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Issues of realization of the general principles of accountability in national legal system of the Republic of Kazakhstan

In the presented article issues of a role of the conventional principles of international law in system of the national right of the Republic of Kazakhstan are considered, the characteristic of their contents and feature is given. The carried-out comparative analysis of criminal and legal, administrative precepts of law which consolidated the general principles of responsibility, new approaches to research of this problem gave the chance in to formulate to authors conclusions and regulations on this topical issue.

Key words: international law, international treaties, national law, sources of law, implementation, implement, the principle of the supremacy of the Constitution, the primacy of international standards.

Undoubtedly, the issues of realization of the general principles of criminal law in national legal system has huge interest in the conditions of world globalization. For a minimizing of any criminal manifestations, increases of welfare of the people of Kazakhstan, an embodiment in life of an ambitious task of entry into number of thirty most competitive countries of the world, are required the qualitative system measures based on modernization of legal policy of the state and increase of a role of institutes of civil society.

The main condition of successful social and economic development of the country strengthening of legality, a law and order, legal discipline, ensuring equal responsibility of all citizens before the law implementation of important legal principles. For the solution of the above-named priority problems of the present and carrying out in life of the general principles of the right a number of fundamental laws of the Kazakhstan national right, including the criminal law underwent reforming. Need to provide the norms defining their ratio with the ratified international treaties were one of justifications of adoption of the new criminal code of the Republic of Kazakhstan. Therefore the Kazakhstan legal system has to be capable to compete as equals in questions of convenience of application and reliability of protection of the rights with the legislation of the developed countries of the world. General globalization and growth of the world competition let to know to participants of the world community need of modernization of legal systems and their maximum approach to needs and needs of people and interests of investors. Only the competitive legal system can attract investments into the country, promote realization of the progressive scientific and technical ideas, help growth of welfare of people, and increase the level of sense of justice and legal culture of citizens.

Efficiency and productivity of means and methods of impact on crime, measures of criminal liability, in many respects are defined by the general principles of criminal law. Criminal and legal principles occupy one of the central places in the sphere of regulation of legal relations in society and, despite the secondariness in comparison with the reality regulated by them, are capable to govern these relations most effectively. In other words, from as far as criminal precepts of law and institutes conform to requirements of the real principles, depends not only efficiency of their application, but also, eventually, progressive development of society.

In this regard one of priority problems of criminal policy is improvement of quality of the criminal legislation — standards of the criminal law have to conform to requirements of legal accuracy and predictability of consequences, that is criminal precepts of law have to be formulated with sufficient degree of clearness and are based on the clear criteria allowing to distinguish with all definiteness lawful behavior from illegal excepting possibility of any interpretation of provisions of the law.

The basic principles of international law express the most important regularities of modern system of the international relations and international law, characteristic signs of system of the principles are universality, all recognition, all-obligation, stability [1]. As it is noted by Yu.S. Romashev, «the important and regulating role in the international relations is played by the universally recognized norms of international law. In this regard the problem of definition of conditions under which international legal norms get the status of «conventional» has as the theoretical and practical importance» [2; 297].

The difficult the question of definition of concepts of the conventional principles and norms of international law on which the criminal code of the Republic of Kazakhstan is based is. According to Professor

S. V. Chernichenko «the universally recognized norms are considered as those because practically all members of interstate community, directly or indirectly, agreed to consider them for themselves obligatory» [3; 13]. Also professor pays attention to that that, such norms can be reproduced, confirmed and concretized in bilateral and multilateral international treaties, from this their value as conventional aren't belittled. For explanation of a place and a role of international treaties in legal system of various countries it is necessary to define first of all interaction of norms of international law with the national right of the states. General globalization of the world community, consolidation of interdependence between the countries cause the necessity of that their legal systems were compatible and capable to interact with each other and with global system in general as its components as there can be problems in the course of interaction of the international and internal law [4; 84].

