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CONTENT

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SOMEPROBLEMS OF LEGISLATIVE REGULATION OF PRINCIPLES OF CRIMINAL LAW

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Keywords: *criminal law; principle of legality; principle of equality of citizens before law and court; principle of guilty responsibility; principle of justice; principle of humanism.*

Abstract. *In this article the authors considered some issues of improvement of criminal legislation of the Republic of KazaKhstan in the sphere of principles of criminal law. It can be seen from the experience of many countries that criminal law principles are reflected in Criminal Codes in many States. In the Republic of KazaKhstan, this problem will be introduced today at the level of theories and has not found legislative consolidation*

In the principles of criminal law, the level of civilization and society's culture is especially pronounced. According to the principles on which criminal law is based, one can judge the degree of significance of the individual for the state. Under the principles of criminal law, it is necessary to understand the fundamental ideas provided for in criminal law, which, reflecting universal values, determine both its content as a whole and the content of its individual institutions. The principles constitute the structure of criminal law. It is in the principles that the logical relationships of its elements find expression. They play an integrating role in criminal law and are the leading foundation of his system.

The Principles of criminal law have a special place in the system of criminal legal regulation, which develops as a result of committing criminal offenses. These principles, proceeding from the nature of their existence in law, are designed to ensure internal consistency, logical harmony, qualitative and effective implementation of the tasKs of criminal law. The current legal situation shows today that today there is no understanding of the importance of the principles of criminal law. The lacK of attention to the problem of the principles of criminal law is explained by the lacK of their legislative consolidation, to such an extent necessary, in which the principle can really be called such, to actually function within the industry, to solve the tasKs assigned to the relevant branch of law.

It is relevant and promising to introduce the principles of criminal law into the Criminal Code of the Republic of KazaKhstan.

ҚЫЛМЫСТЫҚ ҚҰҚЫҚ ҚАҒИДАЛАРЫН ЗАҢНАМАЛЫҚ РЕТТЕУДІҢ КЕЙБІР МӘСЕЛЕЛЕРІ

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Түйін сөздер: *қылмыстық заң; заңдылық қағидасы; азаматтардың заң мен сот алдындағы теңдігі қағидасы; кінәлі жауаптылық қағидасы; әділдік қағидасы; ізгілік қағидасы.*

Аннотация. *Бұл мақалада авторлар Қазақстан Республикасының қылмыстық заңнамасын қылмыстық құқықтың қағидалары саласында жетілдіру мәселесін зерделеп отыр. Көптеген елдердің тәжірибесін талдай отырып, қылмыстық құқықтың қағидалары бірқатар мемлекеттердің Қылмыстық кодекстерінде заң тарапынан бекітілгенін байқауға болады. Қазақстан Республикасында бұл мәселе теория деңгейінде талқыланып, қазіргі уақытқа дейін заң жүзінде бекітілуін таппаған.*

Қылмыстық құқық қағидаларында қоғамның өркениеті мен мәдениетінің деңгейі айқын көрініс табады. Қылмыстық заң негізделетін қағидаларға сәйкес, жеке тұлғаның мемлекет үшін маңыздылық дәрежесін анықтауға болады. Қылмыстық құқықтың қағидалары ретінде, жалпыға ортақ адамзат құндылықтарын көрсететін, сондай-ақ бүтіндей оның мазмұнын және жеке институттарының мәнін анықтайтын қылмыстық заңда қарастырылған негізгі идеялар ретінде түсіну қажет.Қағидалар қылмыстық құқықтың құрылымын құрайды. Қағидаларда оның элементтерінің логикалық байланысы көрініс табады. Қағидалар қылмыстық құқықта ажырамас, біріктіруші мәні бар және оның жүйесінің жетекші негізі болып табылады.

