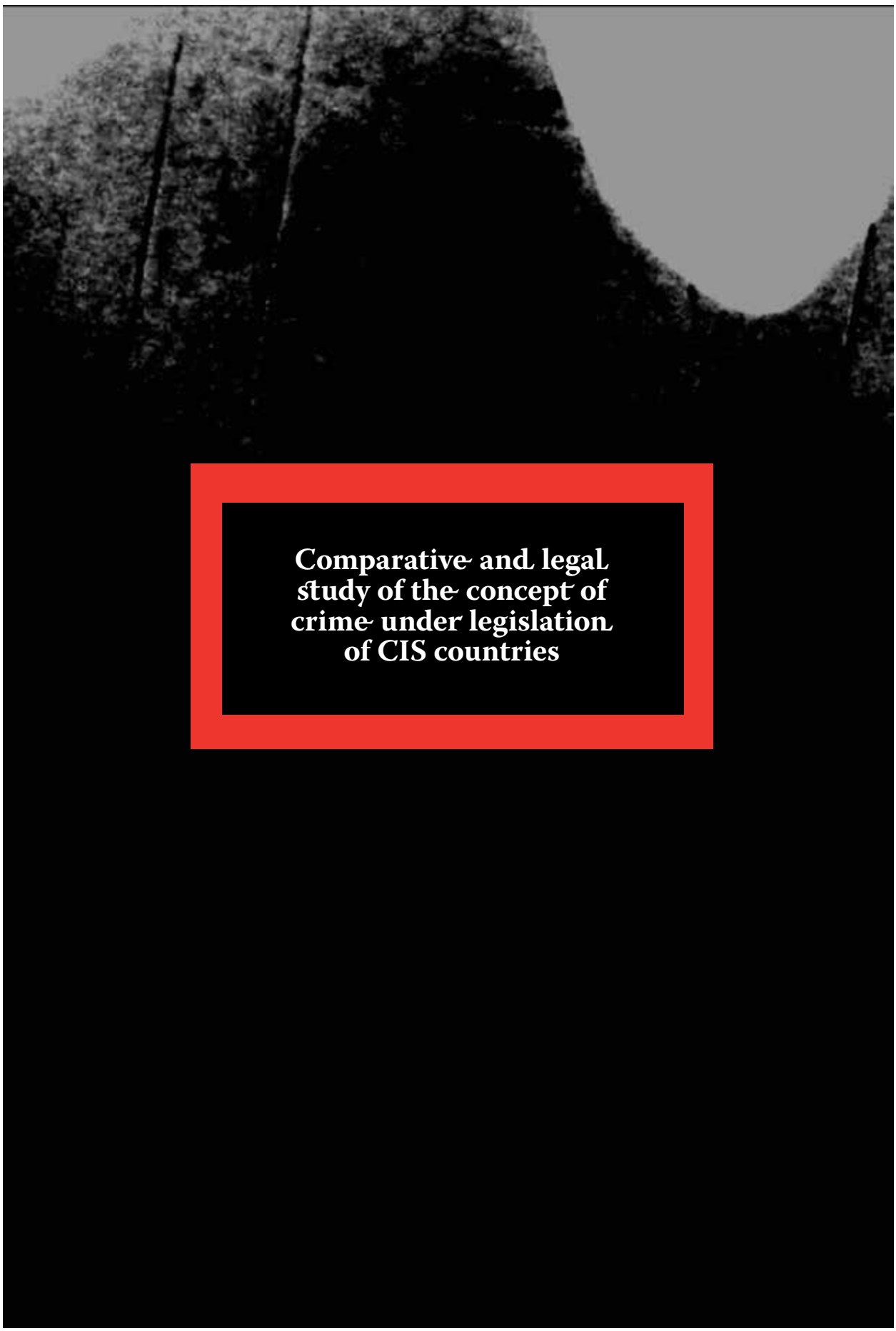

Comparative and legal study of the concept of crime under legislation of CIS countries

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Estudio comparativo y jurídico del concepto de crimen bajo legislación de los países de la CEI

ABSTRACT

This article analyzes the concept of crime under the criminal law of CIS countries, and reveals the specifics of the signs that make up this concept. The present study is based on the features that are most often found in the legislation of CIS countries. Approaches to the description and determination of the sign of public danger are studied and analyzed, and on this basis, the concept of criminal misconduct and insignificant action has been studied. It is revealed that the criminal legislation of selected states is described by its heterogeneity, and there are absolutely specific characteristics that are specified for individual countries.

