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Research Article

THE PRINCIPLE OF RESPONSIBILITY FOR GUILT IN CRIMINAL LAW

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ABSTRACT

The issues of the importance of guilt in criminal prosecution of individuals who commit crimes are studied in the article. The author, based on an analysis of foreign experience, suggested that in appointment of criminal punishment for a crime, it is necessary to take into account not only the presence of guilt, but also the factors that led to the formation of the behavior of the perpetrator of the crime that prompted him to commit the crime. In the article, the author also concluded that it is impossible to introduce the criminal responsibility of legal entities in the criminal legislation of Uzbekistan due to the inability to prove the existence of the guilt in the criminal responsibility of legal entities.

KEYWORDS

Crime, guilt, mental state, intention, carelessness, punishment.

INTRODUCTION

To prosecute a person who committed a crime, the guilt of this person must be proven. There are different views in criminal law theory on whether there is a fault in any socially dangerous act committed, if a socially dangerous act was committed and the resulting socially dangerous consequences occurred, but if there is no guilt of the individual in committing it.

This article attempts to study the manifestation of the responsibility for guilt in the theory of criminal law as well as in the current criminal legislation.

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Material and methods

The article analyzed the current criminal legislation of the Republic of Uzbekistan, criminal legislation of foreign countries, scientific work of scientists of the field on this issue.

Analysis and synthesis, comparative-legal methods were used as research methods.

LITERATURE ANALYSIS

There are different views in the literature on the issue of responsibility for guilt. Guilt is an object of study not only in the field of criminal law, but also in other areas of law, other disciplines. In particular, in philosophical views, concepts such as conscience, shame, pride, guilt have been researched as categories of morality. It was understood that guilt in this comes from self-assessment of conscience [1].

In psychology, guilt is understood as the feeling of guilt over an individual's act, which is caused by an act of one person, which causes negative consequences for other individuals and even for himself in his eyes, the feeling of remorse. [2]

A. Yakubov claimed that guilt in criminal law is understood as a necessary sign of the subjective side of the composition of crime, which is understood as the mental state of a person in relation to his socially dangerous act (action or inaction) and its consequences [3].

V.A. Khilyuta, on the other hand, points out that the mental state (assessment) of a person in relation to his own action and its consequences indicates that the action was committed intentionally or by carelessness, that the person realized the social danger of the act committed by him, and that such a crime considered an intentional crime if he wants to commit this act[4]

D.Karaketova indicates that guilt is a necessary sign of the subjective side of a crime, and the subjective side of a crime is the mental attitude of a person to all signs of what he committed and its separate objective signs, which are legally significant, representing the internal mental nature of criminal behavior[5].

B.Yusupov believes that "Only when establishing the presence of a form of guilt provided for by law, it can be established that the committed act has composition of crime and grounds for criminal responsibility" [6].

Analyzing German criminal law, A. Dzhalinsky and A. Roericht showed that there is a significant difference between guilt and wrongfulness, that an action can be considered illegal, but not guilty, and that guilt and negligence are considered two different concepts in German law[7].

E.Yu. Latypova pointed out that the establishment of responsibility for a crime should be approached from a psychological point of view [8]. N.I. Smirnov, on the other hand, studied the issues of the significance of guilt in determining the responsibility of legal entities [9].

L.A.Krotova argued that responsibility for guilt is a subjective charge that exists in close connection with objective and subjective signs of crime, stating that criminal responsibility should not arise if an individual's actions dangerous to society are not related to the individual's mental attitude[10].

Literature analysis shows that guilt is understood as the mental attitude of the person who committed an offense towards his actions.

The issue of responsibility for guilt in the criminal legislation of foreign countries.

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In criminal law, the principle of guilt ("nulla poena sine culpa") is one of the elements of the principle of the legal state and has a constitutional status in Germany. According to § 46 of the German CC, the guilt of the perpetrator of the crime is the basis for the appointment of punishment[11]. At the same time, when imposing a punishment, its influence on the place of the guilty person in further public life is taken into account.

Particular attention is paid to the following:

motive and purpose of a person who committed a crime;

the way of thinking that comes from him, the will of him in committing a crime, the degree of violation of obligations;

method of committing a crime;

the way of life of the accused before committing a crime, his personal and material condition;

his behavior after committing a crime (compensation for the damage and reconciliation with the victim).

