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Subject Of A Crime Under French Criminal Legislation

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ABSTRACT

This article deals with the issues of criminal liability of persons (the subject of the crime) for committing crimes under the Criminal Code of France. It is noted that the French criminal law does not contain any special chapter devoted to the subject of the crime, but provides for important provisions on the responsibility of individuals and legal entities. Based on the analysis, it was concluded that it is necessary to apply the experience of France in terms of liberalizing the responsibility of minors and introducing the responsibility of legal entities.

KEYWORDS

France, criminal law, subject of crime, criminal liability, legal entity.

INTRODUCTION

One of the main ways of developing national legislation is to study foreign experience, in particular, this is of great importance in reforming criminal legislation and implementing the positive practical experience of countries. One of the most interesting is the experience of France in the field of criminal law. Among the norms requiring the improvement of criminal legislation, the institution of the subject of a crime is of particular importance. In the Concept of improving criminal and criminal procedure

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legislation, one of the important conditions is the provision of reliable guarantees of the inevitability of liability in relation to persons who have committed crimes[1]. Therefore, the study of the issue of the subject of the crime is of current importance.

France is one of the most developed countries in the world with a deep historical and legal heritage. The Criminal Code of the State was adopted as a replacement for the Code, which was in force for almost one hundred and eighty years, adopted in 1810, during the reign of Napoleon Bonaparte.

The new Criminal Code was adopted on July 22, 1992, and came into force on March 1, 1994. The Republic of France is famous not only for its written laws, it is a country that was also one of the first to take the path of codifying the norms of criminal law.

The subjects of criminal responsibility, according to the French Criminal Code, can be natural persons and legal entities. The introduction of the latter into the sphere of criminal law was associated with a number of reasons, which will be discussed below.

In the French criminal law literature, the authors do not, as a rule, single out a special section devoted to the characterization of the subject of a criminal act. This is due to the fact that the subject as such is not an element of the act (in contrast to national criminal law, where the subject of the crime is an element of the composition). Issues of age of criminal responsibility, insanity, etc. analyzed by French lawyers in relation to the characterization of the moral element of a criminal act.

The Criminal Code also does not contain any special chapter dedicated to the subject of the crime. True, in the first chapter of Section II "On Criminal Liability" of Book I of the Criminal Code there are a number of norms that, to one degree or another, are related to it, in particular: Art. 121-2 - on the liability of legal entities, Art. 121-4 - about the perpetrator of the criminal act, Art. 121-7 - about accomplices.

Issues of insanity are regulated in another chapter, "Grounds for the non-occurrence of criminal liability or its mitigation," where insanity is called, along with coercion, a legal error, the execution of an order, necessary defense, etc., a circumstance precluding the occurrence of criminal responsibility.

Natural persons as subjects of a criminal act. The first sign of a natural person as a subject of a criminal act is reaching the age of criminal responsibility. The Criminal Code does not explicitly set the age, although it contains a provision that a special normative act defines the conditions under which a punishment can be imposed on persons over 13 years of age (Art. 122-8).

Such a normative act is Ordinance No. 45-174 of February 2, 1945 on juvenile offenders (with subsequent amendments and additions). The Ordinance establishes a special legal regime for the responsibility of minors, which is based on the presumption of criminal non- responsibility of persons under 18 years of age.

The possibility of prosecution and its principles depend on the age group of the minor. The existence of three such groups is recognized in French criminal law. **The first group unites minors under the age of 13.** Persons of this

[1] Постановление Президента Республики Узбекистан от 14 мая 2018 года № ПП-3723 «О мерах по кардинальному совершенствованию системы уголовного и уголовно-процессуального законодательства».