KEYWORDS: crime, misconduct, social danger, insignificant act, signs of crime, punishability.

RESUMEN

Este artículo analiza el concepto de delito bajo el derecho penal de los países de la CEI y revela los detalles de los signos que conforman este concepto. El presente estudio se basa en las características que se encuentran con mayor frecuencia en la legislación de los países de la CEI. Se estudian y analizan los enfoques para la descripción y determinación del signo de peligro público, y sobre esta base, se ha estudiado el concepto de mala conducta criminal y acción insignificante. Se revela que la legislación penal de los estados seleccionados se describe por su heterogeneidad, y hay características absolutamente específicas que se especifican para cada país.

PALABRAS CLAVE: crimen, mala conducta, peligro social, acto insignificante, signos de delito, punibilidad.

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INTRODUCTION

Crime is the central concept of the criminal law. All the elements that make it up should be clearly regulated and be as specific as possible, because any human behavior that is subsequently recognized as a crime should fall under these signs.

The study of the concept of crime from the standpoint of comparative jurisprudence is extremely important and relevant, as it allows to identify the advanced trends in the development of criminal law (Mironuk et al, 2017).

It should be noted that present work is on the definition of crime, and many of the works are focused on the knowledge of certain types of crimes (Geis, 1991).

The concept of crime is very often viewed from the standpoint of criminology (Henry & Lainer, 1998). Although, the definition of a crime is more of a criminal law concept.

It can be stated that in the presence of theoretical developments, questions devoted to the concept of crime continue to be debatable in the science of criminal law (Schwendinger & Schwendinger, 1972).

RESEARCH METHOD

This study was based on a dialectical approach to the disclosure of legal phenomena and processes by using general scientific (system, logical, analysis and synthesis) and private scientific methods. Among the latter are formal legal, linguistic legal, and comparative legal, which were collectively used to study the texts of criminal laws of 11 post-Soviet countries in order to identify features of the reflection in the criminal law of the concept of crime. The choice of this group is determined by the common historical background of criminal law development within the USSR and the equal period of post-Soviet development. This allows us to predict the existence of common features in the concept of crime on one hand, and the diversity in individual signs characterizing crimes on the other hand.

RESULTS AND DISCUSSION

The present study revealed that all investigated criminal laws contain the concept of a crime. It is clear that without a basic concept of the central element of criminal law, it is impossible to implement the principles of criminal law, and also to come to a common denominator about the ratio of punishable and unpunishable behavior.

It should be noted that each definition reflects signs that are sufficiently necessary to describe the desired concept. For a comprehensive study of the concept of crime, it seems necessary to identify the signs that are traditionally distinguished by the doctrine of criminal law, and are an integral part of law enforcement perception.

The concept of crime should be characterized by the following characteristics: crime is an act, crime has a certain level of public danger; crime is unlawful; crime is an act that a guilty committed; crime is punishable (Criminal law of Russia, 2015).

The above list of characteristics in its totality may constitute a crime, however, not all criminal laws of the CIS countries contain these features in the concept of crime, and in some cases are supplemented with other ones.

The first feature to be analyzed is that crime is always an act. A deed is an external act of unlawful behavior of a person, and it can be expressed in two forms: action (which corresponds to active behavior) or inaction (which corresponds to passive behavior, expressed in an imperfect action that a person could and should have done). Absolutely, all criminal laws of the CIS countries know such a division of the act, however, not all criminal laws have such a division implemented in norm on the concept of crime.

Thus, the criminal codes of Armenia and Russian Federation [4] use the concept of "act" in defining a crime, without disclosing its forms. In the other nine criminal laws, the forms of an act are prescribed - action or inaction. It should be noted that in describing

insignificance of the act, the aforementioned codes do disclose this concept.

We believe that legislators have refused to excessively describe the objective signs of a crime in order not to overload the wording.

The next sign of a crime is a public danger, which expresses the essence of the crime and consists of inflicting harm to social relations by the action, or a danger of inflicting harm. Public danger is an indicator which shows that a crime can harm protected public relations, or creates the risk of causing such harm. In general, this feature is largely not at the discretion of legislator, but it determines that at the moment, some acts or behavior are so unacceptable that their elimination requires criminal law measures.