As we can see, in German criminal law, the main indicator for the punishment of a person is not only to determine the presence of guilt, but also to determine the causes of the crime and the behavior after committing the crime.

According to the article121-1 of French CC, a person can be criminally responsible only for what he committed. In accordance with the French CC, legal entities can also be criminally responsible, while the fact that legal entities are criminally responsible does not exclude that it is individuals who directly commit these acts that are also criminally responsible [12].

In our opinion, this situation does not correspond to the rule that it is impossible to be held accountable twice for one.

Article 8 of the Model criminal code for states that are participants in the Commonwealth of Independent States (model Criminal Code) establishes the principle of personal guilt, according to which a person shall be prosecuted only for his socially dangerous act (inaction), the guilt of which is proven, and the socially dangerous consequences arising from it. An objective charge, i.e. criminal prosecution for causing harm without guilt, is not allowed [13].

Article 23 of this Code establishes that insane persons are not subject to criminal responsibility, Article 24 establishes the criminal responsibility of a person with mental disorders that do not exclude sanity.

Article 5 of the CC of Russia defines the principle of guilt, the text of which is the same as the text of Article 8 of the Model Criminal Code [14].

Article 3 of the CC of Belarus establishes that a person can be held criminally responsible only if it is proved that he has committed, intentionally or by carelessness, socially dangerous acts provided for by this Code[15].

In the Ukrainian CC, principles are not reflected as separate norms. Article 19 of this code is called sanity, according to which it is established that at the time of committing a crime, a person who realizes the socially dangerous nature of his actions (inaction) and is able to control them is considered sane. Section 20, known as limited sanity, provides that subject to criminal responsibility is a person recognized by the court as partially sane, that is, one who, at the time of the commission of a criminal offense, due to his mental

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disorder, was not able to fully be aware of his actions (inaction) and (or) manage them [16].

In the Criminal Code of Kazakhstan, the principles as separate norms are not reflected, and the concept of guilt is given in Article 19 of this Code. In accordance with it, a person is subject to criminal responsibility only for those socially dangerous acts (actions or omissions) and the socially dangerous consequences that have occurred, in respect of which his guilt has been established [17].

It should be noted that states that have separated from the former Soviet Union, whose legislative history is associated with each other, are almost identical in their views on the concept of guilt in criminal law and the existence of its types of intention and negligence. German and French criminal law, on the other hand, place more importance on the role of guilt in criminal responsibility, with a broad emphasis not only on the mental attitude of an individual towards what he committed, but also on the factors that led to the commission of a crime.

The principle of responsibility for guilt in the criminal law of Uzbekistan.

Article 9 of the Criminal Code of the Republic of Uzbekistan (CC) defines responsibility for guilt, that is, the principle that a person is responsible only for his socially dangerous acts, for which guilt has been proven in accordance with the procedure established by law.

This principle reflects the Article 26 of the Constitution of the Republic of Uzbekistan, everyone, accused to perform a crime, shall be considered not guilty, so long as his guilt is not established by legal order, public legal proceeding when all possibilities, to protect him, are secured, this principle exists not only in criminal lawa, but also in Criminal-Procedural Law as presumption of innocence.

In accordance with Article 20 of the CC, a person who committed a socially dangerous act provided for by the Criminal Code, intentionally or by carelessness, may be found guilty of committing a crime.

When a person realizes the social danger of the act he committed, and wishes to commit this act, such a crime is found to be an intentional crime.

In turn, intent is divided into direct or indirect intent. A crime is recognized as committed with direct intent if the person who committed it was aware of the socially dangerous nature of his act, foresaw its socially dangerous consequences and desired their occurrence.

A crime is recognized as committed with indirect intent if the person who committed it was aware of the socially dangerous nature of his act, foresaw its socially dangerous consequences and consciously allowed them to occur.

The second form of guilt is carelessness, and carelessness in its turn is also divided into two types, self-reliance and negligence.

Only individuals are subjects of crime in accordance with CC of Republic of Uzbekistan, and there are conditions under which a person has reached a certain age and sanity in order to be considered a subject of crime.

Sanity, which is one of the conditions for being considered a subject of crime, assumes the awareness and control of the socially dangerous nature of one's actions (inaction)at the time of committing a crime.

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A person who, at the time of committing a socially dangerous act, was in a state of insanity, that is, could not realize the significance of his actions (inaction) or manage them due to a chronic or temporary mental disorder, dementia or other mental disorder, is not subject to responsibility.