The principles of the international criminal law at the heart of which, the conventional universal values as freedom, democracy, respect of the rights and freedoms of the person lie, ideas the defining essence, the contents and an order of construction and application of norms of modern legal system are understood. According to the specified world values, which are fixed in the International Covenant on Civil and Political Rights, the Rome Statute of the International criminal court and other regulations of the United Nations in many countries, bases and an order of criminal liability are defined.

The basic principles on the basis of which activities of the state for criminal prosecution are conducted: (*nullum crimen sine lege, nulla poena sine lege*) legality, (*ratione personae*) lack of a retroactive effect of the law, (*inadmissibility of the link to official capacity*), (*responsibility of commanders and other chiefs*) equalities of citizens before the law, (*individual criminal liability, an exception of jurisdiction for the persons which didn't reach 18-year age*) differentiation of criminal liability, (*inapplicability of a limitation period, basis for release from criminal liability*) inevitability of criminal liability, (*the subjective party, a mistake in the fact or a mistake in the right, orders of the chief and the instruction of the law*) guilty responsibility, justice, humanity. All these principles qualitatively differ from each other, the independent contents, thus they are interconnected, and render equal interaction on formation of criminal precepts of law, and their actions.

It is necessary to tell, fixing with separate norms of the general international criminal legal principles in special standards of criminal laws of Armenia, the Azerbaijan Republic, the Kyrgyz Republic, the Republic of Moldova, the Republic of Tajikistan, Turkmenistan, the Russian Federation, the Republic of Uzbekistan, Republic of Belarus, except criminal codes of the Republic of Kazakhstan, Ukraine [5], despite the existing contradictions of a legislative regulation of these postulates, certainly, is one of achievements of criminal and legal science.

As it was told the criminal law of the Republic of Kazakhstan by separate articles doesn't regulate the general criminal principles. However, as well as all other countries article about a role the general international principles is provided in the law of Kazakhstan. In ch.2. Art. 1 of the Criminal code of the Republic of Kazakhstan fixed situation by which, this code is based on the Constitution of the Republic of Kazakhstan and the conventional principles and norms of international law. In this case we consider a laconic position about a role the general international criminal principles is justified.

The following paragraphs of this article, about that that, «The constitution of the Republic of Kazakhstan has the highest validity and direct action in all territory of the Republic, also in case of contradictions between standards of the present Code and Constitution of the Republic of Kazakhstan provisions of the Constitution, standards of the present Code recognized unconstitutional, including striking the rights and freedom of the person and the citizen affirmed by the Constitution of the Republic of Kazakhstan work, lose validity and aren't subject to application», have the duplicating character. In our opinion these provisions are excessive as comment on theses of Art. 4. Constitution of the Republic of Kazakhstan. Direct application shouldn't be interpreted as action of norms of international law out of the constitutional bases and requirements of the national right and contrary to of Action of the international standards assumes the activity of national legal system connected with execution of requirements of international law including reduction in compliance of acts of the national legislation with them. It is necessary to tell, at emergence of a collision between the international treaty and the Constitution of the specified countries, in particular the Republic of Kazakhstan, the rule about the highest validity of the Constitution because the international contracts are a component of legal system of the state will work, and within this system there can't be acts standing above the Constitution of the country.

From a position of this article of the Constitution standards of the Constitution, laws corresponding to it, other regulations, the international contractual and other obligations of the Republic, and also standard

resolutions of the Constitutional Council and Supreme Court of the Republic admit the Republic of Kazakhstan the law in force. Further the same article consolidated norm on the highest validity of the Constitution and direct action of the basic law in all territory of the Republic.

Despite the objects set in the Concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 about further increase of competitiveness of domestic legal system, further work on systematization of the current legislation, further consolidation in a section of branches of the legislation; to release it from the outdate and duplicating norms, to completion of gaps in legal regulation, to elimination of internal contradictions in the law in force; to minimization of referential norms in laws and to expansion of practice of adoption of laws of direct action within a circle of questions [6], stating rules about the Constitution role in paragraphs ch.2. Art. 1 of the criminal law the legislator allowed repetition of these rules and this norm it is possible to carry to the duplicating.

