

## **SOME ISSUES OF CIRCUMSTANCES PRECLUDING THE CRIMINALITY OF THE ACT**

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**Abstract.** In this article, the author made some comments on some issues of circumstances precluding the criminality of the act in accordance with the criminal legislation of the Republic of Uzbekistan. Also, this article examines the concept and features of the circumstances excluding the criminality of the act, analyzes the opinions of scientists. The relevant proposals and recommendations for improving the norms of the criminal law related to the circumstances excluding the criminality of the act are also given.

**Keywords:** Act, crime, excluding circumstances, punishment, harm, material harm, physical harm, legislation, insignificance, responsibility.

### **Introduction**

As a result of the creation of a specific national system and regulatory framework for the Prevention of crimes committed in our republic and the importance of its compliance with international standards, the state and society are paid attention to issues of protection against various offenses and crimes at the level of state policy. In this regard 'improving and liberalizing criminal and Criminal Procedure legislation, decriminalizing individual criminal acts, humanizing criminal punishments and the procedure for their execution, coordinating activities to combat crime and prevent the wickedness of offenses and increasing its effectiveness' [1] are among the priority areas for the development of the judicial sphere, research in this area shows that when imposing penalties for crimes committed in cases that exclude the criminality of an act, it is important to take into account the behavior of the victim, the person who is committing a socially dangerous act, the reasons and goals of committing a socially dangerous act, and to improve the Prevention of these crimes and research it.

In fact, it is necessary to clearly distinguish the circumstances that exclude the criminality of the act, to determine their legal significance, the limit of application, and to study the legal significance of the circumstances that exclude the criminality of the act in the institution of crime and punishment, and to study the human rights and freedoms of these cases, one of the pressing issues in the legislation is to determine the place of its holding in the protection of the interests of society and the state.

### **Materials and methods**

The concept of circumstances precluding the criminality of the act and its distinctive features study, analysis of the norms of legislation providing for this situation. For this, methods of scientific cognition were used, such as analysis, historical-comparative method, abstraction and comparison.

### **Results of research**

Theoretically speaking about cases that exclude the criminality of an act, it is said that cases that exclude the criminality of an act are not recognized as a crime for committing it on their own behalf, situations that exclude punishment and responsibility, and what acts in the legal literature should be included in the category of cases that exclude the criminality of an act, While many authors describe the concept of situations that exclude the criminality of an act, they argue that it is actions related to human behavior. It is noted that these acts must have their basis. For example, criminal aggression, the risk of damage to the goods protected by law, and the counter-action of the person being caught to inflict damage during the capture will be the basis. That is, it is emphasized that it is the legal behavior that should be considered a situation that excludes the criminality of the act. But this description is one-sided and does not fully cover the content of the status. With this in mind, many authors have tried to give a full-fledged description of situations that exclude the criminality of the act. In Particular, M.Usmanaliyev expressed his opinion on cases that exclude the criminality of the act, according to which social relations were in danger, and if there was a need to immediately protect this social attitude, each citizen is charged with the duty to protect social relations by eliminating danger, and in the process of eliminating this risk when a certain person or other source of danger or another social attitude can be harmed. However, this material or physical damage is formally similar to a crime not provided for in any article of the special part of the Republic of Uzbekistan, but is not considered a crime due to the fact that it is not considered socially dangerous [2].

This theoretical view of the scientist is appropriate, and when there is a risk of harm to social attitudes, in the process of eliminating such a risk, harm to an individual or social attitude is not only considered a crime, but also socially useful, expedient from the point of view of society. Because such damage is applied in order to eliminate the source of danger to the aggressor in order to protect the interests of the state, public or citizens.

M.Rustambayev believes that circumstances that exclude the criminality of an act are not considered contrary to the law, since it is these circumstances that allow the owner of the state and property to dispose of his property and protect himself and his property from various encroachments [3]. Of course, this is precisely the essence of the introduction into the legislative system of cases when the opinion is considered appropriate and excludes the criminality of the act.

R.Kabulov also gave his opinion on this issue, saying that " a person in some cases can commit actions that are externally similar to one or another crime, but this can allow actions that cause harmful consequences by eliminating the risks that he is certain to harm, preventing the commission of a socially dangerous act, by allowing the person who committed such an act at the time. In the event that damage is caused by compliance with the specific conditions established by law, such actions are not considered as a crime [4].

Also, on cases that exclude the criminality of the act, several foreign legal scholars also carried out research work and outlined their theoretical views on the matter. In Particular, A.V.Nikolenko made a wide analysis of these cases, in his

opinion, cases that exclude the criminality of an act are an act caused by a particular situation, as a result of which the risk does not arise, but the risk is eliminated. It is for this reason that the appointment of punishment for such acts is considered inappropriate [5]. Of course, the legal views of this scientist are also justified, and such acts arise as a result of another act, that is, from the need to prevent another socially dangerous act, fulfill a certain task or take reasonable risks.

L.N.Smirnova believes that the existence of circumstances that exclude the criminality of the act is one of the guarantees that ensure the safety of the state and society [6].

Also, lawyer R.R.Shakurov and Yu.V.Goliaths also have their own views on this, according to which they have made several proposals to apply the method of motivating individuals who committed their actions in situations that exclude the criminality of the act [7].

Yu.V.Baulin also gave his opinion on this, among the cases that exclude the criminality of the act was the consent of the victim, playing sports, execution of parental decision, service duty fulfillment, it has given suggestions for the introduction of medical intervention and some other conditions related to the harm to human health or life [8].