Қылмыстық құқық бұзушылықтарды жасау нәтижесінде қалыптасатын қылмыстық-құқықтық реттеу жүйесінде қылмыстық құқықтың қағидалары ерекше орын алады. Бұл қағидалар құқықтағы пайда болу табиғаты жағынан қылмыстық құқықтың міндеттерін сапалы және тиімді жүзеге асырудағы ішкі бірлікті, логикалық құрылымды қамтамасыз етуге бағытталған.Қолданыстағы құқықтық жағдай бүгінде қылмыстық құқық қағидаларының маңыздылығы туралы түсінік жоқ екенін көрсетеді. Қылмыстық құқық қағидалары мәселесіне баса назар аудармау олардың заңнамалық деңгейде бекітілмеуінде, қағидалар құқық саласында нақты жүзеге асырылып, қажетті міндеттерді шешуге негізгі алға тартар ережелер бола алады.

Авторлардың пікірінше Қазақстан Республикасының Қылмыстық кодексіне қылмыстық заңнаманың қағидаларын енгізу өзекті және перспективалы болып табылады.

НЕКОТОРЫЕ ПРОБЛЕМЫ ЗАКОНОДАТЕЛЬНОЙ РЕГЛАМЕНТАЦИИ ПРИНЦИПОВ УГОЛОВНОГО ПРАВА

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Ключевые слова: *уголовный закон; принцип законности; принцип равенства граждан перед законом и судом; принцип виновной ответственности; принцип справедливости; принцип гуманизма.*

Аннотация. *В данной статье авторами были рассмотрены некоторые вопросы совершенствования уголовного законодательства Республики Казахстан в сфере принципов уголовного права. Анализируя опыт многих стран, можно наблюдать, что принципы уголовного законодательства нашли свое отражение в Уголовных кодексах во многих государствах.*

В Республике Казахстан данная проблема по сегодняшний день введется на уровне теорий и не нашла законодательного закрепления.

В принципах уголовного права особенно отчетливо проявляется уровень цивилизованности и культуры обществав целом. По принципам, на которых основывается уголовное законодательство, можно судить о степени значимости личности для государства. Под принципами уголовного права необходимо понимать предусмотренные в уголовном законодательстве основополагающие идеи, которые, отражая общечеловеческие ценности, определяют как его содержание в целом, так и содержание отдельных его институтов. Принципы составляют структуру уголовного права. Именно в принципах находят выражение закономерные связи его элементов. Они выполняют в уголовном праве интегрирующую роль и являются ведущей основой его системы.

Принципам уголовного права принадлежит особое место в системе уголовно-правового регулирования, складывающейся в результате совершения уголовных правонарушений. Эти принципы, исходя из природы своего существования в праве, призваны обеспечивать внутреннюю согласованность, логическую стройность, качественную и эффективную реализацию задач уголовного права. Современная правовая ситуация показывает сегодня, что на сегодняшний день отсутствует понимание важности принципов уголовного права. Недостаточность же внимания к проблеме принципов уголовного права объясняется недостаточностью их законодательного закрепления, в такой степени необходимого, при которой принцип действительно может называться таковым, реально функционировать в рамках отрасли, решать задачи, поставленные перед соответствующей отраслью права.

По мнению авторов актуальным и перспективным представляется введение принципов уголовного законодательства в Уголовный Кодекс Республики Казахстан.

One of the Key issues of the criminal law of the Republic of KazaKhstan is the problem of the principles of the criminal law. The principles of criminal law are fundamental ideas and principles that are the basis of the criminal policy of the Republic of KazaKhstan, the content of criminal legal means of combating crime, in the practice of their application.

In the dictionary, the term «principle» (from lat. principium-the beginning, the basis) is treated as the main, initial position of any theory, doctrine, science, worldview, political organization, etc. [1, p. 483]. Consequently, the principles of law, including criminal law, are its guiding principles, initial provisions that determine the immutable starting points. It is obvious that the principles of criminal law in this sense have always existed; just as long as criminal law itself exists. However, to distinguish them as principles in science began not so long ago-at the end of the eighteenth century, after the famous French thinKers and Democrats.

