

Concept and Sources of Criminal Law

The Criminal Law is a body of norms of law which regulates:

- 1) the criminality and punishability of actions;
- 2) principles and grounds of criminal liability;
- 3) concept, conditions and system of punishments;
- 4) conditions of discharge from criminal liability and punishment.

The only source of Criminal Law is the Criminal Code of RK of July 16, 1997. It is based on the Constitution and the principles of international law.

Principles of Criminal Law

- *Principle of Legality*
 - the criminality of acts and consequently their punishability are determined only by the Criminal Code: No Crime determined by the Criminal Code – No Punishment.
- *Principle of Equality*
 - persons who have committed crimes are equal before the law and are subject to the criminal liability irrespective of any factors.
- *Principle of Guilt*
 - persons are subject to the criminal liability only for those socially dangerous acts and consequences concerning which their guilt is established.
- *Principle of Justice*
 - punishment should correspond to character and the degree of public danger of the crime. Nobody can bear the criminal liability twice for the same crime.
- *Principle of Humanism*
 - criminal punishment may not cause excessive physical sufferings or to humiliate criminals;
- *Principle of Individual Responsibility*
- *Principle of Inevitability of Punishment.*

Tasks of Criminal Law

- Protection of rights and freedoms of individuals;
- Protection of rights and interests of organizations;
- Protection of property;
- Protection of public order and safety;
- Protection of environment;
- Protection of constitutional system and territorial integrity of Republic of Kazakhstan;
- Protection of peace and security of mankind; and
- Prevention of crimes.

Action of the criminal law in space

- ***Principle of Territoriality:***
 - A person who has committed a crime on territory of RK bears liability according to the CC.
 - Exception: Persons who enjoy diplomatic immunity.
- ***Principle of Nationality:***
 - Citizens of the RK who committed a crime abroad are subject to criminal liability in accordance with the CC, if
 - a given act which was committed is recognised as a crime on the territory of a state where it was committed, and
 - if those persons were not convicted in that other state.
- ***Protective Principle:***
 - Foreigners who have committed a crime outside of RK are subject to the criminal liability according to the CC
 - if the crime is directed against interests of RK, and
 - if they were not condemned in that other state.
- ***Extradition:***
 - Citizens of RK who committed a crime on territory of another state are not subject to extradition to this state unless it is stipulated by international agreements. Example: Agreement between RK and China, ratified 1997.
 - Foreigners and stateless persons who committed a crime outside of RK and residing in RK may be extradited to a foreign state according to international agreements of RK.

Action of the criminal law in time

- The criminality and punishability of an act are determined by the law in force at the time of the commitment of that act.
 - A law which eliminates criminality or punishability of an acts, which mitigates liability or punishment for it or otherwise improves the status of a person who committed a crime, has a retroactive force.
 - A law which establishes criminality or punishability of an act which increases liability or punishment, or otherwise deteriorates the status of a person who committed that act, has no retroactive force.

Concept of Crime

Crime is a publicly dangerous act (or a failure to act) for which someone is found guilty, and which is prohibited by the Criminal Code under the threat of legal punishment.

Features:

1. Danger for Society
2. Illegality
3. Guilt
4. Punishability

Corpus Delicti

Elements:

- Object
- Objective Side
- Subject
- Subjective Side

Object and Objective Side

- Object of Crime are social relations which are protected by Criminal law from criminal encroachments
- Objective Side of Crime is a body of external features of a crime:
 - Major Feature: a publicly dangerous act (or a failure to act);
 - Optional Feature: publicly dangerous consequences;
 - Material Corpus Delicti (require publicly dangerous consequences, e.g. Murder, Theft and most other crimes)
 - Formal Corpus Delicti (do not require publicly dangerous consequences, e.g. Espionage)

Subject and Subjective Side

- Subject is a person who committed a crime:
 - Individual (not legal entity);
 - Responsible, of sound mind person;
 - who reached the Age of 16 (Exception: Art. 15 CC).Special subject – one who has special features.
- Subjective Side of Crime is a body of internal features of a crime:
 - Guilt in the forms of 1) Intent; 2) Negligence;
 - Optional features: 1) Motive; 2) Goal.