The mention of public danger is contained in all criminal laws of CIS countries, with the exception of Criminal Code of the Republic of Moldova (http://base.spinform.ru). However, the legislator of the Republic of Moldova described crime as "a detrimental deed (act or omission), provided for by criminal law, committed by a guilty person which is punishable".

It should be said that in this case, the content is fixed, unlike the form of the considered feature. At its core, the social danger is characterized by the possibility of causing harm.

By studying the criminal legislation of the CIS countries, it is possible to meet wording of the crime, which contains both a sign of public danger, and describes its content.

The Criminal Code of Turkmenistan describes a crime as "a committed guilt and socially dangerous act (action or inaction) that causes damage or threatens objects protected by criminal law" (http://base.spinform.ru).

The legislator of the Republic of Uzbekistan [4] in the norm describing the concept of crime also gave an explanation to the socially dangerous act. Thus, an act that causes or creates a real threat of causing damage to the objects protected by the code is recognized as socially dangerous.

The most obvious sign of public danger is revealed when analyzing the concept of a minor act.

Thus, the Criminal Code of the Republic of Belarus describes an insignificant act as "an action or inaction, formally containing signs of any act stipulated by the code, but due to its insignificance does not have the public danger inherent in the crime". Such an act in cases stipulated by law may entail the application of administrative or disciplinary measures (http://base.spinform.ru).

Given the above definition, it is possible to define the boundaries of criminal liability. Therefore, the act described in criminal law, which does not have a sufficient level of social danger can become the basis of responsibility, but not a criminal one only.

There are also other formulations of insignificance that reveal a sign of public danger.

The Criminal Code of Republic of Azerbaijan provides that a minor act does not constitute a public danger; that is, it does not create a threat of harm to a person, society or the state (http://base.spinform.ru).

The Criminal Code of Republic of Armenia defines the insignificance through action or inaction, although formally containing signs of any action stipulated by the code, but because of its insignificance, it does not represent a public danger; that is, it has not caused and cannot cause significant harm to an individual or legal entity, society or to the state. In the above formulation, there is a sign of materiality of harm, which in our opinion, can be interpreted quite widely.

It should be noted that all definitions of the insignificant acts encountered are evaluative, and their determination is at discretion of the law enforcer.

We believe that social danger is an absolutely necessary sign of a crime. The above examples of insignificance illustrate the importance of a sign of public danger in distinguishing between criminal and non-criminal.

Let us turn to the analysis of sign of illegality, which should be understood as the prohibition of the act by criminal law. It expresses its wrongfulness in the fact that a specific act

is committed that the signs of which are contained in the criminal law.

In general, wrongfulness is the material embodiment of public danger, which correlate as a form with content.

A sign of illegality is contained in all criminal laws of the CIS countries, with the exception of Criminal Code of Turkmenistan.

We believe that this feature must be present in the definition of a crime. Objective and subjective signs of a particular act that is recognized as a crime should be clearly regulated by the criminal law. Otherwise, any act or behavior of human can be attributed to acts that infringe on objects protected by the criminal law.

The next necessary sign of a crime is guilt. This characteristic reveals mental attitude of the person toward the act, as well as the consequences. It should be noted that the sign of guilt is an indicator of the attitude of legislator to subjective imputation. By regulating this feature, it becomes impossible to hold a person accountable for innocent harm.

All the criminal laws of CIS countries fix this feature in the definition of a crime.

The sign of punishability means the possibility of imposing punishment in the case of violation of criminal law prohibition. It is important to note that punishment does not mean mandatory use of punishment, but it regulates possibility of its use, and the threat of its purpose. A crime is any identifiable behavior that a significant number of governments specifically banned and officially punished (Bosworth & Hoyle, 2011).

The sign of punishability is not enshrined in all criminal laws of the CIS countries. Thus, the criminal codes of Armenia, Turkmenistan and Ukraine do not provide for such a sign in the definition of a crime (http://base.spinform.ru).

We believe that this feature logically follows the sign of wrongfulness. If the act is prohibited by criminal law, the person who committed it should be subject to criminal liability and punishment (Akbari et al, 2013).

