
ҚЫЛМЫСТЫҚ ПРОЦЕСС ЖӘНЕ КРИМИНАЛИСТИКА УГОЛОВНЫЙ ПРОЦЕСС И КРИМИНАЛИСТИКА

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M.B.Akhmedov

*Police Academy of the Ministry of Internal Affairs of Azerbaijan Republic, Baku, Azerbaijan
(E-mail: m_rashad@mail.ru)*

Criminal law and legal significance factual errors in law enforcement activities

This article is devoted to problems of disclosure of content of "mistake" for effective application of criminal norms of law and institutes in investigative and judicial practice. Lack of accurate and consistent definition of concept of mistake in literature and special norms about mistakes in the Criminal code of the Azerbaijan Republic generates in law-enforcement activity serious difficulties at qualification of act of the person in the conditions of commission of mistake. Therefore in article definitions of legal and factual mistakes in legal literature are considered, the comparative and legal analysis of institute of mistake in the criminal legislation of foreign countries is carried out, judicial practice is studied.

Key words: the criminal legislation, the Criminal code of the Azerbaijan Republic, the criminal legislation of foreign countries, legal mistake, the factual mistake, mistake in object, mistake in means.

With the rapid development of modern public relations is increasingly evident inconsistency between the law and the actual conditions of social existence. This is explained by the fact that many of the usual phenomena take on new social meaning. The same applies to the criminal law, the development of which clearly shows that the effectiveness of criminal law and institutions depends on how they meet the requirements of the present time.

Among the complex and important issues of criminal law has always treated and treats mental element in crime, which is considered very controversial science of criminal disposition and is therefore a lot of difficulties in dealing with questions about the basis and limits of criminal liability response, the definition of crimes, the use of many of the institutions of the criminal rights in the investigative and judicial practice. Especially great difficulties arise in the study of the subject matter error crimes. Since the error of the subject for the crime affects the content, shape, and volume of guilt, thus defines the boundaries of subjective imputation in the criminal proceedings, the offense determines the qualification limits criminal liability and punishment, as well as the use of many of the institutions of criminal law.

Practice shows that the lack of a clear and consistent definition of errors and special rules error generates enforcement serious difficulties in qualifying actions of a person in terms of making a mistake. Relevance of the subject lies in the fact that disclosure of the research problem "error" will allow the fullest limit knowingly commit crime in criminal law, not allowing objective imputation that will further strengthen the rule of law in the field of application of criminal law.

Criminal law as a set of legal norms establishing crime and punishable is the regulatory framework to deal with crime. There is no doubt that a successful solution to this problem depends on the proper application of criminal law on the basis of serious research and evaluation of all evidence of a criminal act committed by a person constituting the offense. According to Art. 63 of the Constitution, every person accused of a crime is presumed innocent until his guilt is proved in accordance with the law and has entered into force of a judgment. And Art. 7 of the Criminal Code establishes criminal responsibility only for those acts and socially dangerous consequences, in relation to which his fault. This means that criminal responsibility for causing harm to the innocent that is objective imputation is not allowed.

Every crime committed wine is individual, allowing investigating the features of mental attitude of a person to a socially dangerous act and harmful effects. In this regard becomes important study on the criminal legal error when the person incorrectly evaluates legal or factual circumstances of the offense [1; 17].

It should be noted that the problem of errors beyond their study separate science, in particular criminal law. Investigation of this issue has focused on different sciences: psychology, sociology, philosophy, etc. No one is immune from mistakes in their behavior, and only a fraction of human error falls within the scope of their study criminal law.

The Criminal Code of the Republic of Azerbaijan special rules dealing with criminal - legal errors not contained. This raises an important issue, when many different, sometimes diametrically opposed views among experts concerning penal characteristics actions of a person in perfect conditions, errors, incorrect imply its legal assessment, which can not affect the criminal responsibility in general. We issue an error and its impact on the guilt and criminal responsibility solved theory of criminal law or judicial practice.

