

The Notion of Guilt and Problems of Legislative Regulations of its Forms: The Notion of Guilt in the Criminal Law of Kazakstan

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Abstract: About the concept of guilt is shown on the criminal law to raise metatheory guilt. The nature of guilt turns intentionally or carelessness. We should mention that there are guilty, criminal law and general legal research and practice, which multiply in the main institution metatheory stories, creed, views and suggestions. Comparing the concept of guilt, developed by Soviet lawyers in the 50s of the last century, under a totalitarian regime in the corresponding political and socio-economic environment, with modern definitions, it can be concluded that there have been no fundamental changes in the approach to guilt during this time. Therefore, in our opinion, the concept of guilt and its forms in the legislation of the Republic of Kazakhstan requires a modern reinterpretation and analysis of foreign experience and the latest achievements of scientists from different branches of science.

Key words: Law • Guilt • Intention • Purpose • A power of guilt • The guilt of the Institute • Negligence • intentional • Carelessness

INTRODUCTION

Modern Criminal Code of the Kazakstan, as well as the acting Criminal Codes before, does not contain the notion of guilt. Traditionally in Kazakstan legislation guilt was defined and is defined by a disclosure in the law of its certain forms. At the meantime before describing the forms of any phenomena, it's necessary to define its notion and essence.

In the theory of criminal law the majority of authors distinguish two main concepts of guilt: evaluative and psychological. Several researchers aside from the above mentioned types consider a theory of a dangerous condition as one of the concepts of guilt. At the same time there is no a consensus of what must be understood by this or that concept of guilt.

The theory of a dangerous condition is interpreted by V.V. Luneev as "a basis of illegal preventive punishment" [1]. The actual base of a dangerous condition is consisted of empowering a criminal by social danger. However, it's difficult to imagine a statement of scholars and experts who think that if a person has not liquidated or withdrawn his/her record, then he/she is undoubtedly guilty of the committed action. Besides we

mustn't forget the fact that different aspects of a criminal's characteristics can influence on the degree of his/her guilt in the committed crime. To deny it means put the sign of equality between a criminal who committed for the first time, let's say, stealing and a professional who earns his living by theft.

The idea of lawyers about evaluative concept of guilt can be divided into two types. In the first case evaluative theory of guilt is interpreted as evaluation of all mental and external circumstances connected with crime. In the second case we must distinguish guilt as a moral and political evaluation of criminal actions from the point of view of class positions. Thoughts of evaluative concepts can be found in the works of A.Y. Vyshinsky, B.S. Mankovsky, B.S. Utevsy and other scholars. It is necessary to note that the above mentioned proponents of the evaluative concept considered it from class position asserting that guilt exists if only a person's behavior is condemned from the point of view of Socialist Law.

Later proponents of psychological concept criticizing evaluative theory of guilt began to realize it more broadly as inherent to the bourgeois legislative theory, in the accordance with which guilt is considered not as a real

existing mental relation of a person to his/her committing socially dangerous act, but as the entire set of mental and external circumstances related to the crime evaluated by court.

Scholars adhering to the psychological concept which is dominant in the Modern Criminal Law also do not have a common approach of defining it.

So A.B. Naumov understands guilt as psychological relation of a person to his/her committed socially dangerous act and its consequences in the form of intent or negligence [2, p.222]. The author of a textbook "General Part of Criminal Law" G.A. Kriger [3, p. 124] recognizes guilt as prohibited by criminal law a mental relation in the form of intent or negligence to his/her committed socially dangerous act and its consequences. V.V. Luneev defines guilt as a mental relation of a person to his/her committing socially dangerous act, its socially dangerous consequences and other legally significant circumstances of the committing crime.

V.A. Yakushin [4, p.122] gives a more complicated definition of guilt: it is a mental relation of a person to his/her committing socially dangerous and criminally illegal act expressed in certain forms by law which reveal a connection of intellectual, willful and sensual processes of the person's mind with the act, thereby having the basis for its mental imputing, qualification of the committed act and defining the limits of criminal liability.

