



Reasonable Risk As A Circumstance, Exclusive Criminal Action: Some Approaches To Classification

Otegenova Luiza Joldasbayevna

Researcher of the Higher School of Judges at the High Judicial Council of the Republic of Uzbekistan

Journal Website:
<http://usajournalshub.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

ABSTRACT

The subject of this study is the authors' attempt to classify justified risk based on from the features that define its essence, highlighting the existing distinction between it and the professional and non-professional. The purpose of this article is to analyze various types of classification of professional risk in the system of circumstances precluding criminality. The research methodology consisted of analytical, comparative, formal legal and systemic methods.

The article discusses certain aspects criminal law and psychological approaches to determining the essence of a reasonable risk, an analysis of the existing doctrinal views on the basis of its classification is given, the author's vision of the indicated problem is proposed. Research findings can be used in further research on the issues under consideration.

KEYWORDS

Reasonable risk, prevention of harm, public benefit goal, legality of risky actions.

INTRODUCTION

In the doctrine of criminal law, circumstances deeds excluding criminality were analyzed from the standpoint of finding the line separating lawful and illegal behavior. This dilemma in certain cases is difficult to solve,

since both types of legally significant behavior have certain common features: social significance, what predetermines their legal regulation, the strong-willed element of the person's mental attitude to the deed, which in

one case is an integral part of a careless form of guilt, and in the other a subjective sign of an innocent causing harm, the occurrence of certain legally significant consequences. However, the interpretation of these general signs of lawful and illegal behavior is naturally different. So, if the social significance of lawful behavior lies in the general focus on strengthening those social relations that are important for society and the state, then illegal – they are clearly violated.

In his message to the Oliy Majlis, the President of Uzbekistan Shavkat Mirziyoyev said: those who for the first time committed a similar crime, but paid a fine, should be exempted from criminal liability”he said.

The concept of “reasonable risk” existing in criminal law implies its heterogeneity in relation to various spheres of human life. We believe that, depending on this criterion, it is possible to distinguish scientific, economic, medical, pedagogical and other types of risk. At the same time, relying on the generalization accepted in the specialized literature², it can be assumed that all designated areas of activity are determined as professional, assigning the appropriate attribute to the subject's risky actions. Hence, the classification of professional risk as a whole and in part according to the relevant areas of activity is logically built into: economic, scientific, production, managerial, medical, etc. Narrowing down the above classification, some experts point out that an uncertain situation involving the possibility of

a choice between risky actions and ordinary manipulations occur in the interaction of humans and technology (technical and operational risk), medical activities (medical risk), innovative research (experimental risk), economic activity (economic risk)³.

From the point of view of psychology, risks are defined as motivated and unmotivated. In this regard, the term "situational risk" is introduced into scientific circulation, when the subject prefers a model that is dangerous in terms of consequences behavior in the absence of external motives, i.e. with only an internal readiness for the appropriate behavior⁴. V.A. Petrovsky, developing the psychological concept of personality activity, pointed to the fact that a pronounced tendency to risk is present in persons whose professional activities contain an element of danger⁵ (for example, law enforcement officers, medical workers), and in such cases, as a rule, we are talking about a motivated risk, since the subject sets himself a socially useful goal, is interested in its achievement and soberly assesses the possibility of success. In accordance with Article 35 of the Criminal Code of the Republic of Uzbekistan, the following cases, i.e. less serious acts; necessary protection; the last need; causing harm during the arrest of a person who has committed a socially dangerous act; fulfillment of an order or other task; reasonable risk associated with an occupation

¹ Message from the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis // <https://uza.uz>

² Kireev V.V. On the theory of risk in the Russian science of constitutional Law // Problem of law. 2012. № 7. P. 11–16.

³ Avdijskij V.I. Risks of economic entities: theoretical bases, methodology of analysis, forecasting and management : textbook. M. : Alfa-M; Infra-M, 2013. 368 p.

⁴ Kruchkov R.A Risk in Law: Genesis, Concept, control : avtoref. dis. ... Cand. judr. Sciences: 12.00.01. N. Novgorod, 2011. 26 p.