However, in some criminal laws, this feature is invaluable. Thus, the Criminal Code of Republic of Kazakhstan stipulates that criminal offenses, depending on the degree of public danger and punishability, are divided into crimes and criminal offenses (http://base.spinform.ru). A criminal offense is an act committed by a guilty (action or inaction) that does not pose a great public danger, causing minor harm or endangering a person, organization, society or the state, for which the penalty is imposed in the form of a fine, correctional work, and involvement in public work arrest.

As a basis for dividing all criminal offenses into crimes and misdemeanors, the legislator of Republic of Kazakhstan selected the signs of public danger and punishability. However, it should be noted that the sign of public danger in this case is an estimate. Primary law enforcement focuses on penalties that are provided in the rule on criminal misconduct.

In general, the consolidation of the concept of criminal misconduct is certainly a progressive step within the framework of criminal law, since the possibilities of individualization of responsibility and punishment expand.

In the Russian Federation, it is also proposed to introduce the concept of criminal misconduct into criminal law. It is assumed that more than 80 articles providing for crimes will go into the category of misconduct. The main advantage of this reform is that the person who has committed a criminal offense will not have a criminal record (They will punish and not plant, 2018).

In addition to the above signs of crime in the criminal law of the CIS countries, there are additional signs that are implemented in the concept of crime.

In Criminal Code of the Republic of Belarus, it is noted that a crime is an act, which is characterized by signs stipulated by the code.

The legislator focuses on the fact that the objective and subjective signs are contained not only in the Special, but also in the General part. For example, when qualifying unfinished crimes, not only the norm of the Special Part, but also the norm that describes the signs of an unfinished crime are subject to accounting.

The Criminal Code of Ukraine defines a crime as a socially dangerous guilty deed stipulated by the code (action or inaction) and committed by the subject of the crime. Without a proper subject, there can be no crime. It seems that the subject of the crime may act as a sign of a crime, although traditionally, the subject is perceived as an element of the crime.

CONCLUSIONS

All criminal laws of the CIS countries have a definition of crime, although the characteristics that form these definitions are not uniform.

In the vast majority of criminal laws, the form of the act constituting the crime is described as an act or omission.

A sign of public danger is either directly enshrined in the concept of crime, or derives from components of the definition. In criminal laws, there are norms that reveal the public danger of a crime. Thus, Criminal Code of the Republic of Uzbekistan recognizes public danger as causing, or creating a real threat of causing damage to objects protected by the code. But if the public danger is not disclosed in the concept of crime, then it can be defined on the grounds of a minor act. Public danger, as a sign of crime, combined with other signs, allows to fix the legal division of criminal offenses into crimes and misdemeanors.

The signs of wrongfulness and punishability are not enshrined in all criminal laws. The indictment of guilt is contained in all criminal codes of the CIS countries. This study revealed that in the definition of crime, there are other signs that are not characteristic of all the laws of CIS countries; in particular, the sign of the subject in definition of crime, which is reproduced in the Criminal Code of Ukraine.

BIBLIOGRAPHY

Bosworth M., Hoyle C. (2011). What is Criminology?

Geis G. (1991). White-Collar Crime – What Is It? Current Issues Crim. Just.

Henry S., Lainer M. (1998). The prism of crime: Arguments for an integrated definition of crime. Justice Quarterly. Vol. 15. http://base.spinform.ru (accessed 10 January 2019).

Mironuk I.V., Burtsev A.S., Lyakhova A.I., Lukyanchikova E.F., Stepanyuk A.V. (2017). Formalization of Innocence Presumption Principle in the States of The Post-Soviet Space. International Journal of Scientific Study. Vol 5. Issue 8. pp. 327-330.

They will punish and not plant. (2018). Russian newspaper. 20 Dec (in Russian).

Akbari, A., Abbasian, M., & Jansooz, P. (2013). Application of RAP Model in measuring the capabilities of attracting sources in the economy: A case study of the tourism sector in Sistan and Balucestan. UCT Journal of Social Sciences and Humanities Research, 1(4).

Schwendinger H., Schwendinger, J. (1972). The Continuing Debate on the Legalistic Approach to the Definition of Crime. Issues Criminology. Vol. 7. № 1.

Diamond, A.V. (Ed). (2015). Criminal law of Russia. Parts General and Special. Under. M .: Prospect. (in Russian).