

THE INSIGNIFICANCE OF THE ACT AS ONE OF THE CIRCUMSTANCES EXCLUDING THE CRIMINALITY OF THE ACT

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Abstract. The article considers the national vision of the place of a minor act among the circumstances precluding the criminality of the act, by conducting a retrospective analysis and identifying the essential feature of a minor act.

Keywords: insignificance of a deed, circumstances precluding criminality of the act, delicti of a crime.

Introduction

Before discussing the issue of insignificance of an act, we should consider the place assigned to this institution in national criminal law. The fact that insignificance of an act is in the list of circumstances precluding criminal liability, gives us the right to directly consider the essence of these circumstances and find out the reason why they preclude criminal liability and the expediency of finding insignificance of an act among them.

Discussion and Results

In accordance with Article 35 of the Criminal Code of the Republic of Uzbekistan, circumstances are recognized as excluding criminality, when an act containing the characteristics provided for by the present Code is not a crime due to the absence of public danger, unlawfulness or guilt [1]. The legislator by this definition underlines the direct connection of these circumstances with the concept of crime. At the same time, the absence of the mandatory elements included in the essential characteristic of a crime, namely public danger, guilt and unlawfulness is indicated as a basis for excluding responsibility. In turn, in the doctrine of criminal law there are several theories concerning the nature of these circumstances. According to the first, most well-known and generally accepted theory, criminality of an act is excluded due to the fact that there is no material attribute of such criminality: social danger of the act committed; the harm caused by the act is regarded as "socially neutral" or even "socially useful". This concept was developed by the Soviet criminal law doctrine. Recently, scientists have made attempts to create new explanations of the legal nature of such circumstances. Of interest is, for example, the theory of "external factor", according to which the sign of not public danger of a deed, but its wrongfulness is excluded: the harm caused is considered admissible in the presence of the grounds for such admissibility provided by law. According to another opinion, circumstances of this category exclude liability by virtue of the social utility of acts committed under the conditions provided for by law. Finally, some specialists point out that the grounds for exclusion of criminality of a deed are of a complex nature: the refusal of the state to prosecute (exclusion of illegality) in this situation is associated with the lack of public danger of the deed, as well as with the possible absence of guilt of a person in its commission [2]. Domestic criminal legislation in this regard, states that the circumstances excluding the criminality of an act may not have public danger (for example, due to insignificance of the act) or not be unlawful (for example, necessary defense and extreme necessity), or not contain guilt (for example, execution of an order or other duty, or justified professional or economic risk) [3]. In other words, the point of view of the national criminal legislation reflects the theory with a comprehensive characterization of the essence of circumstances precluding criminality of a deed, where the basis is the absence in the committed actions of the basic elements of the crime.

In turn, it becomes obvious that the concept of crime is inextricably linked with the concept of circumstances precluding criminal responsibility, as well as insignificance of the act. For this reason, with the help of retrospective analysis we should consider the evolution of these concepts in the origins of domestic criminal

legislation. One of the first codified criminal laws of Uzbek Soviet Socialist Republic was the Criminal Code adopted in 1926, in paragraph 6 of which the concept of crime was indicated, namely the following: any action or inaction against the Soviet system or in violation of the legal order established by the workers' government during the transition to communism, is considered a socially dangerous crime [4]. At the same time, there is a special note to this paragraph, which states that although the act officially corresponds to the features of any article of the special part of the present Code, but because of the seeming insignificance of its duration and the absence of harmful consequences, the act is not considered a crime that does not represent public danger [4]. This norm can be considered the primary source for the domestic notion of insignificance of a deed, which will subsequently take its place in the next national Criminal Code. In its turn, in accordance with Paragraph 1 of Article 7 of the Criminal Code of the Uzbek Soviet Socialist Republic of 1959, the crime was understood as a criminal act against the Soviet social or state system, socialist economic system, socialist property, personality, political, labour, property and other rights of citizens representing danger to society (action or inaction) provided for by criminal law, as well as other actions against the socialist law [5]. This definition specifically describes the objects that are under the protection of the law, for the encroachment on which the criminal law provides for criminal liability. Interesting for us is part 2 of this article, which states what is not a crime, namely, that despite the presence of characteristics of an act under the criminal law, an action or inaction that does not represent public danger due to its insignificance is not considered a crime [5]. Unlike in the Criminal Code of 1926, this norm has already been directly introduced in the text of the article itself, reflecting the concept of insignificance of an act, and it is mentioned right after the concept of crime, which emphasizes their inseparable connection and has a logically constructed sequence. It should be emphasized that there is no concept of circumstances excluding criminality in the texts of the above-mentioned Penal Codes, while there are norms on necessary defense and extreme necessity in Articles 13 and 14 of the Penal Code of 1959. And the concept of the so-called "non-crime" took its place on a par with the concept of crime.