Indeed, in the Criminal Code adopted in 1959, it was stated that no less significant acts are considered a crime in the article of the same code (Part 2 of Article 7), which is given the concept of a crime, not being given in the system of circumstances that exclude the criminality of an act.

In the current criminal code, no less significant acts were issued in a system of circumstances that exclude the criminality of the act.

In the current Criminal Code of the Republic of Uzbekistan, adopted on September 22, 1994, the types of cases that exclude the criminality of an act are not only clearly defined and as a result of an increase in their number, misunderstandings and disputes related to these cases have ceased and in the first part of Article 35 of the Criminal Code, the concept of cases that exclude the criminality of the act was consolidated for the first time.

According to this article, it was established that “although the signs provided for by this code in the Act are formally present, but it is not socially dangerous, illegal or guilty, it is considered cases that exclude the criminality of the act”.

Of great importance is such a definition of circumstances that exclude the criminality of an act, linking them with the concept of “crime”. Such a law interprets these cases by comparing among themselves cases in which there were signs of a crime and an offense, but in fact such an act was not of any content.

In particular, if we briefly talk about the concept of crime, then the Criminal Code of the Republic of Uzbekistan is prohibited by the Criminal Code under Article 14, the guilty Social Security Act (Act or inaction) is considered a crime with the threat of punishment and in order for a social act to be a crime, it will have to manifest certain signs in itself.

In the absence of these signs in the structure of a socially dangerous act, this act is not considered a crime and excludes appropriate punishment and prosecution.

That is, the presence of elements of crime in a person's act in order to establish punishment and responsibility is a necessary sign of such circumstances.

However, without the determination of this norm, in some cases the person may exclude the fact that it is a crime and the imposition of punishment, even if it is a criminal offense in the Social Security Act committed. That is, in some cases, such acts may not be socially dangerous, but also socially useful, and such acts are considered cases that exclude the criminality of an act in criminal law, which we will try to explain in more detail about below.

In order for these cases to be established in the law, it is established that they must have certain signs, for all cases that exclude the criminality of an act, this concept is considered general and an act:

- not being illegal;
- not being socially dangerous;
- there should be no individual's fault in the act.

In this, it is not required that all these signs be at the same time in order to be considered a situation that excludes the criminality of the act. That is, the presence of one of these signs is considered sufficient and in Part 2 of Article 35 of the Criminal Code of the Republic of Uzbekistan the following cases are indicated as cases that exclude the criminality of the act;

1. less significant acts (Article 36);
2. necessary defense (Article 37);
3. last necessity (Article 38);
4. harm during the capture of a person who committed a socially dangerous act (article 39);
5. execution of a command or task in a different way (Article 40);
6. justified risk associated with professional or economic activity (Article 41);
7. Physical or mental coercion or intimidation (Article 41<sup>1</sup>) [10].

The separation of these cases into independent groups is inextricably linked with their single legal nature and functions, regulating the socially useful actions of the subjects of legal relations, which are outwardly seen as a crime.

Above, we mentioned that these acts are not considered a crime unless there are signs of crime in the act committed when we talk about situations that exclude the criminality of the act, that is, the act must be socially dangerous, fail the right, and be guilty of the act.

But a less significant act is different from cases that exclude another crime, its difference is that in this act there will be a violation of the right and guilt from the signs of the crime, only this act will not be socially dangerous, that is, its act will not cause serious harm to a person, state or organization, its act will not, therefore, criminal law finds this act less significant and excludes its criminality.

The level of social danger is manifested in quantitative indicators.

Hence, the size of the damage caused, the type of bodily injury can increase or decrease the level of social danger, the amount of stolen goods, the nature of the fault, the stages of committing a crime, the characteristics of the motive and purpose of aggression, and other signs.

Taking into account the nature and degree of social danger, employees of the competent authorities (inquiry officer, investigator, prosecutor and court) determine whether the Committed Act has little or no significance.

In any case, it must be taken into account that the lesser importance of an act, like the one that excludes its criminality, does not have such socially useful properties inherent in other situations in this group.

Even in the low significance of the act, such signs of crime as guilt and lawlessness are preserved. When determining the low significance of a particular aggression committed with this in mind, it is necessary to proceed from the motive, purpose and form of guilt, and in the presence of revenge, from its direction.

When determining the low significance of an act, the amount of damage becomes important, it is taken into account to what extent the damage caused affects the life of an individual, or to what extent the damage to the property of a person is determined, for example, one or two slaps of a person, in fact, this crime, there are signs of, also in this act there is no social danger, so the criminal law does not find this act a crime.

Damage to the interests of the state and society is also not considered a crime if it is not socially dangerous, at this point it is worth mentioning another thing that when determining the low significance of an act, it is not taken into account the personal characteristics of the victim, that is, his previous conviction, dangerous or extremely dangerous recidivist.

### **Conclusion**

In conclusion, the circumstances that exclude the criminality of an act are considered one of the most important institutions in criminal law, and its existence in our legislative system and its importance as such are determined by human rights and freedoms, the predominance of the interests of the state and society.

In this, we first arise the need to give a new definition to the concept of circumstances that exclude the criminality of an act existing in the theory of criminal law.

For this reason, we propose to change the content of cases that exclude the criminality of an act as follows: although the symptoms provided for by this code in an act seem to exist formally, but it is found to be cases that exclude the criminality of an act if it is socially dangerous, illegal or not guilty.

In this, it is advisable to change the sentence 'although it exists', and through the modified sentence 'although it seems to exist' the concept appears that in reality there are no such symptoms.

At the same time, a theoretical review of the norms of a new and modified order proposed by us to the legislative system should be included in the theoretical sources of criminal law.

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