From the above mentioned definitions of guilt we can distinguish three points: 1) guilt represents legal relation of a person to a certain external phenomena; 2) guilt is a mental relation of a person not only to a committing act, but also to the consequences; 3) a person is conscious of a social danger of his/her committing act and its consequences. Inclusion of other signs of guilt to the given formula is misconception (for example, *forbidden* by criminal law a mental relation) because no legislation can forbid to relate the phenomena of matter of fact in a certain way including his/her actions and their consequences, or can reveal private nuances of the certain crimes (for example, psychic relation to the circumstances which have a legal meaning), in fact which are elements of wider phenomena or actions. And also it describes in detail the essence of mental relation of a person to the act or consequences which probably have value for science, but not for the formal and precise approach of interpretation of legislative formulas.

It should be noted that in the theory of Anglo-Saxon Law, crime consists of mental (mental elements or fault elements) and physical elements (physical elements or external elements) [5].

The mental element (guilt) in the Anglo-Saxon law is designated by the Latin term *Mens Rea* that is in English "guilty mind" [6]. Thus, the guilt is one of two interrelated parts that make up the crime in the Anglo-Saxon law: "an evildoing hand" and an "evil-meaning mind" [7, p.1].

The American researcher, who studied subjective grounds of criminal responsibility, Paul Robinson [8] identifies the concept of "*Mens Rea*" (guilty mind) in a broad sense, which is the personal blameworthiness and its constituent terms (this includes responsibility). In a narrow sense it describes the person's mental state at the time of the crime. However, at present, "*Mens Rea*" is basically just a mental state in the structure of behavior.

The concept of guilt in the law of the West, as a rule, is not reflected, in contrast to the forms of guilt that are always specified. For example, Section 2.02 of the Model Penal Code of the United States [9] defines four forms of guilt at committing crimes: intentionally, knowingly, recklessly and carelessly.

First of all it is necessary to note that proponents of psychological understanding of guilt define the latter as mental relation of a person to his/her committing act and its consequences. But at the same time as V.V. Luneev [1] mentioned national criminal legal science, legislation and the court practice actually haven't declined evaluative elements of guilt. And this statement is absolutely correct.

Over the most part of the Soviet period of development of the theory of criminal law there was a dominant opinion of defining guilt as evaluation of court and awareness of a person of character and content of his/her committing actions and their consequences characteristic only to bourgeois law. Such position was worked out by theorists of the Soviet criminal law in the course of the prolonged discussions in the 50s of the last century. The main argument was that unlike bourgeois courts, Soviet court didn't evaluate the degree of guilt, but explored the real content so that achieved the truth on criminal matter. This approach was traditional for that time when the Soviet legal system which "stood on guard of the victims' as well as crime offenders' interests" in contrast of legal systems of the capitalist countries which used external imputing as the instrument of "oppressing the people".

It would seem that reconsideration of the Soviet values in the present time and integration of Russia into modern system of coexistence of independent states, forms of state government with various political and legal systems, must be a basis for revision of established positions on different legal questions including the notion of guilt in the criminal and other branches of law.

However, after adoption of a new Criminal Code of RF the situation of defining the notion of guilt and its forms has not changed and practically, except some slight changes in qualification, remain.

Guilt is an abstract notion. This term exists for reflecting mental processes which take place in a person's mind during the moment of committing criminal as well as other actions that in some way breaks the established rules which are set or unset by the norms of law. The data of mental processes, however, cannot be seen directly or measured by any apparatus. No lawyer or psychologist and in many cases a person sued by criminal liability cannot totally reveal its content. Guilt as something mental can be defined purely through the analysis and evaluation of mental circumstances of the committed offense of a person. That's why achieving the truth in the investigation of mental qualities of the committed actions is relative and wholly depends on a set of objective facts gathered and specified as evidence, on one hand and on the other hand, on a law enforcer, his experience, knowledge, mental peculiarities, etc.