In turn, at the present stage, the notion of circumstances precluding criminality of a deed appeared with the adoption of the Criminal Code of the Republic of Uzbekistan of 1994 where the notion of insignificance of a deed is enshrined among them in Article 36, but not in Article 14 devoted to the concept of crime. In this case, it raises a very logical question: "Why did the legislator decide to highlight the norm of insignificance of the act in a separate article and place it in the section on the circumstances precluding criminality of the act, and not to fix it in the article devoted to the concept of crime? And how expedient is it?". In order to answer the raised questions, it is necessary to understand the essence of the circumstances precluding criminality of a deed, namely to consider the common features for them in the context of the concept of insignificance of the deed.

First of all, deeds committed under these circumstances, cause a certain harm to the legally protected object and interests, which are under the protection of criminal law. In particular, under a minor secret theft of another's property, the direct object is public relations in the field of ensuring the safety of other's property and property.

Secondly, under such circumstances the external side of a deed, i.e. the objective side of a deed reminds or exactly coincides with the corpus delicti of a crime enshrined in the Special Part of the Criminal Code. For example, when stealing a simple pencil, on the face as if all attributes of theft of another's property, fixed in disposition of art. 169 of the Penal Code of the Republic of Uzbekistan, but public danger at this case has other quantitative and qualitative characteristics.

Thirdly, committing a certain act under the given circumstances is accompanied by the conscious-will aspect, when the choice of committing an act consciously takes place and there is an understanding of the subsequent consequences of committing the act. An exception to this feature is the commission of an act under physical or mental coercion or threat. At the same time, when committing the theft of a loaf of bread, a person is aware that unlawfully of his own free will without any coercion carries out the theft of another's property.

Fourthly, we are talking about the legitimacy of the act, about the so-called usefulness of the act under the given circumstances. In this case, despite the fact that a certain act is forced to cause harm, still this harm is socially useful, which compensates for the harm caused. As, for example, in case of necessary defense, it is

suppression of socially dangerous encroachment. In this aspect, of interest is the insignificance of a deed, as the essence of this norm a priori cannot possess lawful nature, much less be socially useful. In particular, when committing theft of a pencil by this act an unlawful action is committed, which causes damage to the rights and legitimate interests of the property owner.

Fifthly, when committing an act under these circumstances, an important emphasis is placed on the limits of legality of committed actions. In other words, it is a question of the limits and conditions established by law, compliance with which can tell us about the recognition of an act as lawful. From this point of view, insignificance of an act is dislocated from a number of other circumstances excluding criminality of an act, as the legislator has not disclosed quantitative and qualitative characteristics of the concept of insignificance in order to be able to determine its limits and boundaries and distinguish it from a criminal act.

Conclusion

Summarizing the above, we can conclude that insignificance of a deed as a circumstance precluding criminality of a deed has the following features:

- inflicts a certain damage to a certain object protected by the criminal law;
- coincides with the corpus delicti of the crime provided for by the Special Part of the Penal Code of the Republic of Uzbekistan;
- is committed consciously without any coercion
- is not lawful and socially useful;
- does not possess the criminal-law framework necessary for recognising an act as lawful and distinguishing it from a crime.

Literature

1. Criminal Code of the Republic of Uzbekistan. National Legislation Database. URL: <https://lex.uz/docs/111457>
2. Nikulenko A.V. The circumstances precluding criminality of a deed: conceptual bases of the criminal-legal regulation: diss. Candidate of jurisprudence: 12.00.08 // - St. Petersburg, 2019. - P. 82 URL: <https://www.dissercat.com/content/obstoyatelstva-isklyuchayushchie-prestupnost-deyaniya-kontseptualnye-osnovy-ugolovno-pravovo>
3. Criminal Law. General part: Textbook - T.: Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, 2005 - P. 345.
4. Criminal Code of the Uzbek Soviet Socialist Republic. Edited by: Directorate of Affairs of the Council of Ministers of the Uzbek SSR. - T., 1947, P.5.
5. Criminal Code of the Uzbek Soviet Socialist Republic. Publishers: Uzbekistan. - T., 1971, PP. 8-9.