Although it should be noted that the rules of an error contained in the criminal law of many foreign countries. In most foreign codes contain provisions for the exclusion of criminal liability for intentional crime in the presence of the actual error, if the person was not aware of the factual circumstances that the law refers to the mandatory grounds that offense. The principle involves subjective imputation guilty only of the circumstances of the offense that they were perceived. And it accept any liability for the offense, the presence of actual signs is not aware of the subject, but impunity for an intentional crime in this case does not necessarily imply an automatic exemption from criminal liability. Foreign legislation discusses options for to bring the perpetrators to justice, with his mistake for negligent infliction of harm if the deed contains signs of careless crime. In other cases, criminal liability of a person in the actual error is eliminated. Conditions specified algorithm criminal liability if a person commits the crime situation in the actual error is shared by most foreign countries. Most briefly error rate is set out in the Criminal Code of France. Not be criminally responsible person who can prove that it is a result of errors in law, to avoid which it was not able to, I think that may make it applicable law. Considering the rules on legal error, we note that for many foreign countries remains firm doctrinal position that ignorance of the law is no excuse. However, some states have chosen to serious study of this institution, offering a different solution to the responsibility of the person in terms of the error in law. Thus, according to the American criminal law liability is excluded in cases where the criminal law were not known to the subject, or a normative act has not been published or erroneous or invalid the official wording of the law. In some foreign countries, the legal error is grounds leniency (Japan, Switzerland, etc.) and if it is proved ignorance and integrity error, the person may be generally exempt from punishment (Austria, Chile, etc.). Comparative analysis of the institution of the error in the criminal law of foreign countries contributes to solving the problem of development of the regulatory provisions of design error in the science of criminal law.

It should be noted that the issue was considered an error-minded Roman private relation to the characteristics of an effective legal transaction to the main elements of which must be assigned subject and formalized his will. Interest of the parties, which will manifest content, could not be recognized in the presence of two conditions: the transaction should not be contrary to the law and morality, as well as a recognized rule of law must pursue social or economic purpose.

Since the formation of the subject's will could happen including under the influence of errors (error), will might be inadequate legal interests of participants in the relationship. Therefore, the development issues related to the subjective side of the undertaking received in the Roman private law significant development. Roman private law or does not take into account the error or the transaction is considered void or voidable. Roman private law states that " a mistake understood discrepancy between the will and its expression or between the manifest will and the underlying interest caused by ignorance of the subject on the circumstances of the case." It should be noted that even at that time the Roman lawyers offered to classify errors into two main types : legal and factual .

At the present stage in the criminal - legal literature there are various definitions of the error. Some scientists understand iodine mistake misled about the actual person and the juridical nature of the offense, others treat the EU as wrong, wrong idea about face factual and legal attributes or properties of the offense and its consequences, others define it as a wrong assessment of a person of his behavior, according to the fourth error is " misleading face of objective and subjective symptoms of a socially dangerous act that characterize the act as a crime» [2; 48].

Compromise notion of error with respect to the definitions given AI will Rarog. By mistake he understands... person only misleading as to the actual circumstances which determine the nature and degree of social danger of the act or acts on the legal characteristics" [3; 194].

More consistent in their definitions as errors in general, and its species A. Naumov. In all cases, the error in A.V. Naumov revealed through the turn - a misconception [4; 233, 234].

In our view, such a diversity of opinions on the concept of error in criminal law due to the fact that, as a philosophical concept, not given sufficient attention in the philosophical literature. As for the theoretical papers on this subject in itself criminal - legal science, the situation today is such that the expressed ideas about how and why it should be treated hook mistake disclose it only through the category of error, could not find a sufficient number of adherents and theorists considered as a dispute about unimportant aspects of the problem. Collectively, the ego, apparently, and manifested in the fact that the concepts of no error in the criminal law of Azerbaijan as in 1960 and 1999. Meanwhile, legislative strengthening concepts error would strengthen the rule of law, law enforcement agencies would facilitate the application of the criminal law and reduce the often encountered in practice, cases of objective imputation.

Concluding the debate about the definition of the error, it seems the following: because, in accordance with the version of article. 14 of the Criminal Code, the crime of two objective inherent traits: a public danger and criminal illegality, then the error when the person committing the crime concerns of these attributes.

In view of stated, it can be stated that under a mistake of criminal law is to be understood with respect to persons misleading nature and degree of social danger of committed criminal acts and its illegality.

