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HISTORICAL ASPECTS OF ERROR IN THE CIRCUMSTANCE, PRECLUDING CRIMINALITY OF ACT DEVELOPMENT IN UKRAINE

Summary

The article investigates the historical development of the error in circumstance, precluding criminality of act and imaginary defense in the Ukrainian territory. Based on this study the author makes proposals for the formulation of Article 37 of the Criminal Code of Ukraine.

Key words: the error in circumstance, precluding criminality of act, the imaginary defense, random error or deception, non-acquaintance and delusion.

Formulation of the problem. One controversial by legal circumstances precluding criminality in the science of criminal law serves Ukraine imaginary defense. Until now underway debate over whether such a lawful act circumstance excluding criminality, or it appears certain type of errors in self-defense. Also, there is the question of a broad interpretation of the legal nature of imaginary defense by the existence of a theoretical science of criminal law provisions on the legal and factual error. Therefore, a historical study of the emergence and consolidation of the valid normative act at different stages of development of Ukrainian statehood is an important issue for the Ukrainian criminal jurisprudence, as it will provide an opportunity to determine whether the present modern legislative structures of the circumstances in art. 37 of the Criminal Code (hereinafter - CC) of Ukraine.

Background confirmed incompleteness research and study of the legal nature of mental self-defense as a legitimate act, which excludes criminality and the presence of considerable debate in the science of criminal law of Ukraine on this issue. In addition, it is due to historical aspects of existence expansive interpretation appointed due to a lawful act (ignorance) in circumstance, which is caused by the criminal act or that increases responsibility.

Analysis of recent research and publications. Partly study the historical development of mental defense (mostly within the Soviet period) without a detailed study of the content of standards and contemporary views of scientists carried V.V. Anischukom. Leading domestic scholars such as P.P. Andrushko, Yu. Baulin, M.I. Bazhanov, V.I. Borisov, P.S. Matyshevskyy, M.N. Pasche-Ozerskiy and V.I. Tkachenko al. in his work pay attention only to the theoretical aspects of the existing legislative imaginary construction of defense in its close relationship with the necessary. Therefore, a comprehensive historical study of development and legislative consolidation of the abovementioned circumstances (ignorance, error, deceit, imaginary defense) as an independent lawful act that excludes criminality with the study of primary sources in this regard and contemporary views of scientists in this field, and the subsequent formation of opinions on its enhanced legal structures, the science of criminal law of Ukraine is not carried out.

The purpose of article: the study of historical development and the law on mental defense (ignorance, error, deceit) as an independent public benefit lawful act with a detailed study of primary sources in this regard and contemporary views of scientists in this field; formation based on our historical research findings on current legislative imaginary defense construction in Art. 37 of the Criminal Code of Ukraine them appropriately justified.

Presenting main material. Definition lawful socially useful act, which would be responsible on its grounds or was similar to the imaginary defense, not anchored in the criminal law in force in the Ukrainian lands, to the middle of the XIX century. The rules of the various versions of n Truth (Academic list Synodal Akhatist, Karamzinskyy list, etc.), three Lithuanian Statute 1529, 1566, 1588r.r., Catholic Code

is 1649, Voyinskyh articles Peter I 1715. did not contain definite characteristics lawful act or content of links to it. So the first piece of legislation that ensured the emergence of separate circumstances precluding criminality - "random error or deception" (p. 4. 92) of the Penal Code was the criminal and correctional 1842.

In Article 99 of the Articles of 1842 stated that if someone commits a wrongful act of the law due to random error due to fraud or in the surrounding environment or due to ignorance of the circumstances on which such action is illegal, because such action is not entrusted to blame [1, p. 541]. In comments on the application at the time "random error or fraud" in the Russian Empire, NT Volkov of Articles Articles 92 and 99 in 1842 stated the following:

"Because, like fraud or error, as a result of which the offense was committed, belong to legitimate causes of insanity, so the statement about them in court, the court can not refuse to issue statement so special. Error may occur in self-defense, namely, when the circumstances that preceded the application of those defending forces, he could consider himself as being situated in a position in which the defense recognized by law required. Thus, recognized by the court, on the basis of the case, the presence of the accused in the false belief that the time specified in Art. 101 of the Penal Code penal and correctional 1842 (of self-defense) to attack him, he was in complete inability to resort to the defense or the nearest local authorities - could the strength centuries. 99 Articles of 1842, result in his release from responsibility. Similarly, the perception of the accused because of errors or completely legitimate peaceful actions of the victim for the attack that puts the life, health or freedom first of them real danger if you can not turn to the authorities - may not warrant treatment he committed in guilt.