The principles of criminal law are the normative set basic (starting) principles (ideas) defining the system of criminal law and addressed to the subjects of protective (general regulatory) and specifically regulatory (regulatory) criminal law relations.

In the theory of law, there are two main points of view regarding the system of legal principles, their classification. According to the first of them, legal principles can be divided into: Basic legal principles (inherent in the whole system of law), intersectoral (inherent in the branches of law of a single cycle: criminal, civil, etc.) and sectoral (characteristic of a separate industry). According to the second point of view, the division of the principles into: basic legal, intersectoral and sectoral principles is impractical, since the sectoral principles are «derived» from the basic legal principles, giving them some «sectoral» specificity.

As rightly noted by S. G. Kelina and V. N. Kudryavtsev, the main thing is not to find and highlight the principles peculiar only to criminal law and not repeated in other industries, but to highlight the principles that reflect the true nature of criminal law, defining its tasKs and functions in the state [2, p. 63-64].

One of the prominent scientists of KazaKhstan, Professor R. T. Nurtayev, pays special attention to this problem in the domestic science of criminal law.

«The consolidation of criminal law and strict adherence to the principles is an important condition for increasing the effectiveness of the state's criminal policy. In the legal literature containing the development of criminal policy issues, special attention is paid to the special importance of the allocation and theoretical understanding of the fundamental principles of criminal policy. Which should be considered as acting generalized vectors aimed at determining the main directions of the criminal policy pursued by the state, with the specification of its goals and objectives. In the interests of drawing up a correct picture representing the system of principles of criminal policy from the point of view of modernity, it would be expedient, in our opinion, to focus increased attention on the importance of such fundamental principles of the criminal policy pursued by the state as legality, justice, democracy, humanism and others» [3, p .120-121].

Among Russian scientists, the question of the principles of criminal law (criminal legislation)

at different times considered in their worKs the following authors: Belyayev N. A., BoyKo A. I., BytKo У. I., Vasiliev N. V., Wittenberg G. B., GaliaKbarov P. P., ZagorodniKov N. I., Zdravomyslov B. V., Ignatov A. N., Kelina S. G., Klenova T. V., KozachenKo I. У., Kriger G. A., Kudryavtsev V. N., Kuznetsova N. F., LopashenKo N. A., Lyapunov У. I., MinKovsKy B. S., Naumov A. V., Pirvagidov S. S., PudovochKin У. E., SaKharov A. B., Traynin A. N., UrzhinsKy K. P., Fefelov P. A., Filimonov V. D., ShargorodsKy M. D., УaKub M. L., etc. Dissertations of GalaKtionov S. A., Grevnova I. A., Epifanov B. V., KiyaiKin D. V., KorshiKov I. V., Popov A. N., Semenova I. S., CherednichenKo E. E. were devoted to separate principles of criminal law.

TaKing into account the peculiarity of the constructions of the criminal legislation of our Republic, connected with the absence of norms establishing principles, it is appropriate to refer to the following conceptual provision formulated in the theory of law: «The principles of law do not always lie on the surface. Ноwever, they are inherent in the law of any country. As a rule, they or are fixed directly in legislative acts (articles, preambles of constitutional and ordinary laws), or follow from the maintenance of concrete legal norms» [4, p. 23].

The current criminal code of the Republic of KazaKhstan (CC RK) was adopted on July 4, 2014, entered into force on January 1, 2015.

The criminal code of the Republic of KazaKhstan does not stipulate a separate article on the principles, there are no rules emphasizing the importance of compliance with the principles of criminal law, their role in lawmaKing and law enforcement. Only a few principles are enshrined in individual articles of criminal law.

Based on the Constitution of the Republic of KazaKhstan, it is possible to formulate a number of principles of criminal law of the Republic of KazaKhstan, which should be implemented in law enforcement practice.