In the legal literature, there are several classifications of errors in law by various criteria. Thus, according to their causes are divided into pardonable (innocent) and inexcusable (guilty) in importance and influence on the significant qualification that alter the qualification of the offense, and inconsequential that this does not affect the qualification.

In the modern theory of criminal law also offers a variety of classification errors: Public danger of the act; circumstances, which are elements of a crime, etc [5; 32]. Obviously, the study of errors in terms of their classification criteria is of great scientific interest, because the nature of the error may affect the establishment of the subjective aspect of the crime. But the basic classification of errors is carried out on the subject. By this criterion, they are divided on the legal and factual (errors in the actual circumstances of the case).

Legal error — ego misconception face of crime or inaccessibility he committed the act, his qualifications, the type and amount of punishment provided for these actions. This kind of error is sometimes called a mistake in wrongfulness. If a person mistakenly believes that it is committing a crime, while in reality these actions legislator does not relate to criminal (alleged crimes). It may not be prosecuted, as in this case.

No criminal wrongfulness (necessary feature of any crime). In contrast, the misconception face impregnable acts while they are, do not exclude the possibility to answer in criminal law procedure. This kind of error does not preclude deliberate fault, because ignorance of the law is not equivalent to a lack of public awareness of the danger, and cannot justify the person who committed the act prohibited by the criminal law. Most scholars and practitioners are generally recognized unshakable [6; 74]. In many cases, the way it is. But there are situations where a person who violates the criminal law prohibition, not only did not know about it, but could not know in those circumstances in which it was in the time of the violation of this prohibition. In such cases, criminal liability should be excluded due to the absence of guilt. This fact confirms once again that the presence of the criminal law article that regulates the conditions of discharge or leniency when an error is certainly a positive thing. Misconceptions about the qualification of the offense (legal assessment), the type and amount of punishment that may be imposed for a crime does not affect the solution of the question of responsibility and guilt.

The actual error is misleading with respect to the face of the factual circumstances characterizing the objective elements of a crime or aggravating circumstances, the degree of public danger. Depending on the subject of incorrect perceptions and evaluations necessary to distinguish the following types of the actual error: object encroachment in the nature of the act or omission in the severity of the consequences in the development of the cause of communication, aggravating circumstance. Apart from these species in the literature are encouraged to provide as separate species, and the actual error such as an error in the subject of crime, in the person of the victim, the method and means of committing the crime. But it is unlikely the selection of such species the actual error is justified because they represent species or errors in the object or objective side of the crime, or do not have values for criminal liability.

Error in the object — a collective term that includes several kinds of errors. Its main species is only possible when fleshed intent where the perpetrator is clearly the object to which he intends to do harm. At a

resolution of this kind of error is taken into account, on the one hand, the objective finality socially dangerous actions a person on the other mismatch actually performed actions with its intent.

Theory and jurisprudence distinguish this kind of attempt to commit a crime, which is codenamed as an attempt to «waste facility». Attempt on waste facility takes place in cases where the perpetrator of his intent to assault committed on a real object, but in fact his actions do not affect the object and cannot cause him damage. For example, in cases shot dead, mistaken for a living person. Attempt to «waste facility» is always punished in the same range as the usual attempt, as the actions of the perpetrator though were not able in this case to harm subject matter nonetheless undeniably are by nature public danger.

In criminal - legal literature also provides error in consequences. This type of error is covered in the development of causality and its kind — a mistake to dismiss the action. Error deviation action is somewhat reminiscent of an error in the identity of the victim. There is also no harm is caused to the person against whom the defendant infringed. But unlike this error in the error deviation of the person at risk of harm actions simultaneously exposed two faces: that on which the infringement was committed, and that which is actually harmed. In this case, the deed should be classified as an assault on a crime that would make the perpetrator, and how careless actual harm.

Error in the media is expressed in the use of another person than planned, means to commit the crime. Means unfit for crime and misidentified the subject for those that can help you achieve the criminal result, referred to in the literature attempt futile. Demarcation criterion to attempt to waste and futile attempt to bring the character of reasons not the crime.

