately reflect the content of a law and had been translated word-for-word from Russian during the Soviet period were revised and brought into conformity with the substance of the relevant legislation. For example, prior to independence, the law establishing sanctions for administrative offenses was entitled the “Code on Administrative Offenses” (Ma’muriy huquqbuzarlik to’g’risidagi kodeks). This title was a literal translation of the Russian phrase Kodeks ob administrativnykh pravonarusheniyakh and could be understood as referring not to sanctions for administrative offenses, but rather to the commission of such offenses.

Even Russian legal scholars themselves have criticized such a title. V. M. Savitskiy writes: “This title does not indicate that the law contains legal rules on administrative penalties and their types, the bodies authorized to hear cases concerning administrative offenses, or the procedure for conducting proceedings in such cases.”¹

From this perspective, the adoption in 1994 of the “Code on Administrative Responsibility” in the Republic of Uzbekistan constituted one of the important steps in the formation of the national legislative system.

It should also be emphasized that during the Soviet period, and even in the early years of independence, some laws were titled in a form equivalent to “Law of the Republic of Uzbekistan About Land.” This was a literal translation of the Russian phrase Zakon Respubliki Uzbekistan o zemle. Such wording constituted a serious violation of the grammatical norms of Uzbek, the state language.

¹ Savitskiy, V. M. Yazyk protsessualnogo zakona [The Language of Procedural Law]. Moscow: Nauka, 1987, p. 122.

In recent years, owing to the determined efforts of the Oliy Majlis, the Parliament of Uzbekistan, such titles have been formulated in a complete and grammatically correct manner, for example, “Law of the Republic of Uzbekistan on Land.” Other examples include the Law of the Republic of Uzbekistan on Education and the Law of the Republic of Uzbekistan on the State Language.

At the same time, certain problematic aspects remain in the naming of laws, as many legal scholars have noted. Doctor of Law and Professor G‘. A. Abdumajidov, in his article “The Language of Law Is Becoming Uzbek,” specifically argues that the titles of certain laws do not fully express their content and substance, lack precision, and retain some terminology inherited from the Soviet period that does not adequately convey the essence of the matters regulated. He notes that these observations apply, among others, to the Criminal Code, the Criminal Procedure Code, the Penal Enforcement Code, and the Civil Code.²

Indeed, one of the significant problems in the contemporary national legislative system concerns the Uzbek title *Jinoyat kodeksi*, literally “Crime Code,” for the body of laws establishing punishments for criminal offenses. In Uzbek, *Jinoyat kodeksi* may be understood not as a collection of legal norms prescribing punishment for crimes, but rather as a “Code about Crimes” (*Kodeks o prestupleniyakh*). The title does not convey the principal legal norms contained in the Code, namely the sanctions prescribed for crimes and the types of such sanctions.

This title was translated literally from the Russian expression *Ugolovny kodeks* (“Criminal Code”). If the historical origin of the term *ugolovny* is examined, it can be traced in Old Russian to *u* (a prefix) + *golovny* and was associated with the meaning “murderer.” The form *golovny*, created with the Russian suffix *-n-*, was in turn related to *ot golova* and historically carried a meaning associated with a corpse whose head had been removed.

According to V. M. Savitskiy, the eleventh-century *Russkaya Pravda* contained the formulation: “to vir’vnuyu platiti, v’ chyei je vervi golova lezhit” if the murderer could not be found—that is, the monetary fine was to be paid by the community in whose territory the body of the deceased was found.

In the Novgorod Judicial Charter of 1471, homicide was referred to by the terms *golovshchina* and *pogolovshchina*. Later Russian historical sources used the word *golovnik* in the sense of “murderer.” The term *golovnik* did not denote the execution of an offender, but the offender himself—in other words, a “killer” or “beheader.”³

For this reason, in the early twentieth century, some Russian legal scholars objected to the designation *Ugolovny kodeks* when Soviet laws were first being named. In particular, legal scholar N. N. Polyanskiy proposed abandoning the titles *Ugolovny kodeks* and *Ugolovno-protsessualny kodeks*. In his view, the use of the term *ugolovny* in the titles of these laws represented an anachronism. He argued, first, that its etymology was degrading to human dignity and, second, that it failed to distinguish clearly between crime and punishment. N. N. Polyanskiy therefore recommended the title *Ulozhenie o prestupleniyakh i nakazaniyakh* (“Code on Crimes and Punishments”).

² Abdumajidov, G‘. A. “Qonun tili o‘zbekchalashmoqda” [The Language of Law Is Becoming Uzbek]. In *O‘zbek tilida xalqaro huquq atamallari* [International Legal Terms in the Uzbek Language]. Tashkent: JIDU, 1998, pp. 10–15.

³ Savitskiy, V. M. *Yazyk protsessualnogo zakona* [The Language of Procedural Law], p. 118.

N. N. Polyanskiy supported his proposal to rename the law by reference to the following explanation contained in the draft Ugolovnoye ulozheniye approved by the State Council in 1824: “Criminal punishments are those in which the matter concerns the head, that is, life—*diminutio capitis*. The life of every person in society has three dimensions: physical, political, and civil; the latter two are referred to as rights of status. Any punishment that directly diminishes or restricts the existence or status of a person is a criminal punishment.”⁴

Polyanskiy further noted that the term *ugolovnoye nakazaniye* (“criminal punishment”) was incorporated into the *Ulozhenie o nakazaniyakh ugovnykh i ispravitelnykh*, developed in 1845 and in force in Russia until the October Revolution, and he argued that the allegedly demeaning term *ugolovny* should thereafter be abandoned.

