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EXCUSES AND JUSTIFICATIONS IN THE CRIMINAL LAW OF KAZAKHSTAN AND UZBEKISTAN: A COMPARATIVE PERSPECTIVE

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The principle of humanism is one of the key principles of criminal law, the importance of which can hardly be overestimated. One of the practical expressions of this principle is the concept of excuses and justifications in criminal law. The application of this concept allows to achieve the fullest assessment of the objective and subjective aspects of the wrongful act. **The topicality of this article** is in that the concept of excuses and justifications requires a comprehensive study in order to develop it further. Especially, the availability of doctrinal sources of legal interpretation in this field is relevant for the countries whose criminal legislation and law enforcement practice are still in the process of establishment. This article clarifies the concept of excuses and justifications, provides a comparative analysis of legislation in the field of grounds for exemption from criminal responsibility and punishment which constitutes **the subject of this work**, and discusses the main aspects of implementation and application of the concept in the criminal law of Kazakhstan and Uzbekistan. Undertaking such an analysis is necessitated by the fact that criminal law, with its key legal institutions, is currently actively developing in both countries. **The article's purpose** is to keep track of those developments and reveal the gaps, in order to suggest any possible solutions. The **comparative method of researching** these two Central Asian criminal jurisdictions under review is used for the first time in a scholarly piece in English. In short, the article arrives at the following **main conclusions**: (1) while being included in the criminal jurisdictions of both Kazakhstan and Uzbekistan, the implementation of the institution of excuses and justifications in each of these jurisdictions went in their own unique ways and directions which may be easily explained by the unique contextual developments of law and practice; (2) the observed trends in the development of this institution in both states are to be lauded, and (3) the more specific the legal rules on excuses and justifications are, the better they can serve the purpose of professional qualification of criminal offences.

Keywords: Criminal law; general principles of criminal law; principle of humanity; excuses and justifications; right to a fair trial; criminal responsibility; criminal punishment; Criminal Code; Kazakhstan; Uzbekistan.

Introduction

The concept of excuses and justifications represents one of the most fascinating issues in modern criminal law. That is so not only because this legal institution literally translated from Russian "obstoyatel'stva isklyuchayushhie prestupnost' deyaniya" as "circumstances excluding the criminality of the act"[1] serves as an efficient tool for implementation of the principle of humanism in criminal law and legislation. The existence and variety of a range of such circumstances (or defenses) may also helpfully illuminate the degree to which a particular criminal legal system has been liberalized. Furthermore, a proper and sufficient realization of the substantive provisions of the general part of criminal law dealing with excuses and justifications will also determine the efficiency of interpretation and, even more importantly, application of substantive norms of its special part when it comes to qualifying the human conduct as falling under the ambit of criminal law.

While it is not the purpose of this article to analyze and compare the notion of excuses and justifications as it has been introduced in the Central Asian region and other parts of the world, it makes sense to mention that unlike the situation with the criminal legislation of Central Asian states criminal law in many other legal systems (both continental and common) usually distinguishes between the two major types of those defenses. They are classified either as "excuses" or "justifications". The first one negates the culpability of the actor for wrongful conduct (for example, duress) while the second one negates the very wrongfulness of the conduct itself (for example, self-defense).[2] That distinction is explicit in such systems as, e.g., Germany. In Central Asian legislations, in particular, in Kazakhstan and Uzbekistan all those circumstances are grouped under one particular chapter or section in their respective criminal codes.[3] For the time being, there is apparently no need to make such a distinction in these jurisdictions as no different legal consequences could be attached to it: the perpetrator who has committed an offence under duress will be fully exempted from criminal responsibility just like the perpetrator who committed a crime as an act of self-defense.

After gaining independence from the Soviet Union at the start of the last decade of the 20th century, both Kazakhstan and Uzbekistan have been trying to gradually develop and crystalize their legal systems,[4] with criminal law being no exception in this regard albeit to different degrees of pace and success. For the last thirty years these two distinct systems have developed their own distinguishing characteristics, from both doctrinal and practical perspectives, and depending on to what extent they have ab-

[1]Some of Central Asian authors denote this concept in a more exact and specific way as "circumstances that exclude public dangerousness and criminality of the act". See Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 197.

[2]Gur-Arye M. Should a Criminal Code Distinguish between Justification and Excuse? // Canadian Journal of Law and Jurisprudence. 1992. Vol. 5. № 2. – P. 215-235.

[3]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, Part 5, full text in Russian is available at https://online.zakon.kz/document/?doc_id=31575252&pos=70;-48#pos=70;-48 (last visited 13 April 2022); Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, Part 3, Chapter IX, full text in Russian is available at https://lex.uz/ru/docs/111457 (last visited 13 April 2022).