Q.R.Abdurasulova rightly argued that "In the theory of criminal law, it is justified that only a sane person can be held criminally responsible and only they can be punished. It's understandable, of course. After all, sanity is a necessary condition for finding a person guilty and holding him accountable. Insane persons, despite having committed a socially dangerous act, are not considered guilty and cannot be held responsible. Punishment is applied to the guilty with the aim of re-educating him, influencing unstable persons and preventing the commission of new crimes [18].

It is true that a person cannot be held criminally responsible for the inability to realize the essence of his act and to control his actions during the commission of a crime correctly, and this corresponds to the principle that exists in ancient Roman law "Nullum crimen, nulla poena sine cupla" - "without guilt no crime no punishment".

How will the issue be resolved if there is damage to objects protected by criminal law, but there is no guilt of the individual in this? In the literature on criminal law and in the legislation of foreign states, this is also referred to as an objective accusation.

Some foreign scholars argue that it is necessary to establish in criminal law the impossibility of responsibility for innocent harm as a principle [19]. In our opinion, there is no need for this in the legislation of our country, since, although the non-application of responsibility for causing harm without guilt in the criminal legislation of the Republic of Uzbekistan is not established as a principle, but as a separate norm is established in the rules on guilt. Article 24 of the CC enshrines that an act is recognized as committed without guilt if the person who committed it was not aware, should not and could not be aware of the socially dangerous nature of his act or did not foresee its socially dangerous consequences and, due to the circumstances of the case, should not and could not foresee them.

In addition, paragraph 2 of Article 83 of the CPC stipulates that the suspect, the accused, the defendant should be found not guilty and rehabilitated if there is no composition of crime in the person's act.

Also, the answer to this question can be found in Article 16 of the CC. In accordance with the second part of this article, the commission of an act that has all the signs of a composition of crime provided for in this Code is the basis for prosecution. That is, since guilt is a necessary sign of the subjective side, which is one of the elements of the composition of crime, the absence of guilt means that the composition of crime is incomplete and excludes responsibility.

Criminal responsibility of legal entities

At present, discussions are ongoing in scientific circles about the introduction of criminal responsibility of legal entities into the legislation of Uzbekistan. In the opinion of those who oppose the establishment of criminal responsibility of legal entities, the main obstacle is the absence of guilt, that is, the subjective side in the actions of legal entities.

B.Akhrarov, M.Baratov claim, that legal entities do not have the ability to feel and think, as well as the inability to educate them in the spirit of compliance with the law, the collective cannot be held responsible as a subject, the corporation does not have a conscience,

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soul and body to feel punishment, in addition, the corporation is a legal entity that is considered a fiction (a legal situation deliberately invented for a purpose that does not correspond to reality) and cannot be held criminally responsible [20].

G.Alimov, D.M.Kushbakov [21], on the contrary, propose to include in the law the criminal responsibility of legal entities.

In our opinion, as a result of the establishment of criminal responsibility of legal entities, the likelihood of the following organizational, economic and social negative consequences is very high:

the share of thousands of entities operating entrepreneurship with the status of a legal entity in the gross domestic product of our country is significant, covering a large part of the working population, the consequences resulting from the making responsible of a legal entity (termination of the enterprise's activities, reduction of jobs) can cause serious social problems;

this situation can lead to imbalances in the specialization of courts and a negative change in quality indicators in the consideration of cases. Because, in the consideration of the responsibility of legal entities, problems also arise in issues of relevance to litigation, cases against legal entities are considered in economic courts, in turn, there is no experience in the consideration of cases on the issues of responsibility of legal entities by criminal courts;

criminal responsibility of legal entities can also lead to such consequences as limiting the freedom of activity of business entities, the use of repressive responsibility measures against them.

For this reason, we support the opinion of those who oppose the inclusion of criminal responsibility of legal entities in criminal legislation, since, as indicated above, guilt is a mental attitude of a person who committed a socially dangerous act towards his act and its consequences. Since a legal entity cannot have a mental attitude towards an act, there will be no composition of crime in itself.

CONCLUSION

Based on the above, the principle of responsibility for guilt leads to the conclusion that criminal responsibility can arise only when the guilt of an individual is proven in relation to a socially dangerous act and its consequences.

