THE CRIMINAL LAW NATURE OF A MINOR ACT

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Abstract: The article deals with the content of criminal law nature of insignificance of the act, the theoretical foundations of this institution, as well as the peculiarities of interpretation of the rule about insignificance of the act.

Keywords: insignificance of a deed, public danger, characteristics of corpus delicti.

Introduction

Despite the fact that references to the concept of insignificance of a deed exist in the domestic criminal legislation for quite a long time, still the development and improvement of this institute of criminal law has not been given due attention, both from the practical and theoretical point of view. In particular, the issue of the criminal law nature and essence of insignificance of a deed remains open and untouched by the scientific community. At the same time, this injustice generates further problems of practical nature, which leads to the fact that this norm is either not used in the correct way, or it is not applied in all. In this regard, the norm of insignificance of an act remains fixed on paper, but in practical terms it does not play the role prescribed by the legislator. The reason for this is not just insufficient study of this issue by the national scientific community, but a huge gap in its knowledge. Because without understanding of the fundamental, essential characteristics of the criminal-legal nature of insignificance of a deed, its further implementation by law enforcers becomes impossible, as theoretical basis being the

so-called guiding vector, contributes to the correct and accurate application of any norm.

Discussion and Results

At the same time, the presence of problems in the institute of insignificance of a deed is also due to the fact that there is no consensus among legal scholars on the recognition of all elements of crime in insignificance of a deed. It should be noted that due to the lack of consensus among scientists, points of view on this provision have differentiated nature and consist of several groups. In particular, a number of scientists believe that a minor act cannot a priori contain elements of corpus delicti. This position is supported by Y.E. Pudovichkin, stating that an act, which is not a crime according to the law, cannot contain the signs of corpus delicti, it is illogical [1, p.22]. The next group of scientists believes that a minor act in its essence can only formally resemble the corpus delicti of a crime, enshrined in the Special Part of the Criminal Code. This point of view is held by Bagirov Ch. M., while emphasizing that a minor deed implies external similarity, but not identity of the elements of a crime [2, p.9] enshrined by the criminal law. In our view, the considerations of the last group of legal scholars, who adhere to the position of recognition of all signs of corpus delicti as a minor deed, are the most correct [3].

At the same time, it is important to note that the presence of the elements of a crime in a minor act is directly enshrined by the legislator himself in Article 36 of the Uzbek Criminal Code: an action or inaction, although falling under the features of the act provided for by this Code as a crime, but not having public danger due to its insignificance, is not a crime. The legislator emphasizes that the committed act precisely "falls" under the signs of a crime enshrined in the Criminal Code. This wording to a large extent confirms that the opinion of scientists about the presence of features of a crime in the act of insignificance takes place. In addition, if insignificant act had no distinctive features from the crime itself, it would be unreasonable and illogical to allocate it to a separate article. However, in practice there is often misunderstanding of the boundary between the crime and the non-crime. In particular, certain acts in which there is no element of a crime are

recognized as insignificant. This provision is categorically illogical, because if a certain act does not fall under the signs of a crime enshrined in the Criminal Code, then it cannot be automatically recognized as insignificant, as the legislator himself states to the contrary.

In order to understand the criminal-legal nature of insignificance of a deed, it is necessary to understand the elements contained in its definition itself: an action or inaction, although falling under the signs of an act stipulated by this Code as a crime, but not having public danger due to insignificance, is not a crime. Based on this definition, we can conclude that the presence of features of corpus delicti for a minor act is a mandatory component of it. However, of particular interest is the following wording: "not having public danger by virtue of insignificance". Both in the theory of criminal law and the legislator enshrined that the fundamental feature of a crime is, first of all, the public danger of an act, expressed in the form of action or inaction. According to para. 2 of art. 14 of the Penal Code, social danger is an act which causes or creates a real threat to cause damage to the objects protected by this Code. If we consider these provisions from the semantic point of view, it becomes obvious that the legislator, prescribing that the act of insignificance "falls" under the elements of a crime, however, immediately makes a reservation about the "absence of public danger due to insignificance" - these formulations contradict each other. This is due to the fact that public danger is an obligatory feature of a crime, the absence of which tells us about the exclusion of the concept of crime, and accordingly, the corpus delicti itself. If there is no corpus delicti of a crime, then there can be no talk of insignificance of an act. These conclusions derive only from a literal interpretation of the enshrined norms. However, the above wording should be interpreted restrictively, as it hides an insufficient degree of individual public danger of a deed, which clearly does not reach the criminally significant level [4, p.50]. At the same time, it is important to point out the specific differences that exist between the individual danger of a specific behavioral act and the typical degree of public danger of a deed, which is presumed in the process of criminalization [4, p.51]. In this connection, in our view, the considerations of A.P. Kozlov, who specifically

