The Social Sciences 11 (7): 1113-1118, 2016
ISSN: 1818-5800

Role and Significance of Object of the Criminal Offence in the New Criminal Legislation of the Republic of Kazakhstan

[1]Talgat Akimzhanov, [2]Raykhan Esbulatova, [1]Balgyn Torgautova,
[3]Bibigul Kulmukhanbetova and [4]Yerzhan Bimoldanov
[1]Turan University, Almaty, Kazakhstan
[2]Eurasian Law Academy, Almaty, Kazakhstan
[3]Research Institute of Karaganda Academy, Ministry of Internal Affairs,
Karaganda, Republic of Kazakhstan
[4]Almaty Academy, Ministry of Internal Affairs, Almaty, Republic of Kazakhstan

Abstract: An study is considered some measures for improvement of the criminal legislation of the Republic of Kazakhstan. On the example of one of the elements of crime-target of a crime there was shown its value for criminal law as branches of law and scientific discipline. The researchers are offered to expand Article 3 of CC (Criminal Code) "explanation of some concepts, containing in the present code" by new concepts as structure of a criminal offense, target, the objective side, the subject, mental element of a crime. Suggestions for improvement of the criminal legislation of the Republic of Kazakhstan are directed on making the criminal law more available at understanding, effective and easily applied.

Key words: Criminal law, criminal offense, crime, criminal infraction, categories of crimes

INTRODUCTION

It is known that within the realization approved by the presidential decree of the Republic of Kazakhstan of August 24, 2009 No. 858 "concepts of law policy of the Republic of Kazakhstan for the period from 2010-2020" and address of the President of Kazakhstan, the leader nation of N.A. Nazarbayev to the people of Kazakhstan "Strategy "Kazakhstan-2050": new political course of the established state" there were developed and accepted in 2014 the new criminal code, the criminal and executive code, the code of penal procedure and also the code of the Republic of Kazakhstan about administrative offenses which came into force on January 1, 2015.

The new Criminal code of the Republic of Kazakhstan was adopted on July 3, 2014 and it was logical continuation of the existing Criminal code of Kazakhstan of 1997 as the last one was the document of a transition period and it was successfully executed the mission.

The following innovations are provided in the new Criminal code of RK which are directed on improvement of the criminal legislation of the Republic of Kazakhstan.

The new definition is entered into penal law as the criminal offense, providing along with concept of a crime and concept of criminal infraction that is the two-section system of penal acts is provided.

It is reduced an application of such type of punishment as imprisonment by considerable expansion of possibility of application of alternative measures to imprisonment in the form of large fines, community service.

There are made some changes to the questions of the contents and an order of execution of correctional works, providing possibility of replacement of correctional works with a penalty and also it is concretized the sizes of sums which are subjected to budget payment at replacing correctional works with a penalty.

For strengthening of correction of post-criminal behavior there is considerably raised the role of probationary control by establishment of restriction of freedom, extending on all crimes of non-grave and medium gravity and also on part of serious crimes. This provision is provided the stay of condemned out of isolation from society under probationary control and also community service.

It is limited in the new criminal legislation an application of such type of punishment as imprisonment by imposition of a ban on determination of imprisonment for commission of an economic crime if the perpetrator will be completely indemnified the loss caused by its act.

It is strengthened the measure of impact for corruption criminal offenses by toughening of criminal

Corresponding Author: Talgat Akimzhanov, Turan University, Almaty, Kazakhstan

liability for their commission (it is provided the life ban on the right to hold certain positions to the persons, condemned for commission of corruption crimes, the sanctions for bribery are strengthened).

For protection of younger generation, there is provided strengthening of the sanction for criminal offenses against minors; it was imposed the life ban on the right to be engaged in the activity, connected with work with children to condemned for crimes of sexual character concerning juveniles.

For increase of level of medical care of the population of the country there was imposed the special chapter about medical criminal offenses, including about criminal liability for illicit trafficking in the adulterated drug.

For increase of measures of information security there was imposed the separate chapter about computer criminal offenses, directed on execution of the international obligations, providing counteraction a cyber-crime.

For increase of measures of national security there is provided strengthening of criminal liability for manifestations of extremism and terrorism, spreading of radical ideologies, including with use of new technologies.