In addition to the mental attitude towards the act committed by the person in the appointment of criminal punishment, it is also necessary to take into account the reasons that provoke the crime, the factors that have formed the motive for committing a crime in the culprit.

REFERENCES

1. Fromm E. Psixoanaliz i etika. M.: Respublika. 1993.; Gegel F. Filosofiya prava. M. 1988.
2. Krilov A. Psixologiya. Uchebnik. (2-e izdanie). Izdatelstvo Prospekt; 2005. Str. 102-103. https://spbguga.ru/files/04-5-01-002.pdf
3. Yakubov A.S. Pravovaya osnova ucheniya o prestuplenii: predposilki, realnost, perspektivi. Diss. ... d.yu.n. T. 1996.
4. Xilyuta V.A. Vina v ugolovnom prave: poisk novoy kontseptsii. J.Yurist'-Pravoved', 2021, №4 (99). Str. 93-99.
5. Karaketova D. Bezorilik jinoyatining sub'ektiv tomoni belgilari// O'ZBEKISTON QONUNCHILIGI TAHLILI. UZBEK LAW REVIEW. OBZOR ZAKONODATELSTVA UZBEKISTANA. 2021. № 4. 35-b.

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6. Yusupov B.F. Sud hujjatlarini bajarmaganlik uchun jinoiy javobgarlik muammolari. – Toshkent: Falsafa va huquq instituti, 2011. – B.115-116.
7. Jalinskiy A., Ryorixt A. Vvedenie v nemetskoe pravo. M., 2001. S. 594
8. Latipova E.Yu. Razvitie ponyatiya «vina» v rossiyskom ugolovnom prave // Mariyskiy yuridicheskiy vestnik. 2007. T. 1. № 5. S. 118-122.
9. Smirnov N. N. Sub'ektivniy («psixologicheskiy») podxod k ustanovleniyu vini yuridicheskogo litsa: problemnie voprosi teorii i sudebnoy praktiki// Mariyskiy yuridicheskiy vestnik. 2012. T. 1. № 9. S.262- 266.
10. Krotova L.A. Printsipi ugolovnoy otvetstvennosti: nekotorie voprosi realizatsii v zakonotvorcheskoy i pravoprimenitelnoy praktike. Vestnik Udmurtskogo universiteta. 2010 g. Vip. 2. S. 80.
11. Ugolovniy kodeks Federativnoy Respubliki Germanii http://rawunsch.de/images/Ugolovnyiyi_Kodeks.pdf
12. Ugolovniy kodeks Frantsii https://yurist-online.org/laws/foreign/criminalcode_fr/_doc-5-.pdf
13. Modelniy ugolovniy kodeks dlya gosudarstv-uchastnikov Sodrujestva Nezavisimix Gosudarstv https://www.icrc.org/ru/doc/assets/files/other/crim.pdf
14. Ugolovniy kodeks Rossiyskoy Federatsii https://rulaws.ru/uk/Razdel-II/Glava-5/Statya-24/
15. Ugolovniy kodeks Respubliki Belarus https://kodeksy-by.com/ugolovnyj_kodeks_rb/3.htm
16. Ugolovniy kodeks Ukraini. https://continent-online.com/Document/?doc_id=30418109#pos=4;-140
17. Ugolovniy kodeks Respubliki Kazaxstan https://adilet.zan.kz/rus/docs/K1400000226
18. Abdurasulova Q.R. Jinoyatning maxsus sub'ekti. O'quv qo'llanma. – T.: TDYU nashriyoti, 2022. 6-b.
19. Yepifanova Ye.V. Ob'ektivnoe vmenenie kak realnost v sovremennom ugolovnom prave. Vestnik Samarskoy gumanitarnoy akademii. Seriya "Pravo". 2007 №2. Str. 65-68
20. Axrarov B., Baratov M. O'zbekiston Respublikasida yuridik shaxslar javobgarligining ayrim jihatlari // Odil sudlov. – 2020. – № 5. – B. 35–41.
21. Alimov. G'.A. Yuridik shaxslarning korruptsion huquqbuzarliklar uchun javobgarligini tartibga soluvchi xalqaro standartlar tizimi// monografiya. -T. YuMOM, 2019; Kushbakov D.M. Yuridik shaxslar jinoiy javobgarligining xususiyatlari. https://cyberleninka.ru/article/n/yuridik-shahslar-zhinoiy-zhavobgarligining-hususiyatlari