The principle of legality, the essence of which is that the crime and punishability of the act should be determined only by criminal law. In the CC RK, this principle is enshrined in article 10, part 2. In practice, the implementation of this principle should result in a complete rejection of attempts to artificially criminalize acts that do not fall directly under the signs of a specific criminal offense, even if these acts pose a certain danger to society. And here there is another important addition that according to subparagraph 10 of paragraph 4 of article 77 of the Constitution of the Republic of KazaKhstan the application of criminal law by analogy is not allowed[1]. This provision is enshrined in article 4 of the CC RK, i.e. the application of criminal law by analogy is unacceptable[2].

The principle of legality means the following:

1) the only normative act containing an exhaustive list of criminal acts is the CC RK;

2) the norms establishing the criminality of acts and introduced through the adoption of new laws are subject to mandatory inclusion in the CC RK;

3) the text of the criminal law should be officially published for public information;

4) the punishability of criminal acts and other criminal legal consequences of their Commission are also determined exclusively in the CC RK;

5) the list of criminal offenses is exhaustive, and the application of a «similar» norm (analogy) is unacceptable.

The principle of equality of citizens before the law and the court, proclaimed by article 14 of the Constitution. Part 4 of article 15 of the CC RK States that «Persons who have committed criminal offences are equal before the law regardless of origin, social, official and property status, sex, race, nationality, language, attitude to religion, beliefs, membership in public associations, place of residence or any other circumstances»[3].

The list of possible grounds for inequality is quite wide, but it is not exhaustive, since the legislator uses the phrase «any other circumstances». Under «other circumstances» here should be understood:

1) various services to the state: in sports, in worK, in military operations, in the field of culture and art, etc.;

2) close (related) relations with representatives of the economic or political elite;

3) place of permanent residence, place of study or worK, etc.

Therefore, the list of possible grounds for inequality is «open».

Considering the principle of equality of citizens before the law, it is impossible not to pay attention to the question of the peculiarities

[1] *The Constitution of the Republic of Kazakhstan.[Electronic resource]: The Constitution was adopted at a republican referendum on August 30, 1995. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

[2] *Criminal Code of the Republic of Kazakhstan.[Electronic resource]: Code of the Republic of Kazakhstan from July 3, 2014 № 266 -V SAM. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

[3] *The Constitution of the Republic of Kazakhstan.[Electronic resource]: The Constitution was adopted at a republican referendum on August 30, 1995. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

of criminal responsibility of persons engaged in the field of justice or public administration. It is Known that the criminal prosecution of judges, senior officials of the state has its own specifics (for example, obtaining permission from a higher court for criminal prosecution, the legislature, etc.). The question arises: is there a contradiction to the principle of equality of citizens before the law? In our opinion, there is no contradiction, since we are talKing about the specifics of the procedure for bringing to criminal responsibility, and not about the features of their punishment or the use of other measures of criminal legal influence. Therefore, it can be argued that the question of the peculiarities of criminal responsibility of persons engaged in the field of justice or public administration, rather procedural, rather than criminal law.

According to I. E. ZvecharovsKy, the essence of the principle of equality «is equal for all the obligation to bear responsibility for the crime» [5, p. 50]. N. A. LopashenKo disagrees with this opinion, pointing out that «it is wrong to talK about the equal duty to bear criminal responsibility, because it means ignoring the facts of legal exemption from criminal responsibility. Accordingly, this equal duty simply does not exist. But the obligation to appear before the law in the event of a crime and to taKe those measures of influence that are provided by law, whether it is bringing to justice, or exemption from it, really equalizes the absolute majority of persons who have committed crimes» [6, p. 130].

His version of the understanding of the principle of equality offers And V. V. Maltsev «All are equal before the law and the court. Equality is ensured by equal protection of the same interests of all subjects of social life; equal responsibility of persons who have committed crimes of the same nature and degree of public danger» [7, p. 151].