V. M. Savitskiy, however, disagreed with Polyanskiy. He argued that there were no grounds for abandoning the term *ugolovny* because the historical meaning of “beheader,” which Polyanskiy regarded as degrading, was unknown to most people and familiar only to specialists in legal history. Savitskiy maintained that the term had by then acquired the meaning “relating to crime” or “criminal.”⁵

Just as all phenomena in nature and society are subject to change, language also develops over time. Words that once existed in a language may become obsolete and fall out of use, or their original meanings may change and acquire new semantic content. For example, the term “code” originally meant “book” in Latin, whereas today it denotes a systematic collection of laws. Similarly, the term “passport” originally meant a “permit to enter a port” in Italian, while today it denotes a document certifying a person’s identity and citizenship.

Likewise, from the eleventh century until the end of the nineteenth century, the Russian term *ugolovny* was associated with notions such as “beheading,” “beheader,” and “murderer.” From the beginning of the twentieth century to the present, however, its frequent use in legal language has led it to acquire in Russian the contemporary meaning “relating to crime” or “criminal.”

Accordingly, when N. N. Polyanskiy and V. M. Savitskiy expressed their respective views on the phrase *Ugolovny kodeks*, each approached the issue from the perspective of his own historical period. Polyanskiy lived at the end of the nineteenth and the beginning of the twentieth century, when the negative connotations of the term *ugolovny* had not yet entirely disappeared. Savitskiy, by contrast, defined the term near the end of the twentieth century, in 1987. Approximately fifty to sixty years separated the periods in which the two scholars formulated their views. Their positions may therefore each be understood as justified within the linguistic context of their respective eras.

It follows that, over many centuries—from the eleventh century to the present—the term *ugolovny* gradually changed its original meaning and today denotes in Russian something “relating to crime,” i.e., “criminal.”

In Uzbek, however, this term was translated literally as *jinoyat* (“crime”), which does not convey the adjectival Russian meaning “relating to crime.” In Uzbek, the word *jinoyat* is itself a noun

⁴ Polyanskiy, N. N. “O terminologii sovetskogo zakona” [On the Terminology of Soviet Law]. *Problemy sotsialisticheskogo prava*, 1938, no. 5, pp. 122–124.

⁵ Savitskiy, V. M. *Yazyk protsessualnogo zakona* [The Language of Procedural Law], p. 120. Indeed, in contemporary Russian the term *ugolovny* means “relating to crime” or “criminal.” See: Ozhegov, S. I. *Slovar russkogo yazyka* [Dictionary of the Russian Language]. Moscow: Sovetskaya entsiklopediya, 1968, p. 811.

meaning “crime.” Thus, semantically, the Uzbek word *jinoyat* is closer to the earlier historical meanings associated with the Russian term *ugolovny* before the twentieth century than to the later adjectival meaning “criminal” or “relating to crime.”

From a linguistic perspective, the Russian word *ugolovny* is grammatically an adjective. An adjective expresses a characteristic or quality of an object rather than naming the object itself; it therefore does not carry the principal nominative meaning. The Uzbek word *jinoyat*, by contrast, is a noun. A noun performs a naming function rather than expressing a characteristic or quality. For this reason, in the Uzbek phrase *Jinoyat kodeksi*, the word *jinoyat* carries a stronger independent lexical meaning than the adjectival Russian form *ugolovny* in *Ugolovny kodeks*.

Moreover, although the phrase *Jinoyat kodeksi* has been used in Uzbek for approximately seventy to eighty years, it has not acquired the meanings “punishment” or “relating to crime.” In our view, even continued use is unlikely to produce these meanings. Language is a living phenomenon: a word cannot simply be forced into a language or arbitrarily assigned a foreign meaning. Such semantic development must occur naturally.

It is particularly noteworthy that when this law was first adopted in Uzbekistan in 1926, it bore the title *Jazo tuzugi*, which may be rendered as “Penal Code” or “Code of Punishments.” This title fully corresponded to the content and substance of the Code. More generally, in a number of developed countries, legislation of this kind is designated by titles equivalent to “penal code” or “code of punishments.”

In general, legal scholars should develop clear requirements governing the naming of laws, and these principles should be strictly observed when legislative titles are formulated.

In our view, the following principles should guide the naming of laws:

First, the title of a law must fully and accurately reflect the content and substance of that law.

Second, the title of a law must be precise and unambiguous.

Third, the title of a law should be concise and simple.

Fourth, the title of a law should be close to and readily understandable in the language used by the public.

Fifth, every word used in the title of a law should have one clear meaning; polysemous words and homonyms should be avoided.

Sixth, the title of a law must fully comply with the grammatical rules and norms of standard literary Uzbek.

Seventh, a law should be titled from the standpoint of the interests and comprehension of ordinary people living in society. Workers, farmers, professionals, and intellectuals alike should be able, upon hearing the title of a law, to understand immediately what the law concerns and what types of social relations it regulates. Only under such conditions can citizens’ legal consciousness and legal culture be enhanced and the rule of law effectively ensured.