⁵ Petrovsky V.A. Psychology of activity // Questions of psychology. 1975. № 3. P. 26–38.

or economic activity; The commission of an act as a result of physical or psychological coercion or intimidation is considered an exception to the offense.

One of the important conditions for taking risky actions is that a person has taken appropriate measures to prevent harm to the rights and legally protected interests of others. The need for measures to be taken is determined on the basis of objective and subjective criteria⁶.

The division of risk into motivated and unmotivated borders on its other classification - into justified and unjustified risks, which is based on the ratio of the probability of achieving the set goal and possible losses⁷.

Following the foundations of psychological risk theory, it can be stated that such is possible in all spheres of human activity with a difference in the degree of probability of its occurrence. In this regard, in order to determine the justified risk, it seems necessary to determine the criterion for the assignment of one or another type activities to the number of risky. We believe that such may be the presence of a situation of uncertainty, in which an alternative choice arises between several options of behavior, while the status of risk subject, his ability to assess this situation from the point of view of the validity

of risky actions, to take measures to prevent or minimize possible negative consequences. Like approach makes it possible to differentiate reasonable risk to a professional when the subject is only a person who carries out one or another type of professional activity, having the appropriate education, practical experience and skills, as well as a non-professional (for example, sports or operational risks), when a non-professional with certain knowledge can also be a risk subject.

A feature of professional risk is the fact that the person, by virtue of the responsibilities can be put in a situation associated with the need to commit risky actions, i.e. the risk in this case will be forced. Here it is necessary to delimit the professional risk associated with the possible threat of harm to the most at risk, those. The "harmfulness" of a profession that has a high the likelihood of injury, and harm to health due to working conditions that entail the so-called "Occupational diseases"⁸, as well as the risk of harm to third parties, where the determining role in assessing the reasonableness of risky behavior is played professionalism of the subject, his sober calculation and confidence in the ability to avoid an offensive negative consequences of their actions. In the first if there is no need to question reasonable risk in the criminal legal sense, since the principle of freedom of choice is in effect.

According to article 41 of the Criminal Code of the Republic of Uzbekistan, encroachment on rights and legally protected interests by taking

⁶ Urazaliev M.K. Psychological interpretation of reasonable risk associated with professional or economic activity as an exception to the crime. Tashkent: TSUL, 2014. P. 127-137.

⁷ Kulikova T.B. The concept of the average sensible person as an objective criterion of evaluation in criminal law institutes // Model of the International Criminal Court (2012–2013): Collection of works. M., 2013. P. 36–42.

⁸ Kursova O.A. System of evaluation and management of professional risks: Problems of legal regulation // Lex Russica. 2016. № 10. P. 182–191.

a reasonable risk associated with professional or economic activity in order to achieve a socially useful goal is not a crime. Such risk is justified if the action is consistent with modern scientific and technical knowledge and experience, and the goal is not achieved without risk, and the person has taken appropriate measures to prevent damage to the rights and interests protected by law.

Even if the supposed socially useful result of a reasonable risk associated with professional or economic activity has not been achieved, and the damage caused is greater than the useful result that can be obtained as a result of achieving a socially useful goal, the responsibility does not bear.

The risk is not justified if it is done with the knowledge that it could lead to the risk of human death, environmental disaster or other serious consequences. Failure by business entities to fulfill their contractual obligations to banks and other financial institutions for the services provided to them, including loans, due to entrepreneurial risks and other commercial risks, is not a reason for bringing employees of banks and other financial institutions to criminal liability⁹.

These conditions are characterized, firstly, by the social benefit of risk in action, and, secondly, by the observance of a certain level of safety of actions during its implementation. It is when all the requirements of the case are met that it can be recognized as a reasonable risk associated with the profession or

economic activity, and, accordingly, excluded from the offense¹⁰.

In addition, it seems necessary to analyze the possibility of risk differentiation, taking into account the scientifically grounded provisions of psychology and the existing gradation of risky actions into professional and non-professional, in relation to the presence or absence of such signs as: preparedness, alternativeness, harm to protected criminal law interests.