Forms of Guilt

A Crime Committed Deliberately

- Direct intent - A person:
 - was aware of public danger of his acts (omission of acts),
 - foresaw a possibility or inevitability of publicly dangerous consequences, and
 - desired their emergence.
- Indirect intent - A person:
 - was aware of the public danger of his acts (omission of acts),
 - foresaw a possibility of the emergence of publicly dangerous consequences, but
 - did not desire though consciously admitted the possible emergence of such circumstances, or had an indifferent attitude towards them.

A Crime Committed by Negligence

- Willful disregard - A person
 - foresaw a possibility of the emergence of publicly dangerous consequences of his acts (omission of acts), but,
 - without sufficient basis, light-mindedly counted on the prevention of those consequences.
- Neglect - A person
 - did not foresee a possibility of the emergence of publicly dangerous consequences of his acts (omission of acts), though,
 - with due care and forethought, must have and could have foreseen those consequences.

Circumstances which release from Criminal Liability

- Necessary Self Defence or Defence of Another;
- The Causation of Damage When Detaining a Person Having Committed a Crime;
- Extreme Necessity;
- The Performance of Operative-Investigative Measures;
- Justifiable Risk;
- Physical or Psychic Coercion;
- The Execution of an Order or an Instruction.

Circumstances Which Mitigate Criminal Liability and Punishment

- commission of a crime for the first time;
- minority of a convict;
- pregnancy;
- the existence of small children of a convict;
- rendering of medical and other assistance to the victim directly after the commission of a crime;
- the commission of a crime as a result of physical or psychic coercion, or by virtue of material, official, or other dependence;
- the commission of a crime in violation of the conditions of lawful necessary self-defence, extreme necessity, detention of a person having committed a crime, justifiable risk, and the execution of an order or instruction;
- unlawfulness or immorality of the behavior of a given victim which served as a an incentive for a given crime;
- sincere repentance and active contributing to the disclosure of a crime.

Note: When establishing punishment, other circumstances may also be taken into consideration as mitigating factors.

Circumstances Which Aggravate Criminal Liability and Punishment

- repetition of crimes, criminal recidivism;
- causation of serious consequences by a crime;
- commission of a crime within a group of persons, a group of persons in preliminary collusion, an organized group or a criminal association (criminal organization);
- involvement in the commission of a crime of persons who suffer from serious psychic disorders or persons who did not reach the age from which criminal liability arises;
- commission of a crime under a motivation of national, racial, or religious hatred or enmity, out of revenge for lawful actions of other persons, as well as for the purpose to conceal another crime, or to facilitate its commission;
- commission of a crime with regard to a woman who is pregnant as well as with regard to a small child or a defenseless or helpless person;
- commission of a crime with regard to a person or his relatives in relation to the implementation by that given person of his official, professional, or public duty;
- commission of a crime involving an atrocity, sadism, mockery, as well as torments for the victim;

Circumstances Which Aggravate Criminal Liability and Punishment

- commission of a crime with the use of arms, ammunition or explosive substances, combustible and inflammable liquids, poisonous and radioactive materials;
- commission of a crime with the use of conditions of an extraordinary situation, natural or other social disaster, as well as in cases of mass unrest;
- commission of a crime in a condition of alcoholic, narcotic, or toxicomaniac inebriation;
- commission of a crime by a person who violated by that a military oath or a professional vow;
- commission of a crime with the use of a uniform or documents of a representative of authority.

The Concept and Purposes of Punishment

- Punishment is a measure of state coercion which is appointed pursuant to a court's sentence.
- Punishment applies to a person who was found guilty in the commission of a crime, and consists of imprisonment or restriction of the rights and freedoms of that person which are stipulated by the Criminal Code.

Purposes of Punishment

- Restoration of social justice;
- Correction of a given convict;
- General prevention;
- Special prevention.

Note: Punishment must not have as its purpose the infliction of physical sufferings or humiliation upon human dignity.

Main Types of Punishment

- Fine;
- Deprivation of the right to hold a certain office, or to engage in certain activity;
- Engagement in public works;
- Correctional labour;
- Restriction in military service;
- Detention in a disciplinary military unit;
- Restriction of freedom;
- Arrest;
- Deprivation of freedom;
- Capital punishment.

Additional types of Punishment

- Deprivation of special, military, or honorary ranks, diplomatic ranks and state awards.
- Forfeiture (Confiscation) of property.

Note:

- Fine and
- Deprivation of the right to hold a certain position, or to engage in a certain type of activity,
 - may be applied either as principal or additional types of punishment