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The History of the Formation of the Concept of Guilt in Criminal Law

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Abstract: The relevance of this study is predetermined by the trends in the growth of crime in modern society, the importance of legislative consolidation of the main provisions relating to the subjective side of the crime, forms of guilt, and their consideration in the individualization of punishment. Understanding the principle of guilt as a measure or degree of neglect of generally significant values or norms of behavior has a number of important social and legal consequences. The main of these consequences is that the measure of neglect can have a lot of shades, a large number of degrees, which must be taken into account not only when imposing punishment, but also in the process of qualifying a crime. It is impossible to reflect in the criminal law all the intellectual, strong-willed, emotional moments of such an attitude, the variety of their shades and combinations, the process of its formation. We can only talk about the most important of all this, i.e. about the essence of the combinations of these moments and the signs characterizing them, about the very result of the mental attitude of a person to a crime. It is in this connection that this study is aimed at studying the history of the formation of the concept of guilt in criminal law.

Keywords: guilt; criminal process; subjective side of the crime; intent, negligence

JEL Classification: K14; K19; K39

1. Introduction

Guilt is an obligatory sign of the subjective side of any *corpus delicti*, expressed in the form of intent or negligence, or both, which is a characteristic of the criminal law of intellectual and volitional moments, including their absence, the mental attitude

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of a person to a socially dangerous act provided for by criminal law as a crime and its consequences and certain combinations of these moments, expressing a negative subjective attitude of a person to social values, having a psychological, socio-political and criminal law content.

The subjective side is a mandatory element of the crime. Its absence excludes such, and the exact establishment ensures the correct qualification of a particular act and, as a result, the legal and justified liability of the perpetrator.

This attitude is expressed in various intellectual, volitional, emotional moments, in various shades and combinations - both in relation to the act itself, and to the circumstances connected with the last, preceding it, existing simultaneously with it or relating to the future time.

The subject is responsible to a greater extent not for the act, but for the neglect of generally significant values, which finds objective expression in behavioral acts. At the same time, neglect, in relation to criminal law, should not be abstract, but specifically defined, expressed in the direction of consciousness to a specific act of behavior. We are talking about responsibility for the desire to commit a specific illegal act, or about neglecting the precautionary rules adopted in society, which resulted in a specific crime.

2. Discussions and Obtained Results

Being the main component of the subjective side, guilt is the mental attitude of a person to a socially dangerous action or inaction and its consequences, expressed in the form of intent or negligence.

The concept of guilt as one of the most important institutions of criminal law was already used in the first decrees of the Soviet government (Decree of the Council of People's Commissars of the RSFSR of May 8, 1918 "On Bribery", of July 22, 1918 "On Speculation", etc.). These decrees explicitly stated that persons guilty of committing specific socially dangerous acts were subject to criminal liability, and that punishment should correspond to the degree of their guilt.

In the Guiding Principles on the Criminal Law of the RSFSR of 1919, which summarized two years of rule-making experience, there was no article on guilt and its forms. However, in some other articles, wine and its forms were still mentioned. This situation was apparently caused by the following. Despite the fact that the idea of responsibility for guilt was quite consistently carried out in the criminal and

criminal procedural legislation of the first years of Soviet power, in the theory of that time, an opinion was widely adopted that denied the need for the principle of guilt, which was reflected in a number of drafts of the Criminal Code.

In the Criminal Code of the RSFSR of 1922 - the first Soviet Criminal Code - the definitions of intent and negligence were so successful that they persisted for decades. The law enforcement practice of this period considered the presence of guilt an indispensable condition for criminal liability.

Detailed definitions of intent and negligence as a form of guilt were also contained in the Basic Principles of the Criminal Legislation of the USSR and the Union Republics of 1924. Subsequently, these definitions, with some changes, were included in the Criminal Code of the Union Republics of 1926-1935. However, the term “guilt” was still not mentioned either in the Basic Principles or in the Criminal Code of the RSFSR. These legislative acts quite consistently proceeded from the fact that only persons who committed a socially dangerous act and acted intentionally or carelessly are subject to punishment.

The Fundamentals of the Criminal Legislation of the USSR and the Union Republics of 1958, having for the first time formulated in a special norm (Article 3) the grounds for criminal liability, pointed to guilt as the subjective basis of criminal liability. In addition, the wording of intent and negligence was clarified. Adopted on the basis of these Fundamentals of the Criminal Code of the Union Republics in 1959-1961, basically reproduced the definitions of the forms of guilt given by the Foundations.