On the basis of the abovementioned definition we can make a conclusion: guilt is as well as many other phenomena in one way or another applied in the criminal legislation an evaluative notion. The estimation of guilt depends on a person representing justice and participating in evaluating the gathered evidence of a specific criminal investigation.

Thus, guilt can be defined as a law enforcer's evaluation of mental peculiarities of the committed crime. It is necessary to distinguish the mental part which has a meaning for qualification of a crime and individualization of a crime committer's criminal liability which is subject to evaluation by a law enforcer for a full realization of the principles of justice according to the Constitution of the RK and the Criminal Code of the RK.

The next thing which unites the definition of guilt interpreted by supporters of a psychological concept is that a person is treated not only to an action in some way, but also to its consequences. At the same time on the basis of legislative formulas of guilt describing its individual features, relation of a person to the consequences of the committed act is expressed by forecasting its consequences of the committed act as well as in "volitional" relation to its consequences. Traditionally theorists of a psychological concept of guilt when revealing its content distinguish two moments: intellectual and volitional. Intellectual moment includes a guilty's awareness of the manner of his actions and forecast of the consequences of his actions. And

volitional moment is consisted of certain characteristics of a person's intent: desire of consequences, conscious assumption and indifferent attitude to them, speculation on preventing their consequences which are directly concerned with the legal interpretation of the forms of guilt.

At the meantime the definition of guilt in the criminal law must be in the accordance with psychological understanding a volitional behavior of a person. Distinguishing the forms of guilt into "intellectual" and "volitional" moments from this point of view is artificial. Will and awareness in behavioral act are inseparable and interrelated. A person cannot make a volitional act unconsciously because the main characteristics of the latter is awareness of a person of the pursued objective and a possibility of the control over the unfolding internal and external processes.

Awareness is the supreme function of brain which includes generalized and targeted reflection of the reality, preliminary mental construction of actions and forecasting its results, regulation and self-control of behavior of a person. Will means, first of all, a possibility of free choice in the conflict of desire, ability in self-determination and self-regulation of a person of his/her action. Thus, desire, conscious assumption or either indifferent attitude to the consequences in the intentional form of guilt and light-minded speculation on preventing the consequences of the actions or the consequences a person could have seen, but he couldn't, are characteristics of arbitrary regulation of a person's activity. They do not express will in this context, but reveal that a person consciously commits certain actions and foresees possible consequences of his actions.

From the other hand, distinguishing intellectual and volitional moments in guilt is not observed in the legal definition of its forms. If the interpretation of Article 25 of Criminal Law of RK on intentional forms of guilt allows defining distinctly intellectual and volitional moments of intent, then the legal definition of a criminal light-mindedness does not contain fully the intellectual moment because nothing is said about awareness of a person about the manner of his actions. In describing negligence a lawyer fully ignores a volitional moment because the formula "he could have foreseen but couldn't do that" is related to the intellectual moment. We can make a conclusion that the scheme which intellectual and volitional moments of guilt were not accepted by a lawyer and not used in applying the criminal law. The opposing opinions on the given problem can be found in scientific works. Some authors suppose that a person isn't

conscious of a criminal light-mindedness or criminal negligence of his socially dangerous actions (inactions) and some think that awareness of a social danger take place only in criminal light-mindedness and the others express the opinion that a person is conscious of a social danger of his actions in committing a criminal light-mindedness or negligence. It proves that a legal interpretation of intent and negligence is not fully correct.

Determination of forms of guilt in practice is complicated by availability of material and formal elements of crime in criminal legislation, although some scholars think such division is questionable.

Under crime with material elements according to the description of the article in the Criminal Law we consider an act which has not only signs of action or inaction, but also its material consequences. Formal elements of crime are acts whether they have consequences or not, nevertheless, while committing such crime they have harm to social relations, but the harm is not of material nature.