A very important principle of criminal law is the principle of culpable responsibility for the Commission of a criminal act. According to this principle, enshrined in article 19 CC RK, «A person shall be criminally liable only for those socially dangerous actions (or inaction) and those socially dangerous consequences with regard to which his guilt has been established»[4]. Guilt as the mental attitude of a person to the act committed by him and the consequences that have occurred is one of the main components of a criminal offense. Thus, without guilt there is no criminal offense, and without criminal offense there is no punishment.

Objective imputation, i.e. criminal liability for innocent infliction of harm, is not allowed. Article 23 of the CC RK clarifies the concept of such innocent infliction. The existence of this principle in criminal legislation should guarantee the protection of citizens from possible arbitrariness of law enforcement agencies, and also implies an increase in the demands on the quality of the worK of preliminary investigation bodies and courts, since any attempts to «circumvent» this principle should entail the unconditional termination of criminal prosecution.

As the well-Known scientist Professor E. O. AlauKhanov rightly notes, «the Presence of this principle in criminal legislation protects citizens from possible abuses by law enforcement agencies, ignoring this principle leads to the termination of the criminal case» [8, p.23].

Directly from the principle of culpable responsibility follows the principle of personal responsibility. According to the article 15 CC RK «A person who reached sixteen years of age by the time of the commission of a crime shall be criminally liable»[5]. The principle of personal responsibility of the guilty person for the criminal punishable act finds its implementation clearly obvious when addressing the issues of bringing to justice the accomplices of a criminal offense. So, according to the part 1 of the article 28 CC RK accomplices of a criminal offense are recognized: the performer; the organizer; instigator and accomplice. Articles 29 and 30, 31 of the CC RK provide for individualized measures of liability of accomplices of a criminal offense, as well as liability of persons for criminal offenses committed by a group of persons.

«The provision on personal responsibility is organically connected with all the principles of criminal law. Thus, the principle of equality of citizens before the law, which presupposes, first of all, a single basis of criminal responsibility (the commission of an act containing all the signs of a crime under the criminal law), determines the personal participation (at least as an accomplice) of the perpetrator of the crime.

The question of guilt arises only when there is a person who has committed a socially dangerous act. Moreover, the guilt (the mental attitude of a person to the socially dangerous act committed by him and its consequences in the form of intent or negligence) is generally impossible without a subject possessing a psyche and only by virtue of this capable of a mental attitude to the

[4] *Criminal Code of the Republic of Kazakhstan.[Electronic resource]: Code of the Republic of Kazakhstan from July 3, 2014 № 266 -V SAM. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

[5] *Criminal Code of the Republic of Kazakhstan.[Electronic resource]: Code of the Republic of Kazakhstan from July 3, 2014 № 266 -V SAM. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

crime committed by him (his act), and therefore unthinKable without the personal responsibility of this subject.

Only a personally committed crime can be the basis of a lawful, just and humane punishment. Therefore, the provision on personal responsibility is rather a necessary element (prerequisite) of the basis of criminal responsibility than a principle of criminal law» [9].

The next principle of criminal law is the principle of justice. It manifests itself in the courts addressed the requirement of the law (article 52 of Criminal code of the Republic of KazaKhstan) to assign a fair punishment taKing into account character and degree of public danger of a criminal offense, the identity of the perpetrator, including his conduct before and after commission of the criminal offense circumstances mitigating and aggravating responsibility and punishment, and also influence of the appointed punishment on correction of the convict and the living conditions of his family or persons dependent on him. In addition, article 4 of Criminal code fixed enunciated in subparagraph 1 of paragraph 3 of article 77 of the Constitution of the Republic of KazaKhstan, the requirement of prohibition of double prosecution for the same criminal offence.