At the same time, the modern theory of penal law will be taken place to continue the research of the criminal and legal legislation and law-enforcement practice and in particular, the questions which are connected with target of a crime as the target of a crime is one of the central categories of penal law science.

DISCUSSION

Significance of object of a criminal offense for penal law as for branch of the right and as scientific discipline is difficult to overestimate.

It is possible to mark out a number of the circumstances, testifying to significance of object of a criminal offense.

Firstly, thanks to target of a crime as to one of obligatory elements of structure of each criminal action, there is defined such sign of a criminal offense as public danger.

Secondly, the target of a crime is caused not only by an emergence of a criminal and legal ban but also by considerably its legal structure, by volume and limits of criminal and legal protection and also many objective and subjective signs of corpuses delicti.

Thirdly, the target of a crime is along with the objective party, the subject of a crime, the subjective side of a crime, an obligatory element of corpus delicti. If there is no a target of a crime-there is no crime as well.

Fourthly, thanks to target of a crime, there is carried out and codification of the criminal legislation. So, for example on the basis of patrimonial target of a crime it is carried out the creation of all special part of the Criminal code of RK, consisting of 18 heads.

Fifthly, the target of a crime gives a chance to delimit a crime from other offenses and thereby to prevent of involvement person who made an offense to criminal responsibility.

So, at insignificance of actual or possible damages to any benefit, even protected by penal law, there can not be talked about a crime (item 4. Article 10 of the Criminal code of Kazakhstan-petty crime) as the object does not undergo that damage which is supposed from a crime.

Sixthly, the target of a crime is the regulator of the list of acts which were subjected of criminalization or decriminalization as the border between the relations, protected and non-protected by penal law is relative, conditional.

The circle of the public relations is changed in time depending on new relations which are developed in society in the sphere of policy, economy and other social spheres.

The legislator, having defined these public relations, infringements of them, criminalizes the new articles of special part by imposition into the criminal code.

And on the contrary, when the public relations aren't needed the protection by criminal and legal means any more, the legislator decriminalizes the acts, encroaching on them by deleting the relevant norms of the criminal code.

Fifthly, thanks to target of a crime, it is possible to define a character and degree of public danger of criminal action, i.e., to which exactly merit goods or the public relations, protected by the criminal law and also in what degree, there could be done harm.

Sixthly, the target of a crime has an important and sometimes and critical significance at qualification of an act and delimitation of a single crime from another.

In this regard a relevance of consideration of target of a crime from a position of determination of public danger of crimes is undisputed as it is directly connected with modern comprehension of the doctrine of the corpus delicti, structuring of structures of single act in law-enforcement activity, the general and special questions of improvement of criminal and legal regulation.

Unfortunately, in the new Criminal code of the Republic of Kazakhstan in Article 3 of CC "explanation of some concepts, containing in the present code", it is not given a concept about corpus delicti and its basic elements.

Though, in Article 4 "the basis of criminal responsibility" and in Article 25 "the termination of criminal offense" of Criminal code of the Republic of Kazakhstan there is mentioned the concept of "structure of a criminal offense" and its "signs".

So, in Article 4 of CC there was written down that "the only basis of criminal responsibility is commission of a criminal offense that is the act, containing all signs of corpus delicti or criminal offense, provided by the present code".

And in Article 25 CC it is specified that "the criminal offense is admitted consummated if in act, committed by the person, there is contained all signs of structure of an offense, provided by special part of the present code".

Developers of the new Criminal code of Kazakhstan were missed an opportunity to make the new Criminal code of RK more clear, available and applied not only for employees of law enforcement agencies but also for all residents of our state, who are participants of criminal legal relations.

In modern concept of law understanding has to be offered an idea allowing to increase efficiency and quality of law-enforcement activity of law enforcement agencies in the solution of questions of counteraction of crime in Kazakhstan. At the same time, imperfection of the existing criminal legislation and law-enforcement practice don't allow to use all potential of crime control fully.

Besides, so far in Kazakhstan uniform judicial practice on right understanding of the criminal legislation and its application wasn't created in full. These circumstances predetermine need of deeper theoretical judgment of a problem from a position of target of a crime.

Therefore, the criminal legislation of the Republic of Kazakhstan has to be comprehensive, covering all possible structures of criminal offenses, clear and easily applied.