How can we clear out if a person was aware of the consequences of his actions (inactions) or relied on their prevention in crimes with formal elements? It's difficult to convict a crime with formal elements because possible consequences do not consist of circumstances in proof. For example, committing a state treason can be with direct or indirect intent. In one case a person wished to cause harm to the state security and in the second one he was indifferent to the consequences, having interest only in the size of a material reward. However, in practice criminal law doesn't define a type of intent as it is not clear what consequences of his actions or inactions a person was expected (was indifferent) to happen. At the meantime it's undoubtedly that a specific type of intentional guilt must affect on infliction of punishment.

In the theory of criminal law there is a whole range of opinions on the content of mental component of formal elements of crimes and possibilities of their committing by guilty with negligence. In most cases the authors of monographs, textbooks on Special Part of Criminal Law and commentaries in the Criminal Code of RK think that crimes with formal elements can occur only with direct intent and suggest to guide by the following formula of defining guilt: a person was aware of that he was committing certain actions and desired them. Such recommendations are unacceptable; moreover do not meet to the provisions of Criminal Law because a desire or admission in the intentional form of guilt can be related only to consequences, but not actions themselves. This fact was emphasized by several scholars (B.S. Nikiforov,

N.I. Trofimov, V.V. Luneev, B.S. Uteevsky, V.V. Tkachenko, etc.). That's why a statement that a crime with formal elements can be committed with direct intent does not correspond to reality.

Besides, such attitude to define guilt in crimes with formal elements causes confusion by other reason – a psychologically healthy person committing a volitional action always wishes to commit it, but if a person doesn't wish to commit it, but still does it, it more indicates a psychological disability or insanity of a person.

Attempt to solve the problem of defining the form of guilt and of its particular type with formal elements of crimes was in the Criminal Code of RF in 1996. The idea of intentional guilt in addition to awareness of a person of manner of his action (inaction) and foresight of the consequences of the action (inaction) also include foreseeing inevitability or possibility of the coming consequences. It may seem that such interpretation, in fact, did not give anything new in comparison with the previous Criminal Law. For criminal prosecution of a person for a committed crime with formal elements it is still necessary to find out if a person wished or admitted to do so and if he was indifferent to the consequences of his action (inaction).

The third moment, general to all notions of guilt discussed by proponents of a psychological concept, is that a person in a certain way relates not only to the act which he is committing and the consequences, but also to a socially dangerous act and socially dangerous consequences, i.e. he is aware of a social danger of his action (inaction) and foresees socially dangerous consequences of his actions.

Traditionally in the theory of Criminal Law a social dangerous act is considered action or inaction infringing on social relation protected by criminal law, causing harm or putting them at risk of causing such harm. It means that if a certain type of social relations is not protected by criminal law, then whatever value the given social relations have in case of their infringement they cannot be recognized as socially dangerous. Hence, a sign of a social danger is essential not to all acts externally causing harm to social interests, but only to those ones which are forbidden by criminal law under penalty. Therefore, as several researchers note down, a social danger is directly depended on the lawyer's will that recognizes if an act is of social danger and determines a criminal liability for it reflecting externally existing reality. This statement is mainly fair taking into account multiple examples of decriminalization of certain actions which have happened in recent years.

Inclusion of awareness of social danger of the actions (inactions) to the notion of guilt is to a greater extent objective as the person can be unaware of socially dangerous character of the committing act, although it is related to a punishable act and vice versa, a person can be aware that his actions and consequences cause danger for social interests whereas a lawyer does not recognize them as criminal. According to data given by A.F. Zelinsky [10] 82% of surveyed criminals denied awareness of social danger of their actions. To bring to criminal justice those people law enforcement agencies have to give strong evidence of the contrary meaning because guilt and, hence, awareness of a person of a social danger of his act in its intentional form is the obligatory conditions of recognition of a person's actions as criminal.