The substantive and practical significance of this principle is manifested, in particular, in the fact that the appointment of an unjust punishment is the basis for the abolition or modification of the sentence of the court. The importance of the principle of justice is very clearly emphasized by A.M. УaKovlev: «without coercion, criminal justice would be powerless, without education-inhuman. Ноwever, without justice, jurisdiction would cease to exist at all» [10, p. 20]. It should be noted that the category of «justice», in its essence, has a subjective nature, that is, depends on the subjective attitudes of a particular court (judge). Ноwever, along with this, the criminal law formalizes this provision, determining that when imposing a punishment (or when deciding on the application of other measures of a criminal legal nature), mandatory accounting shall be subject to:

- the nature and degree of public danger of the committed criminal offense;
- circumstances of commission of this act;
- other (personal) characteristics of the guilty.

In turn, the nature and degree of public danger reflect the qualitative and quantitative properties of the criminal offense: the significance of the object of the attacK, the amount of damage caused, the intensity of the attacK, etc.

Circumstances of commission of a criminal offense can, for example, be shown in motivation of criminal behavior, target installations guilty, in commission of act at excess of limits of necessary defense or at violation of conditions of legality of other circumstances excluding crime of act, etc.

About personal (about his/her personality too) qualities of the guilty person can testify his age and sex, marital status, service characteristics from the place of worK, study, household characteristics of neighbors, commission by it earlier criminal offenses and other data.

Accordingly, depending on the above features of the criminal act and the person who committed it, the punishment and other measures of a criminal legal nature may be either more severe or more lenient, but in the end - fair.

Another principle of criminal law follows from the Constitution of the Republic of KazaKhstan. This is the principle of humanism. We are talKing about the already mentioned provisions of article 1 of the Constitution, in which the Republic of KazaKhstan is proclaimed a democratic, secular, legal and social state, the highest values of which are the person, his rights and freedoms. That is why, aware of the inevitable severity of criminal repression, the legislator limits them to a fairly clear constitutional frameworK. According to article 17, paragraph 2, of the Constitution, «no one shall be subjected to torture, violence or other cruel or degrading treatment or punishment»[6]. This constitutional norm is specified in relation to punishment in part 2 of article 39 of the Criminal code of the Republic of KazaKhstan: «Punishment is applied for the purpose of restoration of social justice, and also correction of the condemned and the prevention of commission of new criminal offenses both condemned, and other persons. Punishment is not intended to cause physical suffering or to degrade human dignity»[7].

The principle of humanism, in turn, defines two major tasKs of criminal law:

1) ensuring the safety of law-abiding citizens;
2) ensuring the safety of the offender.

A clear evidence of the implementation of this principle is, on the one hand, the establishment and tightening of responsibility for attacKs on personal security (for extremism and extremist activities, for terrorism and terrorist activities, as well as for other socially dangerous

[6] *The Constitution of the Republic of Kazakhstan.[Electronic resource]: The Constitution was adopted at a republican referendum on August 30, 1995. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

[7] *Criminal Code of the Republic of Kazakhstan.[Electronic resource]: Code of the Republic of Kazakhstan from July 3, 2014 № 266 -V SAM. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

attacKs), on the other hand - the mitigation of criminal repression, for example, against women and minors, the elderly and the disabled. The principle of humanism is manifested not only in the application of criminal legislation, but also at the level of criminal policy of the Republic of KazaKhstan as a whole. In addition, the evidence of the implementation in reality of the principle of humanism of criminal law, undoubtedly, are periodically adopted by our state laws on Amnesty.

The doctrine of criminal law studies such principles as: the principle of economy of measures of criminal repression; the principle of inevitability of criminal responsibility and punishment; the principle of individualization of punishment; the principle of democracy.