The reason that destroys sanity, can only serve as a mistake of fact, not an error in law that, by force of Art. 62 legal bases can not serve as an excuse and do not fit the scope of Articles 92 and 99 of the Articles of 1842 "[2, 28-29].

In the wording of the Penal Code penal and correctional 1845 was fixed as random error or fraud as circumstances precluding criminality. For n. 4. 98 Articles of 1845 one of the reasons for which deeds should not be put in guilt was "accidental

error or due to fraud" [3, p. 31]. Its regulation was carried out in Art. 105 Subdivision II «On the reasons for their deeds should not be put to blame" Division I «On determining penalties in general and the circumstances in which the deed is not intended to blame" in Chapter III «On the determination of penalties for offenses" of Title I «On crimes general offenses and punishment ", which stated:

"Who will do anything illegal by law only committed from accidental errors or due to fraud that occurred ignorance of the circumstances from which it is turned to illegal acts, committed as it is not put in the wine. It may, however, in some cases by law, be sentenced to church penance " [3, p. 34].

At the final stage of the historical development of the Russian Empire in the Criminal Code in 1903 has changed the legal characteristics of the "random error or fraud" to "ignorance of the circumstances, which is caused by the criminal act or that increases responsibility." Article 43 Division IV «On the subject of crime and acts of sanity" in Chapter I «About the criminal acts and penalties in general" Criminal Law is solidified as follows:

"Ignorance circumstances, which is caused by the criminal act or that increases liability excludes attitude of guilt acts or circumstances that enhances accountability.

When careless actions of this rule does not apply if it was ignorance was the result of negligence of the perpetrator " [4, p. 81].

In comments to art. 43 of the Criminal Code in 1903 on ignorance, delusion and error NS Tagantsev said the following: "Ignorance and delusion can occur either because of mental activity of the subject, its negligence, due to the limitation of its development, or they may occur from the actions of others people who, in turn, became the basis of deceit unknowingly or knowingly and intentionally, when, respectively, was the result of ignorance delusion. According to its object, and at the same time to influence the sanity must be made between ignorance and misleading factual and legal [4, p. 84].

The lack of a more or less clear idea of the perpetrator of the actual conditions of his criminal activity, acting grounds of error or ignorance may apply: 1) the

circumstances that lead to criminality and those of his legal characteristics (in which the perfect losing the character of intentional assault) 2) the circumstances that produce the act with the generic concept of a criminal act in a particular species, to be enhanced or reduced punishment (if they eliminated the opportunity to enhance or mitigate liability on the circumstances which were unknown to the wine); 3) the circumstances which albeit relating to the situation the act but have no significance for its composition nor the size of the responsibility (minor conditions). These provisions are set out in Art. 43 for which differing circumstances of two kinds: those that lead to criminality, ie, within its legal structure, determine its legal concept; circumstances which only affect the level of responsibility, and no matter whether they relate to the actual situation or legal action, or they are caused by fraud or mistake of others and deceit of those who acted " [4, p. 84-85].

Concerning ignorance and delusion law, namely crime and bans the offense, it was noted that in this case "... Article 43 does not concern ... link the defendant that he did not know that committed the act prohibited by law, can not have any effect on his responsibility (Art. 62 Basic Law) ... these arguments are separated and the State Duma "[4, p. 85].