Also it is necessary to point out the following: if a criminal unlawful act is recognized as socially dangerous we may conclude that legitimate actions of a person socially safe, i.e. socially useful or socially neutral. It means that when a person commits a crime a social safety is always broken and when a person does legitimate actions a social security is not breached. Attempt to depart from awareness of a person of a social danger of his committing act has been undertaken in separate projects of RK of RF in the mid- 90s of the last century. Particularly, there was a suggestion to substitute a sign of "social danger" into a sign of "wrongfulness", "malficence" which are more correct on the assumption of above pointed reasons. However, these suggestions, unfortunately, were not perceived by a legislator in discussing a new Criminal Law of Kazakstan, which left the institute of guilt on the same index position.

Speaking about a person's awareness of a social danger of his actions (inactions) and the consequences, we cannot ignore the fact that in. Thus, a statement that a person was conscious of a dangerous character at the moment of committing an action (inaction) in the following cases is absolutely incorrect as if the given norms of circumstances haven't happened yet; the committed action cannot be a crime. For example, a person is engaged in illegal business, but it hasn't led him yet to earn a large profit or caused a big damage to the interests of citizens, organizations and the state. Does he have to be conscious of a social danger of his actions? From one hand, he doesn't have to be aware because his actions are not criminal, from the other hand, he must know that if the pointed in the law circumstances occur, all his actions will

be criminal. It means it is necessary to prove that a person was aware of a socially dangerous character at the moment of committing an act, although they were not criminal before the consequences occur.

In the CC of RK in 1960 the possibility of criminal prosecution of a person was also stipulated by the fact of previous prosecution for the same offense . There was an interesting situation from the point of view of the institute of guilt: if a person had been prosecuted to the administrative liability before for poaching and illegally hunted again, then he had to be aware of a socially dangerous character of his actions, but his companion in the hunt committing the same actions hadn't been prosecuted before, then he didn't commit a crime and his actions were not of dangerous character. The same actions, but in the relation to one person they were socially dangerous, in relation to another person they were not. This administrative article was excluded from CC of RK because it contradicted not to the institute of guilt, but because of inefficiency in the set of cases of this institute due to the fact that the legal nature of the administrative offenses do not change by repetition of the crime.

We can make a conclusion: between a legislative interpretation of the institute of guilt and disposition of particular articles in the CC of RK there was and there is a contradiction which is to be excluded. We can do it in two ways. The first way is complicated and in fact unreal - to change a disposition of the abovementioned articles of a Particular Part of CC of RK, the second one is perhaps simple – a sign of a social danger in defining a psychic relations of a person to his actions (inactions) must be changed into another sign which is general for all offenses.

A sign of wrongfulness is the most suitable in the first case; moreover, the notion of guilt in the administrative legislation includes awareness of a person of an illegal character of his actions or inactions. There are some convincing arguments in favor of a sign of wrongfulness on pages of legal publications which are worth to think over. At the same time the possibility of use of a wrongfulness sign in the formula of guilt can arise some questions. Which wrongfulness is meant: criminal, administrative, disciplinary or civil? It has been mentioned before that the majority of norms in Particular Part of describe actions which do not violate the norms of criminal law, but which are found crimes only in cases of the occurrence of certain circumstances. If a person

committing certain actions is not aware of their illegality, but is aware that they break certain rules of behavior (for instance, preventing a possible seizure a person sets a device in his own garage which can cause harm to an evildoer), does he have to be prosecuted to the criminal responsibility?.