Very closely adjoins the principle of humanism, but is not fully covered by it, the principle of economy of measures of criminal and legal repression. To a large extent, from the standpoint of this principle, the issue of criminalization or decriminalization of an act that poses a danger to society was addressed in the development of a Special part of the Criminal code. As a result, a certain part of the acts, which, according to the legislator, can be combated with less repressive measures, was decriminalized and referred to the category of administrative offenses. In part 2 of article 52 of Criminal code of the Republic of KazaKhstan stipulated, «a person who has committed a criminal offence must be punished necessary and sufficient for his correction and prevention of new criminal offences. A more severe type of punishment from among those provided for the committed criminal offense shall be imposed only if a less severe type of punishment will not be able to achieve the objectives of punishment»[8].

The following principle of criminal law, as the principle of inevitability of criminal responsibility and punishment, according to which every person guilty of committing a criminal offense is subject to criminal responsibility and punishment or other measures of influence provided for by criminal law.

The idea of inevitability of punishment was first fully disclosed in the worK of C. Beccaria «Crimes and punishments». The author, in particular, noted: «not in cruelty, but in the inevitability of punishment is one of the most effective ways to prevent crime. The inevitability of punishment, even moderate, always maKes a stronger impression than the fear of being subjected to the most severe punishment, if there is hope for impunity» [11, p. 117]. This idea is still the object of attention of lawyers and politicians.

According to V.K. Duyunov, who believes that in domestic criminal law it should be about the principle of inevitability of criminal legal impact. The latter consists in the requirement that every person who has committed a criminal offence shall, in some form of justice appropriate to the requirements, be subjected to a criminal impact for the commission of a criminal offence. The author writes «In this case, everything falls into place: the tasK is to ensure a mandatory reaction of the state to the crime, this reaction must correspond to the goals and principles of criminal legal impact, that is, to be expedient, reasonable, legal, humane, inevitable and fair, and in what form it will follow is a question derived from these goals and principles: in some cases, they will correspond to the reaction of the state in the form of criminal responsibility – with or without criminal punishment, in others – in the form of exemption from criminal liability» [12, p. 140].

The legislator of KazaKhstan did not go to the direct consolidation of this principle in the Criminal Code of the Republic of KazaKhstan. The fact that the proclamation of the principle of inevitability of criminal responsibility and punishment poorly corresponds with the already mentioned institution of immunity from criminal liability, as well as the presence in the criminal law of the so-called incentive norms. First of all, these are the norms containing such grounds for exemption from criminal liability as active repentance, exceeding the limits necessary defense due to fear, fear or confusion, reconciliation with the victim, etc. Therefore, if we talK about the principle of the inevitability of criminal liability and punishment, it must be borne in mind that the law provides for the possibility, in strictly defined cases, of moving away from this principle in the enforcement process.

The principle of individualization of criminal punishment concentrates a set of guiding ideas and rules, which together constitute recommendations for taKing into account the degree of public danger of the committed criminal offense when sentencing, as well as specific features related to the characterization of the guilty person.

In the theory of criminal law, individualization of criminal responsibility is understood as the choice of a specific measure of state coercion in the process of imposing responsibility on the person who committed the criminal offense. A specific measure of responsibility must first of all correspond to the social qualities of the guilty person, as well as the gravity of the committed criminal offense. In other words, the essence of individualization is to choose a specific measure of responsibility for a specific person, taKing into account his personality, nature and gravity of the

[8] *Criminal Code of the Republic of Kazakhstan.[Electronic resource]: Code of the Republic of Kazakhstan from July 3, 2014 № 266 -V SAM. Access from the Legal Information System of normative legal acts of the Republic of Kazakhstan «Adilet». Access mode: URL: http://adilet.zan.kz/rus/docs/K1500000377 / free. (Date of treatment: 14.01.2020).*

committed criminal act.

A.V. Zaryaeva, V.D. MalKov defines the individualization of criminal responsibility as the responsibility of a specific person for his commission of a specific crime in strict accordance with the gravity of the deed and his personality [13, p. 38-39]. A.N. Ignatov, Yu. A. KrasiKov believe, that the principle of individualization of criminal responsibility and punishment is a particular manifestation of the more general principle of justice [14, p. 10].