differentiates the boundary between the general, so-called typical public danger and individual one, are successful. In particular, he believes that the typical degree of public danger should be understood as an assessment of the typical elements of a type of crime, expressed in the typical type and amount of punishment indicated by the legislator in the sanction. The individual degree of public danger arises when the typical elements of a type of crime begin to "grow" with their individual characteristics. All these individual features, when added together, create an individual degree of public danger; at that, some of them increase the individual public danger (aggravating circumstances), others - reduce it (mitigating circumstances). In their totality, both these and others nivel their influence and, accordingly, the individual degree of public danger [5]. This opinion is held by not all legal scholars, some scientists make a mistake in understanding the essence of individual and general public danger and thereby identify them, understanding at the same time that when a deed is insignificant only general (typical) public danger is implied. Thus, A.V. Korneeva argues that if an act formally contains signs of a crime under the Criminal Code, it cannot fail to represent public danger, since the basis for criminalization of deeds is the presence in the criminalized act of signs indicating that its commission represents public danger characteristic of crimes [6, p.1078]. At the same time, according to the point of view of I.G. Ragozina and V.V. Brazhnikov - an act can be recognized as insignificant in the presence of two conditions: firstly, it should fall under the signs of a crime provided for by criminal law, i.e. it should have lawfulness, and secondly, it should have no public danger. This does seem paradoxical, because public danger and unlawfulness are two obligatory features of a crime, and if the legislator has included an act among the criminal, it means that he has presumed the presence of public danger. Public danger is a feature of any crime. If an act loses public danger, the legislator must decriminalize it. If an act does not contain the necessary attributes of corpus delicti, then we should speak not about insignificance, but about the absence of corpus delicti [7, p.43]. At the same time, this opinion is held by M.V. Levadnaya, who believes that in the absence of public danger of a deed there is no obligation for a person who has committed this

deed to be brought to responsibility. But the paradox lies in the fact that if an act loses the attributes of a crime (public danger), then we should talk not about the insignificance of the act, but about the absence of corpus delicti in this act [8, p.125]. In this case, in our opinion, the statements of these scientists should be reconsidered. Since they take as the basis of their provisions only a typical characteristic of public danger, they miss its individualization at a specific committed unlawful act. In each individual case, the law enforcer always faces the task of giving the correct criminal-legal assessment, taking into account the conditions and circumstances of the committed act, in connection with this application of only standard provisions without taking into account the individual circumstances of the committed act is unacceptable and may lead to a violation of the objectives of justice.

In turn, I would again like to draw your attention to the wording from Article 36 of the Uzbek Penal Code: "having no public danger by virtue of insignificance". In this case, the legislator emphasizes that insignificance predetermines the absence of public danger. This provision violates the causal link between these concepts, as insignificance turns out to be the cause of the absence of public danger, although in fact insignificance is implied as a consequence of the absence of this public danger. In other words, it is necessary to clarify and define that an act is recognized as insignificant due to the lack of public danger, and not vice versa, as it is enshrined in the Criminal Code of the Republic of Uzbekistan. In this connection, in our opinion, it is necessary to revise the current wording.

Conclusion

Thus, we summarize that a deed of little significance is a deed (action or inaction), the signs of which correspond to the corpus delicti of a specific crime, but in its essence does not reach the public danger, which is implied by this crime.

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