Let's address to science of penal law. Now there are two concepts of understanding of target of a crime in science of criminal law. The first approach focuses on such solution of a question of target of a crime which was taken place in the Soviet jurisprudence, i.e., on recognition by target of a crime of the public relations.

The second approach which developed in the last decades among which there are a lot of supporters is connected with critical perception of idea of the first approach that as target of a crime there are acted only the public relations. According to this group of scientists, "target of a crime there is necessary to consider not something, but someone" that is it is necessary to expand interpretation of concept of target of a crime.

Without going deep into a discussion essence, it is easy to notice that arguments of scientists as first approach of understanding of target of a crime both public the relations and the second approach of understanding of target of a crime that target of a crime is not limited to concept only of the public relations and it is connected with victim's identity and they are so convinced and reasoned that there is very difficult to object.

At the same time, in our opinion, vagueness and uncertainty in understanding of target of a crime are considerably complicated work on counteraction of crime.

Current situation with understanding of target of a crime extremely complicates process of right understanding and enforcement. Therefore, there are cases, when announcement of this or that sentence, especially on high-profile corruption cases and quite often live broadcast on television of the Republic of Kazakhstan as one of big achievements of our state and all law-enforcement system is caused the mass of questions both the prosecution and the defense.

Also, it is necessary to notice that sometimes as accused (too heavy sentence) and the victim (too light sentence) do not agree with a sentence. Therefore, it is formed the negative opinion of the public not only to judicial authorities but also to all law-enforcement system of our state.

The given circumstances are testified that full and comprehensive investigation of target of a crime only in the formal legal level of regulation doesn't reach the level of sufficient justification of criminal responsibility, i.e., the legal nature of a crime is still not rather studied.

It is necessary to agree with opinion of the Russian scientists that the public relations and their participants should not be opposed-there cannot be two opinions. However, first, about such opposition there can be talk only when target of a crime is declared both the public relations and their participants and so, recognition as target of a crime either one or the other is quite admissible. Secondly, opposing of opposition, there is impossible to go into other extremes: to identify one with another. But it is just also happened every time when there is substantiated the provision that causing harm to the participant is simultaneously causing harm to public relations.

According to the Kazakhstan scientists, target of a crime on penal law are socially significant values protected by the criminal law, interests, the benefits or the public relations to which as a result of commission of criminal action there is directed harm or they are threatened of tresspass.

At the same time, value of target of a crime is not fully used by the Legislator at a categorization of crimes. V.N. Kudryavtsev is reduced the target of a crime to set of

three factors: actual public human relations; their legal form; material forms, conditions and prerequisites of existence of these public relations (Kudryavtsev, 1972).

It is deserved attention the position of N.A. Belyaeva that "the public relation is the relations between persons (physical and legal) concerning corporeal things or actions which are made by subjects of this relation. As elements of the public relation are acted the subjects of the relations, their activity and corporeal things".

The position of B.S. Nikiforov is very interested, who defining target of a crime as public interest against which it is directed the crime, he considered that interest is included into structure of the public relation (Nikiforov, 1960).

Also, other scientist Ya.M. Braynin adhered to approximately same position who wrote that into the structure of the public relation, along with other elements, there are included the interests of subjects of the public relations protected by the law (Braynin, 1963).

Professor E.I. Kairzhanov for the 1st time in Kazakhstan investigating a problem of target of a crime, notes: "… it is impossible to tear off the public relations from interests. In this sense interest is as if a peculiar "subject" basis of the elementary public relation. Though, the last ones are arisen irrespective of consciousness of the person but they are developed in an occasion and in connection with interest. Target of a crimes on penal law are only such public relations which correspond to interests of the people. Interests-are concrete manifestation, expression of the public relations. Such understanding of interest as object of criminal legal protection plays a role and in more concrete conception and studying of object as public relation (on character or the meaning of this or that interest and its bearer the subject)" (Kairzhanov, 1973).

For full explanation of an essence of harm which is done to society by infringement of the interests protected by the criminal law, the great importance has study of target of a crime, establishment and assessment of those public relations on which offender is infringed.

It is necessary to notice that the changing priorities in system of values of criminal legal protection have impact on the content of target of a crime. Let's address to history of development of the criminal legislation.

The basic principles of the criminal legislation of the USSR and federal republics of 1924 were declared as a crime "socially dangerous acts, undermining the power of workers or violate the established law and order" (Kareev, 1957). CC RSFSR of 1926 was considered the general object of criminal legal protection "the socialist state of workers and peasants and the law and order which was established in it" (Article 1).