In 1991, the All-Union Parliament adopted the Fundamentals of the Criminal Legislation of the USSR and the republics. These Fundamentals directly indicated that guilt is a necessary subjective basis for criminal liability, fixing the principle of guilty liability. However, due to the collapse of the USSR, the Fundamentals did not enter into force.

Trying to overcome the formal psychological nature of the above definition, some scientists have proposed to include in the concept of guilt an indication of a negative moral and political assessment of guilt, which led to the emergence of a narrow and broad understanding of guilt in the theory of criminal law. In the process of clarifying these concepts, a proposal appeared to distinguish from guilt as an element of the subjective side of the *corpus delicti* guilt - a set of objective and subjective circumstances that justify the application of a specific punishment to a person.

A.Ya. Vyshinsky, who stated that guilt is “a causal relationship between the person who committed the crime and the object of the crime committed, which is an action

or inaction recognized by law as socially dangerous”. However, the recognition of a causal relationship as the basis of responsibility could lead to one-sidedness in determining guilt, to the objectification of the grounds for responsibility, and as a result, to the justification of objective imputation. Therefore, the definition of guilt proposed by A. Ya. Vyshinsky did not meet with support from Soviet criminologists.

In many ways, these disputes were caused by different understanding of such terms as “guilt”, “attributable to guilt”, “guilty”, “guilty”, etc., which was reflected in the doctrine of criminal law.

This discussion was essentially never completed, since it was unfairly and unreasonably called scholastic and divorced from real life.

Nevertheless, in subsequent years, interest in the problem of guilt did not wane. Some scientists, when determining guilt, began to include in this concept the negative attitude of the offender to the interests of socialist society or individual citizens. But the main thing was that guilt was understood by most scientists as a certain reality that must be known and established in the process of investigating and considering a criminal case.

Guilt in the commission of a crime (both intent and negligence) objectively exists outside the consciousness of the law enforcer (judges, criminal prosecution officers). It is included in the subject of proof in the production of criminal prosecution and trial.

Guilt, which is the mental attitude of a person to a socially dangerous action (inaction) committed by him and its consequences, includes intellectual, volitional and emotional (sensory) signs. Intellectual and volitional signs are taken into account by the legislator when determining intent and negligence as forms of guilt.

Emotional signs are not included in these concepts, however, they also play a certain role and are taken into account in the process of law enforcement practice as circumstances taken into account by the court in the process of individualizing punishment.

In real life, intellectual, volitional and emotional signs are interconnected and form a single mental process, so their selection is conditional, necessary to understand the content and meaning of guilt.

Intellectual signs reflect the cognitive processes occurring in the psyche of a person. It is a thinking-based ability of a person to understand both the actual signs of the

situation in which he finds himself, and the consequences of his behavior in this situation, as well as their social meaning.

Volitional signs are a conscious direction of mental and physical efforts to make a decision, achieve goals, hold back from action, select and implement a certain behavior, etc.

The prerequisite for guilt is the freedom of the actor. This raises the question of free will and the determinism of human behavior.

All actions of people are determined. However, the influence of the external environment on human behavior is always mediated by his consciousness and will. Thus, the actions of people cannot be considered a mechanical reaction to the external environment. A specific situation gives rise to an act of will, only refracting through interests, attitudes, habits, mental characteristics and other individual personality traits.

The behavior of any sane person is conscious and volitional. Man acquires the possibility of dominating himself and the laws of external nature through his social existence and experience.

Free will is the ability of a person to choose behavior options, to foresee and evaluate the consequences of his actions based on knowledge of the objective side of reality, taking into account the requirements of morality and law.

Therefore, the responsibility of a person for his behavior is determined not only by the fact that he caused socially dangerous harm to law-protected interests by his act, but also by the fact that these actions (inaction) previously passed through his consciousness and will, compared with various aspects of the surrounding reality and were an expression his subjective intentions, desires and interests.

In the current criminal law, the concept of guilt is not disclosed, it is only indicated that guilt is a generic concept of intent and negligence. The same situation was in pre-revolutionary legislation. The Russian Penal Code of 1845 did not define either guilt or its forms, while resorting to the use of various terms (intentionally, with knowledge of the consequences, with the aim, with intent, maliciously, etc.), which caused their different interpretation in theory and practice. The Criminal Code of 1903, having done away with such ambiguity of terms, defined both forms of guilt (intention and negligence) in the law, indicating the main features of these concepts.