Futile attempt occurs when a person attempts to commit an offense means or instruments that, by their objective properties are not able to harm the project encroachment. Unsuitable or instrumentalities of crime can be both constant and variable. Given this characteristic in the literature means crimes are divided into species. Distinguish absolutely and relatively unfit agents, unfit due to objective characteristics of a particular case and the inability of their objective under any circumstances.

Speaking of time, the relative "Unsuitable" due to the objective characteristics of a particular case, it means that a person exercising his will criminal activity, sought to ensure that the result came, and only because of his error in the quality of this particular property funds at this time and under any other circumstances the use of these funds could lead to socially dangerous results. Because of this error in the properties related crimes, which are relatively unsuitable temporary and does not eliminate the social danger of the act. But as a result of error due to not come, the guilty actions necessary to qualify as an attempted crime.

Thus, as a general rule, the ignorance of the person that they applied tools and means of committing the crime are not suitable for the intended purpose does not relieve him of criminal responsibility. Actions of a recognized socially dangerous, as no consummation of crime were due to circumstances beyond his control. Only in exceptional cases, a person may be relieved of responsibility for the assassination committed futile. Here are misleading, based on ignorance of people (referred to in science as an attempt to void means) when a person because of their low literacy, religious suspiciousness, extreme ignorance and superstition uses such means (prayers, spells, divination and etc.). Which inherently are not more than the discovery of intent. Actions of a person, which are based on such an error, are not punishable because the degree of social danger is negligible.

Thus, to summarize, it is undeniable that the issue of error in criminal law directly related to the issue of guilt and its impact on the responsibility. Legal error does not affect the form of guilt and criminal responsibility, but in some cases may play a role mitigating circumstance. Influence of the actual error to the criminal liability can be described thus: aggravating circumstances, the presence of which did not know the offender cannot be attributed to him, the criminal liability shall be determined taking into account the orientation of guilty intent. Committing the crime, the offender may not always accurately imagine the development of a crime, the causal link between the act and its consequences, as well as other circumstances of the crime. He is not always aware of the offense, the qualifications and terms of punishment. The principle of responsibility for fault (subjective imputation) requires an assessment not only true, but also misconceptions about the nature of the person committed the act and its social significance. In this regard, considering the concept of guilt, it is necessary to give notion of error and determine its impact on the criminal liability. We believe that the legislative consideration of this issue would enhance the effectiveness of law enforcement.

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М.Б.Ахмедов

Құқық қолдану қызметіндегі заңдық және мәліметтік кателердің қылмыстық-құқықтық мәні

Мақалада қылмысты тергеу және соттық тәжірибелерінде қылмыстық-құқықтық нормалар мен институттарды тиімді қолдану үшін «қате» мазмұнын ашу мәселесі жан-жақты қарастырылған. «Қате» ұғымына қатысты әдебиетте нақты және қарама-қайшы емес анықтаманың берілмеуі және Әзербайжан Республикасының Қылмыстық кодексінде кателер туралы арнайы нормалардың болмауы кателік жасау жағдайында жасалған тұлғаның әрекетін саралау бойынша құқық қолдану қызметінде әжептәуір қиындықтар туындатады. Сондықтан автор заң әдебиетіндегі заңдық және мәліметтік кателердің анықтамаларын салыстырып, шетелдердің қылмыстық заңнамаларындағы қате институтына салыстырмалы-құқықтық талдау жүргізіп, сот тәжірибесін зерттеген.

М.Б.Ахмедов

Уголовно-правовое значение юридических и фактических ошибок в правоприменительной деятельности

В статье освещены проблемы раскрытия содержания понятия «ошибка» для эффективного применения уголовно-правовых норм и институтов в следственной и судебной практике. Определено, что отсутствие четкого и непротиворечивого его определения в литературе и специальных норм в Уголовном кодексе Азербайджанской Республики порождает в правоприменительной деятельности серьезные трудности при квалификации деяния лица в условиях совершения ошибки. Автором рассмотрены определения юридических и фактических ошибок в юридической литературе, проведен сравнительно-правовой анализ института ошибки в уголовном законодательстве зарубежных стран, представлена судебная практика.

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