Inclusion of a wrongfulness sign to the notion of guilt also cannot help leading its forms to a common denominator because of the identity of its elements. In a negligent form of guilt a person often isn't aware of wrongfulness of his actions (inactions), as it may mentally not break law due to its absence because it is not possible to regulate in detail all the spheres of social relations. Meanwhile in the given situation a person is conscious that although his actions are not unlawful they may cause harm to the surrounding, that's why it's necessary to follow the precautions which he fails to do and in the result he does harm to social relations which are protected by criminal law. Thus to prosecute a person of a criminal liability it is enough to determine if he was aware during committing a crime of the fact that his actions break some certain rules of behavior or not, or if a guilty neglected the precautions while committing the actions which might harm to others.

We suggest defining guilt as evaluation of the court of a degree of a person's awareness of the character and content of his committed actions and their consequences. If we try to give a more detailed definition of the notion of guilt it may be the following: guilt is an evaluation of the court of the degree of awareness of a person if he was conscious that his actions (inactions) break the rules of norms of behavior or if he neglected precautions while committing his actions (inactions) which may cause harm to others and the degree of his foresight or availability of a possibility of such foresight of causing harm to the interests protected by criminal law.

A practical value of defining guilt will be only in the case if we include it to the criminal law. It is practically impossible to form its notion in the acting criminal law with its attitude to define guilt because the established definition of guilt as psychic relation of a person to the act and its consequences is too abstract and is of interest only from the point of scientific research of the given problem. Taking into account the abovementioned interpretation of the concept of guilt and also according to proof consists of gathering, checking and evaluating evidence to clarify the circumstances stipulated by Article, which include guilt of a person in committing a crime and forms of his guilt.

Definitions of "light-mindedness" and "negligence" set out in CC of RK are oriented solely to the crimes with material elements. Then there is a question: how can a person be recognized guilty in committing crimes stipulated by, i.e. a law enforcer recognized the pointed socially dangerous actions (inactions) as negligent crimes with formal elements.

At the same time there is an opinion according to which the criminal acts under consideration are designed by a law enforcer as crimes with material elements which may be committed only with indirect intent as the given Articles do not contain the indication to careless attitude to socially dangerous consequences. This opinion is controversial for the following reasons. A possibility of the occurrence of a person's death or a possibility of radioactive pollution of the environment are only a threat of the occurrence of socially dangerous consequences, but not the consequences, that's why the given acts must be found crimes with formal elements. Psychic relation of a person expressed by the form of indirect intent is possible relatively only to crimes with material elements. Crimes with formal elements can be committed only by negligence as carelessness in the form of light-mindedness in its essence is oriented to the crimes with material elements only. Hence, it is necessary to determine what is expressed by a person's mental attitude in the form of negligence to the crime with formal elements.

Crimes is recognized committed by negligence if a person is aware of possibility of the occurrence of socially danger of his/her actions (inactions) and didn't foresee possibility of the occurrence of socially dangerous consequences of his/her actions (inactions), although with necessary care and prudence he/she had to or could be aware of social danger of his/her actions (inaction) or foresee possibility of the occurrence of socially dangerous consequences".

Thus, crimes with formal elements are considered to be committed by negligence if a person was not aware of a social danger of his/her actions (inactions), although with necessary care and prudence he/she had to or could be aware of their social danger.

There is an opinion that the absence of awareness of a social dangerous character of a committed act means the absence of intentional commitment of crime even if a person foresaw the occurrence of the consequences and wished their occurrence (the so-called "legal negligence") and the absence of possibility of this awareness excludes carelessness, hence, guilt in the whole.

In the given research we tried to justify the possibility of giving the formula of guilt without distinguishing a volitional moment, it was not aimed at negation of the fact that a person didn't have a desire or other attitude to his actions (inactions), but, from one hand, overcoming of unsystematic interpretation of forms of guilt in the modern criminal legislation which consisted of partial and full absence of intellectual and volitional moments in interpreting the formula of guilt and from the other hand, familiar difficulties which take place in qualifying crimes with formal elements.

On the basis of a suggested concept of guilt connected to exclusion of a volitional moment from the formula of guilt, it is necessary to lineate intent from negligence by other criteria.