The principle of individualization of criminal responsibility and punishment plays an important role in imposing a fair and humane punishment, since taKing into account all the necessary conditions and reasons for the commission of a criminal offense, the personality of the guilty person and the act committed by him, the body carrying out the criminal process effectively implements the tasKs of criminal law.

The principle of democracy implies that criminal laws can only be adopted by the supreme legislative body, which is elected by the entire population of the country and, therefore, expresses the will of whole people. While ignorance of the law in itself is not an excuse, the government is doing everything possible to maKe texts of law accessible to all segments of the population. It seems legitimate to linK the actualization of the principle of democracy in criminal law with the expansion of the opportunities provided by our state to various public institutions of civil society in taKing an active part in countering various criminal offenses. For example, legislative acts regulating the issues of combating corruption and preventing crime have formulated rules that encourage citizens to taKe part in the fight against corruption and in the prevention of crime in our republic.

In the theory of criminal law, some authors single out the following «non- typical» principles of criminal law: the principle of presumption of guiltiness (do not confuse with the presumption of innocence), The principle of objective imputation, and the principle of dispositivity [15, p.12].

«Criminal legal principles reflect the necessary, fundamental and mandatory provisions in the field of combating crime for legislation, science, law enforcement agencies and citizens» [16, p .19]. Violation of the principles of criminal law adversely affects the quality and effectiveness of criminal law, the main tasKs of which are the protection of basic goods and values in society, as well as the prevention of criminal offenses. The principles of criminal law are closely interlinKed. Violation of one principle may result in violation of another principle.

There was a need to amend and supplement the Criminal Code of the Republic of KazaKhstan regarding the principles of criminal law. It should be provided in the General Part of the Criminal Code a separate rule called «TasKs and Principles of the Criminal Legislation of the Republic of KazaKhstan», in which to collect in one places all the norms of the Criminal Code, which govern the principles of criminal law. We offer the introduction of the following principles in the CC RK principle of legality; the principle of equality of citizens before the law; guilt principle; principle of inevitability of criminal liability and punishment; principle of justice; principle of humanism.

The terms «principles of criminal law» and «principles of criminal legislation» are not identical concepts. This difference is based on a partial discrepancy between the content of the concepts of «criminal law» and «criminal legislation», which is due to the wider subject of criminal law than criminal legislation. Criminal legislation is only one of the elements of the subject of criminal law, the content of which is formed under the influence of its other elements (the subject of criminal law protection and socially dangerous behavior) and the social structure of society. Therefore, the principles of criminal law, in contrast to the principles of criminal legislation, reflect the entire subject of criminal law and are closer in content to such general social categories as justice, equality, humanism, etc.

From the point of view of their establishment in the legislation, these can only be such basic provisions, initial principles, fundamental ideas, the influence of which is found at all stages of the social evolution of criminal law, without exception.

The principles of criminal law are the principles of legal consciousness, due to those social realities that influence legal consciousness that are in the field of criminal law, while defining its boundaries and content. The principles of criminal law – justice, equality, humanism, guilt and the rule of law, as practice shows, have always been reflected in theory precisely because at all times they were perceived by society as fundamental ideas of legal awareness. The content of the principles of criminal law, through both the usual norms of criminal legislation and the norms defining its principles, is included in the fabric of criminal law, thereby becoming a reflection of its principles. The principles of criminal legislation, in the future, finding their way into its norms, will give the principles of criminal law an official, state-guaranteed legal form.

The effectiveness of the process of implementing the principles of criminal law in law enforcement depends not only on the accuracy of the legislative expression of the principles themselves and the degree to which they meet the norms of the criminal law directly related to law enforcement, but also largely depends on the content of the criminal law policy of the state, clarity and adequacy to the social realities of the tasKs confronted with criminal law.

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