The Criminal code of Kazakh Soviet Socialist Republic 1959, in initial edition was recognized as targets of a crime a social order of the USSR, its political and economic systems, the personality, political, labor, property and other rights and freedoms of citizens, all forms of ownership, a socialist law and order.

The Criminal code of Kazakh Soviet Socialist Republic 1959 with revisions and additions, amended by the Decree of April 19, 1982 (Statements of the Supreme Council of Kazakh Soviet Socialist Republic, 1982, No. 17, Article 177) and by the presidential decree of the Republic of Kazakhstan, having the force of a law of May 12, 1995 No. 2282 in Article 2, determining tasks of the criminal legislation of the republic, called the protection of the constitutional system of the Republic of Kazakhstan, its political and economic systems, property, the personality, the rights and freedoms of citizens and a law and order.

The Criminal code of the Republic of Kazakhstan was recognized 1997 as objects of criminal legal protection, first of all, the rights, freedoms and legitimate interests of the person and 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, the world and safety of mankind (Article 2 of the Criminal code of Kazakhstan).

The Criminal code of the Republic of Kazakhstan of 2014 practically was upheld a version of Article 2 of the Criminal code of Kazakhstan of "tasks of the criminal code", so and understanding of objects of criminal legal protection, except for introduction of the new term of "a criminal offense" instead of a crime.

And it is not casual as the list of objects of criminal legal protection is followed from provisions of the basic law of our country of the constitution of the Republic of Kazakhstan.

Problems of object and subject of criminal legal protection are caused by that the target of a crime has multidimensional criminal and legal value. It defines social essence and public danger of act.

Features and properties of target of a crime characterize a social orientation of a crime, its legal signs. In our opinion, problems of object and a subject of a crime in science of penal law are needed further research.

Thus, on the example of short historical digression according to the basic legislative criminal legal acts of the 20th century, it is visible that with the course of time and change of historical conditions (social, political, moral, etc.) there is changed both system of the legal-protected values and structure, a ratio, hierarchy of these values.

From the above, it is possible to draw a conclusion that the Kazakhstan legislator recognized priority value of

the person and citizen in comparison with the public relations, protecting institute of property or interests of the state in system of social values.

Failure to take into account of the specifics of object encroachment, its wrong establishment is led to miscarriages of justice in practice.

However, not all advantages of target of a crime are used by the Legislator in full. Let's consider it on concrete examples.

So, in the Article 10 of CC "the concept of a crime and criminal offence", developers unfairly refused concept of target of a crime at determining of the concept of a crime and offense.

So, a crime, according to Article 10 of CC is admitted made guilty and public and dangerous act (action or inaction), forbidden by the present code under the threat of punishment in the form of a penalty, correctional works, restriction of freedom, imprisonment or capital punishment.

Criminal offense is admitted made guilty act (action or inaction) which is not constituted a big public danger, inflicted an insignificant harm or created threat of infliction of harm of the personality to the organization to society or the state for commission of which there is prescribed punishment in the form of a penalty, correctional works, drawing to public works, arrest.

That is the legislator does not specify, on what there is infringed the crime or criminal offense as it was taken place in the Article 7 "concept of a crime" of CC of Kazakh Soviet Socialist Republic, where it was written down that a crime is admitted, provided by the criminal law, a socially dangerous act (action or inaction), encroaching on a social order of the USSR, its political and economic systems, socialist property, the personality, political, labor, property and other rights and freedoms of citizens as well as other, encroaching on a socialist law and order, socially dangerous act, provided by the criminal law.

Therefore, the concept of a crime was so simplified that in it the developers were completely excluded an object of encroachment and the emphasis is placed only on types of punishments.

The same omission was made and in the Criminal code of Kazakhstan 1997 in Article 9 "concept of a crime". Or let's consider another example. It is Article 11 of CC RK "categories of crimes".

According to item 1 of this article, acts, provided by the present code depending on character and degree of public danger are subdivided into crimes of non-grave, crimes of medium gravity, grave crimes and especially grave crimes.