Intent from the point of view of view of etymology is a deliberate intent, preparation of crime with awareness of the consequences. Intent is an assumption to do something, a desire and intention (deliberate, done consciously). Taking into account the etymological meaning of a term we can make the only correct conclusion: if a person committing some actions is fully aware of its aim, character, a supposed result and its possible consequences, then he acts intentionally. Hence, we can conclude that a person acts intentionally in the case if he is conscious the character of his actions (inactions) and foresees its possible consequences.

The Article 25 of CC of RK reinforces a rule according to which a crime is recognized committed intentionally if a person was aware of a social danger of his actions (inactions) and foresaw a possibility or inevitability of the coming socially dangerous consequences.

CONCLUSION

Thus, the legislative definition of intent implies that a person's awareness of the character of his actions (inactions) is in awareness of their social danger. Failure of the defining the notion of guilt has been stressed out before in the given work because:

- Empowering a social danger of any actions is directly depends on the legislator establishing the criminal prohibition, at the same time not all social dangerous actions are recognized as crimes by the legislator and not all the crimes can be recognized as socially dangerous;

- The majority of criminals in committing criminal actions are not conscious of a social danger as certain researches show;
- The term "social danger" in its essence is the opposite of "social safety"; it means a socially dangerous act always violates a social safety which is an independent object of the crime according to CC of RK; taking into account the division of crimes in Sections and Chapters of CC of RK we can make a conclusion that an act which does not infringe on a social safety is not socially dangerous in its essence;
- There are crimes in CC of RK which are recognized as crimes only in the occurrence of certain consequences; when they occur a person's actions are recognized as socially dangerous and when they don't occur the same actions do not have signs of a social danger in its essence;
- A legislator mentions a person's awareness of a social danger of the committing actions only in describing intentional type of guilt, meanwhile says nothing on the regard to negligent form of guilt, what exactly a criminal has to be aware; therefore there is a breach of the system of constructing the formula of certain forms of guilt.

In the theory of criminal law a person's awareness of a social danger of his committing actions (inactions), as a rule, is revealed by a person's foresight of a possibility of causing harm to social relations protected by criminal law. At the same time such position, in fact, blurs the distinction between awareness of a character of the committing actions and a person's foresight of their consequences because a person's awareness of a social danger of his actions, in its essence, in this case can either be an element of foresight of harmful consequence of the act or identify fully with it.

In the legal literature there are also remarks that wrongfulness is a legal expression of a social danger. It implies that a person's awareness of a social danger of his actions actually implies awareness of their wrongfulness. However, as V.V. Luneev absolutely correctly noted, in reality distinct and clear term "wrongfulness" is substituted by indefinite and situational term "social danger" [1, p.12]. The substitution of the sign of awareness of a social danger into awareness of wrongfulness is, on the opinion of V.V. Luneev, a real way to overcome elements of mental imputation.

REFERENCES

1. Luneev, V.V., 2000. Subjective Imputation. Moscow.
2. Naumov, A.V., 2000. Russian Criminal Law. General Part: Course of Lectures. Moscow.
3. Kriger, G.A. *et al.*, 1988. Soviet Criminal Law. General Part: Textbook. Moscow.
4. Yakushin, V.A., 1988. Subjective Imputation and its Value in Criminal Law. Togliatti.
5. Fisse, Brent, 1990. Howard's Criminal Law.
6. Martin, Elizabeth A., 2003. Oxford Dictionary of Law. Oxford: Oxford University Press.
7. Gryphon, Marie, December, 2009. Mens Rea in the Criminal Law: Current Trends. The Federal Society Press.
8. Robinson, P.H., 1999. Mens Rea.
9. Dubber, Markus D., 2002. Criminal Law: Model Penal Code. Foundation Press.
10. Zelinskiy, A.F., 1999. Criminal Psychology. Kiev: Yurinkom Inter.