In terms of making sufficient measures to prevent harmful effects risky actions risk can be prepared and situational. In the first case, the mechanism for making a decision on the commission of appropriate actions is characterized by the presence of a clearly defined socially useful goal that the subject realizes as positive and achievable, as well as an assessment of the situation that allows you to anticipate the possible consequences of achieving a pre-planned result (for example, conducting medical experiments). In the second case, the named there is no mechanism for risky actions, since the decision-making by the subject is characterized by suddenness, the presence of extreme conditions under which it is impossible to plan in advance the course of actions, as well as their possible consequences, therefore, to take measures to prevent harm (for example, the use of weapons when arresting a criminal).

In Uzbek criminal law, it is important to have a separate institution as an exception for

⁹ Criminal Code of the Republic of Uzbekistan // lex.uz

¹⁰ Rustambaev M.H. Criminal Law Course of the Republic of Uzbekistan // Volume 1, General part. Military Technical Institute of the National Guard of the Republic of Uzbekistan. 2018. P. 478.

determining the crime of actions, such as reasonable risks associated with professional or economic activities, since it contributes to the development of society, exempts from criminal liability those who conducted experiments in certain cases. creates an opportunity. At the same time, the law prevents the commission of unreasonable, irresponsible actions and establishes conditions that determine the legality of committing dangerous actions or not. Violation of these conditions is the basis for criminal prosecution¹¹.

CONCLUSION

we can say that the risk is justified and legal only if all the above conditions are met, and the damage caused is not considered criminal. The person taking the risk shall not be held liable, even if the socially useful result of reasonable risk associated with professional or economic activity has not been achieved, and the damage caused is greater than the result that can be obtained as a result of achieving a socially useful goal.

However, if the person made a mistake in the factual circumstances of the case, then the actions of the perpetrator must be classified in accordance with the rules relating to the factual error, that is, the risk is classified as a crime of negligence in accordance with legal conditions.

REFERENCES

1. Message from the President of the Republic of Uzbekistan Shavkat Mirziyoyev to the Oliy Majlis // <https://uza.uz>
2. Kireev V.V. On the theory of risk in the Russian science of constitutional Law // Problem of law. 2012. № 7. P. 11–16.
3. Avdijskij V.I. Risks of economic entities: theoretical bases, methodology of analysis, forecasting and management : textbook. M. : Alfa-M; Infra-M, 2013. 368 p.
4. Kruchkov R.A Risk in Law: Genesis, Concept, control : avtoref. dis. ... Cand. judr. Sciences: 12.00.01. N. Novgorod, 2011. 26 p.¹
5. Petrovsky V.A. Psychology of activity // Questions of psychology. 1975. № 3. P. 26–38.
6. Urazaliev M.K. Psychological interpretation of reasonable risk associated with professional or economic activity as an exception to the crime. Tashkent: TSUL, 2014. P. 127-137.
7. Kulikova T.B. The concept of the average sensible person as an objective criterion of evaluation in criminal law institutes // Model of the International Criminal Court (2012–2013): Collection of works. M., 2013. P. 36–42.
8. Kursova O.A. System of evaluation and management of professional risks: Problems of legal regulation // Lex Russica. 2016. № 10. P. 182–191.
9. Criminal Code of the Republic of Uzbekistan // lex.uz
10. Rustambaev M.H. Criminal Law Course of the Republic of Uzbekistan // Volume 1, General part. Military Technical Institute of the National Guard of the Republic of Uzbekistan. 2018. P. 478.
11. Rustambaev M.H. Criminal Law Course of the Republic of Uzbekistan // Volume 1, General part. Military Technical Institute of the National Guard of the Republic of Uzbekistan. 2018. P. 477.

¹¹ Rustambaev M.H. Criminal Law Course of the Republic of Uzbekistan // Volume 1, General part. Military Technical Institute of the National Guard of the Republic of Uzbekistan. 2018. P. 477.