On the other hand if we set the purposes about adoption of laws of direct action within concrete circles of questions, the above-named provisions ch.2. Art. 1 of the criminal code which, directly send to standards of the Constitution of the Republic of Kazakhstan, contradict these purposes. Practical realization of the all-criminal principle of legality consists in application of rules of Art. 4 the criminal code where, it is fixed that «the only basis of criminal liability is commission of a criminal offense, that is the act containing all signs of crime or criminal offense, provided by the present Code. Nobody can be subjected to repeatedly criminal liability for the same criminal offense. Application of the criminal law by analogy isn't allowed». These rules are based on the most important principle of criminal law of «*nullum crimen sine lege*» («there is no crime without instruction on it in the law»).

For implementation of tasks of protection of the rights, freedoms and legitimate interests of the person and the citizen, property, the rights and legitimate interests of the organizations, a public order and safety, environment, the constitutional system and territorial integrity of the Republic of Kazakhstan protected by the law of interests of society and state from socially dangerous encroachments, protection of the world and safety of mankind, and also the prevention of criminal offenses, the criminal code establishes the bases of criminal liability, defines, what dangerous to the personality, societies or the states of act are criminal offenses, that is crimes or criminal offenses, establishes punishments and other measures of criminal and legal influence for their commission.

In textbooks according to the theory of the state and the right an offense the illegal, guilty, punishable, socially dangerous act of the responsible person doing harm to interests of the state, society and citizens [7]. Also a number of authors claim that the offense is the socially harmful guilty act of the capable subject contradicting requirements of precepts of law [8]. In science of criminal law as a criminal offense illegal, socially dangerous, guilty, punishable behavior of the person which is specially provided in articles of Special part of the criminal code is understood.

The legislator in ch.2 a crime recognizes Art. 10 of the criminal code of the Republic of Kazakhstan perfect socially dangerous act (action or inaction) forbidden by the present Code under the threat of punishment in the form of a penalty, corrective works, restriction of freedom, imprisonment or the death penalty is guilty.

We having analysed definitions of criminal offense and a crime this in ch.2, ch.3 Art. 10 of the criminal code was noticed that, on signs they differ from each other. It agrees p.1 Art. 10 of the criminal law «Criminal Offences depending on Degree of Public Danger and Punishability Are Subdivided into Crimes and Criminal Offences» and it means that, these offenses from each other differ only in degree of public danger and punishability. Further in ch.3. Art. 10 of the criminal code where the concept of criminal offense contains is absent an illegality sign as criminal offense admits perfect the act (action or inaction) which isn't constituting big public danger, did insignificant harm or created threat of infliction of harm of the personality, the organization, to society or the state for which commission punishment in the form of a penalty, corrective works, attraction to public works, arrest is prescribed is guilty.

Follows from a plot of the specified norms that, the legislator when determining signs of criminal offenses in places doesn't mention illegality of criminal offense, that is a crime the illegal and forbidden by the law act, criminal offense isn't that. The sign of illegality testifies that the person who made a criminal offense broke a criminal and legal ban and in case of commission by the person of the act which isn't provided by the criminal law, it can't be considered as a criminal offense.

If to follow the postulate fixed in ch.4 by Art. 10 4, isn't a criminal offense action or inaction though it is formal and containing signs of any act provided by Special part of the present Code, but owing to insignificance not constituting public danger. In the theory of criminal law the phrase [is formal and containing

signs] means illegality of act. We consider not a mention in ch.3. Art. 10 of the criminal code of a sign of illegality or a forbiddenness of this act by the law to contradict realization of the principle of legality.