In our opinion, the developers of the Criminal codes of Kazakhstan were made a methodological mistake at determination of categories of crimes. For classification of crimes it was offered mechanical approach as in its basis there were put only two grounds, it is a form of fault and degree of punishment (imprisonment terms), the last one is the prevailing criterion. And nature of public danger that is target of a crime about which the legislator only means was remained out of a legal framework. It is considerably complicated the law-enforcement practice as there was a depersonalization of the offered categories of crimes.

It would be desirable to give once again as a positive example the legal technique which was applied by the former CC of Kazakh Soviet Socialist Republic in the Article 7-1 "concept of grave crime". The legislator of that period accurately defined a concept of a grave crime as he made enumeration of all corpuses delicti, relating to category of the grave crimes. Such specifics was allowed for law enforcement agencies in the course of their law-enforcement activity easier to be oriented in the current events and to give the correct qualification of these or those committed crimes and it, in turn was meant also the correct sentencing.

So, in Article 11 Criminal code of Kazakhstan of "category of crimes", crimes of non-grave is admitted intentional acts for commission of which the maximum punishment does not exceed 2 years of imprisonment and also negligent acts for commission of which the maximum punishment does not exceed 5 years of imprisonment. The legislator refers to the crimes of medium gravity the intentional acts for commission of which the maximum punishment does not exceed 5 years of imprisonment and also negligent acts for commission of which there is provided punishment in the form of imprisonment for the term of over 5 years. The legislator refers to grave crimes the intentional acts for commission of which the maximum punishment does not exceed 12 years of imprisonment.

And the legislator refers to especially grave crimes the intentional acts for commission of which there is provided punishment in the form of imprisonment for the term of over 12 years or capital punishment.

So, the legislator defines and establishes complicity of committed act to one of four categories of crimes (crimes of non-grave, crimes of medium gravity, grave crimes and especially grave crimes) only on the basis of degree of punishment (imprisonment term). For example, if to change in CC the sanction of part 1 of the Article 99 "murder" (from 8-15 years of imprisonment) on another that this crime can be unfairly passed into other category from category of especially grave crimes, despite the public danger, etc.

CONCLUSION

In our opinion, there would be correct, considering positive last legislative experience to return to it and to refuse at determination of the categories of crimes from such basis as terms of punishment (imprisonment) and to enumerate the concrete corpuses delicti, relating to each category of crimes proceeding from object of encroachment in Article 11 of Criminal code of Kazakhstan.

And it would be necessary to consider one more detail, in relation to article, studied by us. So, developers of the existing Criminal code of the Republic of Kazakhstan were made serious omission at creation of Article 11 CC RK.

The principle of determination of primacy of a crime and punishment was broken. It is known that the crime was always primary and punishment was secondary.

And the structure of Article 11 of CC RK is given the grounds to draw a conclusion on the return, it means about primacy of punishment.

From our point of view, Article 3 of CC "explanation of some concepts, containing in the present code" should be added with such concepts as structure of a criminal offense, concept of all its elements (target of a crime, the objective side of a crime, the subject of a crime, the mental element of a crime).

And there is one more addition. It would be expedient in each chapter of special part of the Criminal code of the Republic of Kazakhstan after their names to give the short description of object of encroachment.

It would be allowed to be convinced of correctness of developers in systematization of special part of the Criminal code of Kazakhstan and also it would be increased readability and intelligibility of the criminal legislation of the Republic of Kazakhstan not only participants of criminal procedure but also all citizens of all country.

Besides, this innovation would be considerably promoted to increase of efficiency of law enforcement agencies and together with it and authority of law-enforcement system of our state.

We hope that our offers on understanding of value of the object of criminal offense will be taken into account during the further work on improvement of the criminal legislation.

REFERENCES

Braynin, Ya.M., 1963. Criminal Responsibility and its Basis in the Soviet Penal Law. Juridical Publisher, Moscow, Russia, Pages: 167.

Kairzhanov, E., 1973. Interests of Workers and Criminal Law. Almaata Publisher, Kazakhstan, Pages: 56.

Kareev, D.S., 1957. Criminal Legislation of the USSR and Federal Republics. Juridical Publisher, Moscow, Russia, Pages: 7.

Kudryavtsev, V.N., 1972. General Theory of Qualification of Crime. Juridical Publisher, Moscow, Russia, Pages: 151.

Nikiforov, B.S., 1960. Target of a Crime on the Soviet Penal Law. Juridical Publisher, Moscow, Russia, Pages: 121.