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group cannot be punished, in connection with which some French lawyers argue that for them the presumption of criminal non-responsibility is absolute. Commenting on this situation, professors Conte and Maistre du Chambon note that, speaking about the criminal non-responsibility of persons in this group, one must bear in mind two possible options for the legal consequences of such persons committing socially dangerous acts.[2]

In some cases, the criminal non- responsibility of a minor under the age of 13 may be based on lack of sanity, since a young age, as a rule, excludes awareness of behavior. In addition, a minor may suffer from some kind of mental disorder, which also indicates a lack of sanity. And this should be established when considering each specific case. In other cases, the court (judge) may conclude that the child, despite his young age, perfectly understood the meaning of his action and was able to distinguish between good and bad. In such situations, when the sanity of a minor and other signs of a criminal act (legal, material, moral) have been established, the criminal non-responsibility of the minor, according to the authors, can be explained solely by the fact that the legislator decided not to apply criminal punishment to such a person for reasons of humanism or others. However, in these cases, the court (judge) has the right to apply to the minor the security measures referred to in Art. 122-8 of the Criminal Code and Art. 2 of the Ordinance: "measures of protection, assistance, supervision and education." Thus, in relation to the case under consideration, one can speak, as the professors believe, only about partial criminal non-responsibility. The remark of the named legal scholars is true if the educational measures applied to minors are included in the concept and content of criminal responsibility.

The judge, if he does not consider it necessary to transfer the case to the juvenile tribunal and does not consider it possible to completely release the teenager from any measure, may confine himself to giving instructions (less adman-stations), which are not considered a punishment, or apply any of the measures: place a minor under the supervision of a parent, guardian, person who looks after him, or a person of trust; place in an educational institution or a vocational training institution; send to a medical or medical, pedagogical institution; transfer to a boarding school for juvenile offenders; place under judicial protection for up to five years. Such a person may be prescribed a regime of limited freedom(la Liberté survival) up to the age of majority (paragraph 11, article 8 of the Ordinance).[3]

The second group includes minors between the ages of 13 and 16. They may also be subject to the presumption of criminal non-responsibility with the appointment of any educational measure. The Juvenile Tribunal may order any of the following measures: handing over to a parent, guardian, caregiver or trustworthy person; placement in a public or private educational or vocational education institution; placement in a medical or medical pedagogical institution; placement in a state educational institution with supervision or in an educational correction institution (Art. 16 of the Ordinance).

However, the older age of the persons of this group and the presence of a greater ability to

[2] См.: Recueil Dalloz Sirey. 1996, 29 aout. - 29. P. 347.

[3] См.: Girault C. Le droit penal a l"epreuve de l"organisation criminelle. Revue de science criminelle et de droit penal compare. 1998. №4. - C. 715.

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understand the meaning of their actions, the possibility of rejecting the presumption of criminal non-responsibility is provided for. At the same time, the regime of criminal responsibility, as noted, remains specific. Firstly, some types of punishment to them, in general, cannot be applied: prohibition of stay on French territory, penalty days, deprivation of political, civil and family rights, prohibition to hold public office and others. Secondly, the punishments provided for adults, in the case of their appointment to minors of this group, are assigned only in an reduced form.

The third group includes adolescents from 16 to 18 years old. Like people of the second group, they can take advantage of the presumption of criminal non-responsibility, and can also be found guilty and convicted. The difference between this regime and the regime of criminal responsibility of the second group is that for persons of the third group, the action of such a mitigating circumstance, which is a minority, is optional.

In the event that these persons committing a criminal act, the decision may be threefold:

1) The minor is released from criminal liability by virtue of the presumption of criminal non-responsibility of minors and he is assigned any measure of "re-education";
2) A minor is prosecuted, however, the punishment provided for the commission of this act is reduced by virtue of such a mitigating circumstance as a minority;
3) A minor is brought to criminal responsibility on a general basis and he is assigned the usual punishment provided for by the article for the commission of this criminal act. A minor who has reached the age of 16 and charged with a crime is subject to the jurisdiction of the Assize Juvenile Court, composed of a chairman, two assessors and a jury.[4]

These are the features of the criminal responsibility of minors.

According to French criminal law, the sanity of a person is a prerequisite for a conviction. As already noted, sanity presupposes the ability of a person to act voluntarily, not under duress, freely disposing of his will. This ability can be impaired when an individual suffers from any mental disorder.

The Criminal Code of France named the criteria that determine the recognition of a person as insane: a) medical criterion - the presence of a mental or neuropsychic disorder; b) psychological criterion - the lack of the ability to be aware of or control their actions (Art. 122-1).