There is no definition of guilt as a generic concept in foreign criminal law. In some foreign Criminal Codes it is noted that guilt is a generic concept. So, in Art. II (1) of

the Criminal Code of Bulgaria states: “A socially dangerous act is recognized as guilty if it is committed intentionally or carelessly.” Further, the legislator reveals the concept of these forms of guilt, defining their features. In other Criminal Codes, the recognition of two forms of guilt is simply stated without indicating their signs.

For example, according to Art. 10 of the Spanish Criminal Code “Crimes or misdemeanors are actions or omissions punishable by law, committed with intent or negligence.” According to Art. 15 of the German Criminal Code “only an intentional act is punishable, unless the law expressly provides for punishment for a negligent act.” Finally, some of the Criminal Codes do not at all contain in the General Part any indication of either guilt or its forms. However, in the Special Part of these Criminal Codes, there is a fairly clear distinction between intentional and reckless acts. So, in the Criminal Code of France in Ch. 1 in div. 1 refers to “deliberate attacks on life”, and in dep. 2 - about “unintentional encroachments on life”, etc.

3. Conclusion

The degree of guilt of a particular person in committing a certain crime is a direct expression of the degree of distortion of the perpetrator's value orientations. Given that the degree of guilt is a quantitative expression of a person's negative attitude towards the interests of the individual and society, as well as an indicator of the distortion of the value orientations of the perpetrator, establishing it causes a different degree of denunciation of the person, the measure of his responsibility. Determining the presence and degree of guilt contributes to an objective solution of the issue of responsibility and punishability of the perpetrator.

A criminal act is assessed by the legislator, the court, and the offender himself. By prohibiting this or that behavior of a person under pain of criminal punishment, the authorities thereby assess it as especially dangerous and consider it criminal. This is the highest form of evaluation because it entails the choice of prohibition. An assessment given by a court, a qualifying assessment, i.e., an assessment of the statement, which consists in establishing that the committed act corresponds to the signs specified in the law.

The assessment of the criminal himself, given to his own behavior, is the assessment of comparison. Its essence is that the subject compares the “existent” with the “due”, i.e., what he did, with how he should have behaved in a similar situation, and this comparison gives him the opportunity to clarify to him the harmfulness of his deed.

In the criminal law of the Republic of Moldova, objective imputation is categorically excluded. Guilt is the mental attitude of a person to a committed socially dangerous act and its socially dangerous consequences, expressed in the form of intent and negligence. The constituent elements of guilt are will and consciousness.

Intent includes foreseeing only those consequences, the occurrence of which or the possibility of the occurrence of which is provided for by law as a necessary sign of a specific *corpus delicti*. Indifference to the consequences indicates indirect intent.

The conscious assumption of the onset of socially dangerous consequences, which is characteristic of indirect intent, may also be associated with the unwillingness of these consequences to occur. Indirect intent is impossible with formal crimes, that is, where the act itself forms a completed crime and where dangerous consequences are not required. An act committed through thoughtlessness or negligence is a crime committed through negligence.

In practice, there are cases when the mental attitude of a person to the act itself is intentional, but to the consequences - careless. In this case, we are dealing with a mixed form of guilt.

An act is recognized as committed innocently if the person did not realize the social danger of the act and, due to the circumstances of the case, should not or could not foresee the social danger of the consequences.

The act is also recognized as innocent if the person, although he foresaw the possibility of dangerous consequences, could not prevent them due to the inconsistency of his physical or psychological qualities with the requirements of extreme conditions or neuropsychic overload.

References

- *** (2003). Code of Criminal Procedure of the Republic of Moldova No. 122-XV of March 14, 2003. *Official Monitor*, No. 104-110 of June 7, 2003. Entered into force on June 12, 2003.
- *** (2003). Criminal Code of the Republic of Moldova No. 985-XV of April 18, 2002. *Official Monitor* No. 128-129 of September 13, 2002. Entered into force on June 12.
- *** (2004). New criminal law of Russia. A common part. *Textbook*. Edited by Kuznetsova N.F. Moscow, Beck.
- Astemirov, Z. A. (1994). *Problems of the theory of criminal responsibility and punishment*. Makhachkala.

Krylova, N. E. (2006). Criminal law. A common part. *Textbook*. Moscow, Zertsalo.

Minkovsky G.M. & Magomedov A.A. (1998). Criminal law of Russia. *Textbook*. A common part. Moscow, KnoRus, 1998.

Ratinov A.R. (1992). *Psychological study of the identity of the offender*. Moscow, Yurait, 1992, p. 78.

Utevsy B.S. (1980). *Guilt in Soviet criminal law*. Moscow, Gosjurizdat.