Following point No. 7. The standard resolution of the Supreme Court of the Republic of Kazakhstan of July 10, 2008 N 1 «About application of standards of international treaties of the Republic of Kazakhstan» courts at establishment of the bases of responsibility can't directly apply the international criminal and legal, administrative and legal acts as the international legal norms providing signs of structures of crimes have to be applied when the norm of UK directly establishes need of application of the international treaty of the Republic of Kazakhstan (for example, articles 158 and 159 UK). When considering the case when norms of UK provide approach of criminal liability for the crime forbidden by the international treaty of the Republic of Kazakhstan, the court is obliged to study the contents of the international agreements of the Republic of Kazakhstan and standard of the criminal law providing criminal liability for acts, forbidden by the international treaty, for the purpose of establishment, whether all signs of penal act from the international treaty of the Republic of Kazakhstan are included in the criminal law, to find out a question of ratification, the effective date and so on [9].

Criminalization of acts, considering of acts by an administrative offense is within the exclusive competence of the legislator. A legislative prerogative is also differentiation of the crimes and criminal offenses which aren't constituting such degree public danger as crimes, also administrative offenses. From the moment of act declaring illegal, publications of the relevant law (criminalization of acts, considering of acts by an administrative offense) act becomes criminal offense or a crime, an administrative offense the state has an opportunity to apply criminal and legal, administrative and legal means to these acts.

For differentiation of these illegal acts we investigated standards of the code about administrative offenses of the Republic of Kazakhstan. In p.1. the legislator an administrative offense recognizes as Art. 25 of the Code of Administrative Offences of the Republic of Kazakhstan illegal, guilty (deliberate or careless) action or inaction of the natural person or illegal action or inaction of the legal entity for which the present Code provided administrative responsibility. Such formulation of concept of an administrative offense lets to us know that the let act made by the natural person is illegal and guilty, the act made by the legal entity only illegal. It is possible to come to a conclusion that in the Republic of Kazakhstan criminal offense isn't forbidden by the criminal code, the administrative offense made by the legal entity doesn't contain a guilt sign.

In the following articles of administrative code of RK, in particular Art. 26 commission of an administrative offense is deliberate, Art. 27 commission of an administrative offense on imprudence one of guilt signs the legislator describes anticipation of harmful consequences and desire or the assumption approach of these consequences, also anticipation of possibility of approach of harmful consequences of the action (inaction), or not anticipation of possibility of approach of such consequences from the act only of the natural person is conscious. In the administrative code of RK is nothing to be told about guilt of the legal entity. As it is considered to be, the guiltiness is category subjective, and it is impossible to define the mental relation to the act and its consequences of the legal entity. In this case on the basis of guilt it is estimated only the offenses made by natural persons. «The principle of fault establishes that the person is subject to criminal liability only when socially dangerous act made by it depended on the personality when the person was capable to refrain from infliction of harm to society» open essence of the principle of guilty responsibility P.S.Dagel and D.P. Kotov [10; 14].

Both in item 3 of Art. 77 of the Constitution of the Republic of Kazakhstan, and in standards of the constitution of a number of the CIS countries I received fixing the principle according to which criminal liability comes only in the presence of fault of the person who committed a crime, the person is considered innocent in commission of crime until his guilt is recognized as the sentence of court which entered into being». According to the current criminal legislation of RK «The Person Is Subject to Criminal Liability Only for Those Socially Dangerous Acts (Actions or Inaction) and coming socially dangerous consequences concerning which his guilt is ascertained», that is the guilt is a necessary sign of an offense. On each offense the guilty relation of the person to the outside world, to society, to the individual is established.

According to N. A. Lopashenko the principle of fault is the central principle of the criminal legislation" [11; 96]. In the Kazakhstan legal literature the question of need of its legislative fixing is rather often discussed. It would be desirable to note that the criminal legal principle of fault is a peculiar manifestation in criminal law of the presumption of innocence fixed in standards of the Constitution of the CIS countries. Criminal laws of these countries are constructed, on the basis of this situation, that is, the person who committed a crime bears for it criminal liability only if this act is made is guilty. Respectively, the come respon-

sibility of the person for acts, perfect it is guilty, is the fundamental provision of the criminal law, and we think it answers the principles of the criminal legislation.