The number of mental illnesses that can constitute a medical criterion for insanity is very large. French criminal law refers to them as chronic and temporary mental disorders: mental retardation (a deep degree of debility), delusional states, twilight disorders of consciousness, etc.[5]

The mental disorder must be established at the time of the commission of the criminal act, regardless of whether the disorder was short-term or chronic. The presence of a mental disorder at the time of the commission of the offense means not only the lack of sanity and

[4] Новый Уголовный кодекс Франции / Научн. ред. Н.Ф. Кузнецова, Э-Ф. Побегайло. - М., 2014. С.72.

[5] Уголовное право зарубежных государств. Общая часть: Учебное пособие / Под ред. и с предисл. И.Д. Козочкина. — М.: Омега-Л, Институт международного права и экономики им. А.С. Грибоедова, 2003. – С.233.

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the moral element of the criminal act, but also the offense in general.

The Criminal Code of France for the first time included the norm on diminished sanity (paragraph 2 of article 122-1). The latter is due to the presence of two necessary criteria: a) medical - mental or neuropsychic disorder; b) psychological - a decrease in the ability to be aware of or control their actions.

At the same time, the state of diminished sanity does not exclude the criminality of the act and criminal liability (as opposed to complete insanity). This institute allows to apply medical measures to these persons. Such convicts are sent to specialized institutions, the regime of which combines imprisonment with medical and psychiatric measures.

Legal entities as subjects of a criminal act.

In accordance with the Criminal Code 1992, any legal entity, with the exception of the state, can be held criminally responsible. First of all, we are talking about legal entities of private law: commercial companies, various associations, foundations and similar civil law associations, as well as private groups of legislative origin, and trade unions. Foreign legal entities of private law can also be held responsible in cases where the jurisdiction of the French courts extends to the acts committed. This is the first category of legal entities.

Legal entities can be held criminally responsible both along with individuals and independently. Article 121-2 of the Criminal Code indicates that the responsibility of a legal entity does not exclude the responsibility of an individual, "the performer or accomplice of the same actions". In this case, one can see here a violation of an important principle of criminal law: you can't be punished twice for the same thing. However, French lawyers do not see a violation of this principle in the case when, along with a legal entity, the direct perpetrator of criminal acts (inaction) is also responsible. For example, as a result of fraud by one of the bank's representatives, who is not its manager, the bank receives a large profit. Here, joint responsibility of both the bank and the representative - the objective perpetrator of the criminal act is quite possible. French lawyers see a violation of the above principle only in the case when, despite the fact that the representative has committed fraud, along with the legal entity, his manager is also responsible due to the manager's responsibility in France for the actions of his subordinates (responsibility for other people's actions).[6]

The responsibility of legal entities, according to the Criminal Code, is due to the presence of two circumstances: 1) the criminal act must be committed in favor of the legal entity and 2) by its head or representative. Committing a crime "in favor", or, in other words, "at the expense", of a legal entity means that as a result of the commission of a criminal act, a legal entity receives a certain benefit, moreover, it is about property benefits, although other "benefit" is not excluded.

A prerequisite for the criminal responsibility of a legal entity is the commission of a criminal act by its head or representative. The commission of an act, although in favor of a legal entity, but by other persons: technical workers, service personnel, ordinary employees, who, according to regulatory enactments and constituent documents, are not

[6] Уголовный Кодекс Франции / Под науч. ред. Л.В. Головко, Н.Е. Крыловой; Пер. с франц. и предисл. Н.Е. Крыловой. – СПб., 2002. – 350 с.

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representatives of a legal entity, do not entail criminal liability for the latter.

Responsibility of legal entities does not arise in France for all criminal acts, but only for those that are directly stated in the normative act. An analysis of the norms of the Criminal Code allows us to conclude that the French legislator has established criminal responsibility of legal entities for a wide range of criminal acts: for crimes against humanity, unintentional attacks on life, attacks on human integrity, direct putting a person in danger, illegal distribution of drugs, discrimination, pandering, conducting experiments on humans, encroachment on privacy, false denunciation, "computer" crimes and misconduct, much embezzlement, abuse of trust, the organization of militant groups, attacks the fundamental interests of the nation, terrorism, counterfeiting, and some others. For any of the listed acts committed in favor of a legal entity by its head (representative), it is subject to criminal responsibility.[7]

Thus, the experience of French criminal legislation provides for the importance of humanizing responsibility and punishment in relation to minors, expanding educational measures. At the same time, the experience of the French Criminal Code also indicates the need to consider the issue of responsibility of legal entities.

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