After the collapse of the Russian Empire and of the USSR norm error (ignorance) in circumstances precluding criminality ceased to exist and based criminal legislation of the USSR in 1919, 1924, 1958 and the wording of the Criminal Code of the Ukrainian SSR, 1922, 1927, 1960 not fixed. However, because of practical necessity, gradually, in judicial practice within the necessary defense began to develop the doctrine of the imaginary (imaginary) defense, which was seen as an error in the presence of a socially dangerous attack in self-defense. Formation of the provisions of this legitimate act took place at Resolution of the Plenum of the Supreme Court in 1956, 1969, 1984, 1991 that synthesized judicial practice disadvantages associated with the use of self-defense. For example, in Resolution 1956 stated, "courts should distinguish between the state of self-defense and so-called imaginary (imaginary) defense when a person does not feel real attack and only wrongly presupposes the existence of such an attack ..." [5, p. 6]. Edited p. 13 Resolution 1984 "the courts

should distinguish between the state of self-defense and so-called imaginary (imaginary) defense when there is no actual encroachment and socially dangerous person only wrongly presupposes the existence of such an attack ..." [6, p. 12]. The initial limits the formation of Ukrainian statehood in Resolution 1991 stated that "courts should distinguish between necessary defense against imaginary (imaginary) defense, when the person pomylyayuchys about the reality of assault and considering that it protects the legally protected interests, causing harm to another person ..." (Mr. . 9). [7] However, at the legislative level of the Criminal Code 1922, 1927, 1960 imaginary defense not found its consolidation.

After Ukraine became independent provision (imaginary) imaginary defense of generalization of judicial practice moved to the Soviet Criminal Code of Ukraine in 2001, where centuries. 37 imaginary defense has been identified as an independent circumstance precluding criminality. Duplication of content in judicial practice was held at Plenum of the Supreme Court of Ukraine of 26.04.2002 "On judicial practice in cases of self-defense" (p. 7).

As a result, in the current criminal law of Ukraine formed a narrower understanding of opportunities assumptions person mistakes only about the reality of socially dangerous attacks in self-defense, which is formed by generalizations of the court practice of the USSR, although historically, in times of empire, there was a broad understanding of error in any circumstances precluding criminality, as well as the circumstance that enhances accountability. The author considers it possible to use the described historical experience for the formulation of Art. 37 existing Criminal Code of Ukraine norms Error in circumstances precluding criminality, instead of the existing rules on the imaginary defense. As a theoretical justification may be noted that the false assumption a person can occur not only in self-defense (protection from mental socially dangerous attacks), but, at the extreme necessity (protection from imaginary danger), during the arrest of the person committed a crime (when incorrectly determined the identity of the person who is late or legal person qualification acts as an imaginary crime); in the performance of a lawful order or orders (regarding the apparent subordination of certain state officials) and others. In particular, the

emergency person may be wrong about the existence of danger, which actually was not, or for her character, who in reality was little, like the driver of the minibus route passengers moving at night along the road, saw him suddenly into the oncoming lane endowments turn left on a tool that lights blinded him. For a power lamps and lighting them, he decided that it was a truck (lorry vysokohabarytnyy). In order to avoid his death and the death of the passengers, he turned sharply to the side, drove into a ditch, causing several passengers received serious injuries. After the accident found that the specified tool was an ordinary wheelbarrow from the horse, which sylnohabarytnyh driver installed two lights that truly resembled light truck. Moving on dirt road between the trees, horse abruptly turned to the main asphalt road, but skilful management driver could miss out minivan if minibus driver continued to drive forward. So, as a result of this case, the driver minibus route arose misconception about the dangers (Going towards the truck) and its considerable character, which really was not.

Conclusions. Therefore by using historical experience and study, finds the feasibility of consolidation in Section VIII of the Criminal Code of Ukraine instead of centuries. 37 "imaginary defense" new article - "Error in circumstances precluding criminality". This centuries. 37 of the Criminal Code of Ukraine "Error in circumstances precluding criminality," according to the author, might read as follows:

"1. If a person because of errors felt that in a state the relevant circumstances excluding criminality and the situation that has arisen had reasonable grounds to believe their actions legitimate then this person is subject to criminal liability, provided that it is not aware of and could not realize the falsity of his assumptions.

2. If the person did not understand and could not realize his false assumption, but exceeded the permissible limits permitted by the Code for such circumstances that exclude criminality that person is subject to criminal responsibility for exceeding its limits.

3. If the situation prevailing person had reasonable grounds to believe their actions lawful and did not understand, but could recognize the state of lack of

appropriate circumstances precluding criminality, it is subject to criminal liability for causing harm through negligence. "

Characteristics of the Criminal Code of Ukraine such common mistakes in any circumstances precluding criminality, according to the author, is a progressive step forward towards improving the mechanism of legal regulation.

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