For comparison in p.1. Art. 2.1 the code of the Russian Federation about administrative offenses «an administrative offense illegal, guilty action (inaction) of the natural or legal entity for which the present Code or laws of subjects of the Russian Federation on administrative offenses established administrative responsibility admits». Further in ch.2 same article «the legal entity is found guilty of commission of an administrative offense if it is established that it had an opportunity for observance of rules and norms for which violation the present Code or laws of the subject of the Russian Federation provided administrative responsibility, but this person didn't take all measures for their observance depending on it» [4]. In questions of establishment of guilt and attraction to administrative responsibility for guilty offenses the Russian legislator doesn't carry out differentiations between acts of the natural and legal entity.

We are inclined to think that such approach is connected with the general principles enshrined in Art. 1.4. «Principle of an equality before the law», Art. 1.5. «Presumption of innocence», Art. 1.6 «Law enforcement at application of measures of administrative coercion in connection with an administrative offense», Art. 1.7 «Action of the legislation on administrative offenses in time», Art. 1.8 «Action of the legislation on administrative offenses in space» the code of the Russian Federation about administrative offenses. All standard principles of the legislation on administrative offenses of the Russian Federation according to the contents express the general ideas of application of provisions of the law for realization of administrative responsibility and natural and legal entities.

Principles of material standards of the legislation on administrative offenses of the Republic of Kazakhstan: legality, an equality before the law and court, the presumption of innocence, the principle of fault, inadmissibility of repeated attraction to administrative responsibility, the principle of humanity, integrity of human beings, respect of honor and dignity of the personality, personal privacy and protection of secret, inviolability of property, release from a duty to give testimony, ensuring the rights for the qualified legal aid, publicity of production on cases of administrative offenses, attach significance to production on affairs of natural persons. Only number of standards of procedural character: Art. 18 independence of court (judge) and body (official) authorized to consider cases on administrative offenses, Art. 21. publicity of production on cases of administrative offenses, Art. 22 safety during production, Art. 23 freedom of contest of proceeding decisions and appeal of procedural actions, Art. 24 judicial protection of the rights, freedoms and legitimate interests of the person, we consider have basic value for affairs production and natural and legal entities.

We consider, in the administrative code of RK it would be expedient to give separate concept of the administrative offense made by the natural person separately concept of the administrative offense made by the legal entity and it is obligatory to specify a sign of guilty responsibility for legal entities. Allowed disagreement in these laws will result in complexity in formation of uniform law-enforcement practice, in the countries of the Eurasian space, it would be desirable to see integration between these countries not only in the economic relations, but also standard and legal questions too.

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Ж. Уәлиева

Қазақстан Республикасының ұлттық құқықтық жүйесінде жауапкершілікке тартудың жалпы қағидаларын жүзеге асыру сұрақтары

Мақалада Қазақстан Республикасының ұлттық жүйесінде халықаралық құқықтың жалпы танылған қағидаларының ролі жөніндегі сұрақтар қарастырылған, олардың мазмұны мен ерекшеліктерінің сипаттамасы берілген. Жауаптылықтың жалпы қағидаларын бекіткен қылмыстық-құқықтық және әкімшілік-құқықтық нормаларды өзара салыстырмалы түрде талдау және осы мәселелерді зерттеуге арналған жана бағыттар авторға осы өзекті сұрақтар бойынша өз қорытындылары мен тұжырымдарын жасауға мүмкіндік берді.

Ж. Уәлиева

Вопросы реализации общих принципов привлечения к ответственности в национальной правовой системе Республики Казахстан

В статье рассматриваются вопросы о роли общепризнанных принципов международного права в системе национального права Республики Казахстан. Приведены характеристика их содержания и особенности. Проводимый сравнительный анализ уголовно-правовых, административно-правовых норм, закрепивших общие принципы ответственности, новые подходы к исследованию данной проблемы, дал возможность сформулировать авторам выводы и положения для раскрытия темы исследования.

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