[4]See Atadjanov R.B. Building the State of Law (Rechtsstaat) in the Countries of Central Asia: An Unachievable dream or realistic objective? // Право и государство. 2021. № 3 (92). – С. 52-70.

sorbed principles and ideas from foreign systems and practices. It appears to be all the more so justified to dig into the question of how exactly the excuses and justifications, or circumstances exempting from criminal responsibility, have been implemented into the criminal legal systems of two states of Central Asia. Doing so in a comparative manner will allow the reader to track down the progress achieved so far in either one of these states in terms of legal formulations and clarifications whereas it would also reveal those areas where more promising work could still be carried out. At the end of the day, criminal law being a functional branch of law acts as the heaviest legal tool of the state when it comes to imposing legal responsibility for the most serious violations of law. Its proper realization and fair application can serve, *inter alia*, as yet another indicator of whether or not the state in question is truly implementing its both international and domestic legal duties before its society. Kazakhstan, with its regularly updated and improved criminal legislation, and Uzbekistan, with its recent promise of probably the most fundamental criminal legal reform yet to be undertaken, seem to be illustrative case studies in this regard.

Basic Provisions

The article deals with the description of the critical notion of excuses and justifications, or as they are known in Central Asia, circumstances exempting from criminal responsibility, in the criminal law of two states of the region: Kazakhstan and Uzbekistan. It explains the concept's major elements and traces its connection to one of the most fundamental principles of law, the principle of humanism. The article further considers each of the types of excuses and justifications implemented in these two jurisdictions as they have been formulated in their respective main criminal legal sources, i.e., criminal codes. That allows the article, in its discussion section, to pinpoint the possible gaps and cross-cutting elements in the criminal law of Kazakhstan and Uzbekistan as concerns the implementation of the institution of excuses and justifications. The concluding part summarizes the main conclusions of the article offering the author's prospective on how exactly this important concept of criminal law works in the context of Kazakhstan and Uzbekistan and proposing potentially useful solutions to make it more efficient from the point of view of the main purposes of criminal law.

Materials and Methods

When drafting the article, this author used the publication materials written by both foreign and Kazakhstani scholars. Existing definitions and notions proposed in the available published materials written by leading criminal law scholars in Central Asia have been analysed and compared. The critical approaches allowed the author to review main concept of excuses and justifications, and to carry out a comparative analysis of the two criminal legislations on the matter of level of implementation of this concept in their respective codes. The comparative method was also useful in juxtaposing certain gaps in the criminal law of Kazakhstan and Uzbekistan. In addition to the major legal analytical method used throughout the main text, the article also employs an interpretative approach when it comes to consideration of concrete types of excuses and justifications.

Main Part

1. The Notion of Excuses and Justifications

According to Professor Borchashvili, the absence of even one of the necessary features of a criminal offence such as criminality (i.e., unlawfulness), public danger, guiltiness (guilt) and punishability, means the absence of public dangerousness of the offence.[5] There are situations when human conduct formally, that is, externally, corresponds to the description of the criminal offence but under certain circumstances that conduct would be devoid of public danger,[6] i.e., would not be constituting a threat to the societal interests. Based on this logic, one could arrive at the following definition of excuses and justifications in criminal law: they are the circumstances excluding the criminality of the offence, i.e. those circumstances under which the conduct of the person inflicting harm formally corresponds to an offence's description but is not recognized as a criminal offence and is socially acceptable.[7]

This also implies that criminal law provides for special situations or cases when the individual subjects' behavior formally similar to *actus reus* of a crime or a criminal misdemeanor will nevertheless be recognized as lawful. The person (subject) is entitled to a right to inflict harm when there are certain specific grounds and some conditions provided in the criminal legislation are satisfied.[8] The norms in the respective chapters / sections of the criminal codes (general parts) of the two states in question differ from many other so-called enabling ("upravomochivayushhie") criminal norms because they entitle with the said right to inflict harm ALL physical subjects, not only the special subjects such as state officials including those working in the law enforcement and investigation bodies and in the judicial system. At that, the types of harm inflicted as a result of human conduct mentioned above are similar to those types of harm that are inflicted because of the actions constituted by the criminal offences included in the special part of respective criminal code. They may include physical harm against another person, harm to his/her individual rights, damage or destruction of someone else's property, i.e., proprietal harm, material or financial harm (e.g., due to tax non-payment) and so on.

It goes without saying that when the legislator formulates the norms that exclude criminality of the acts it must do so being guided by and having in mind the protection of constitutional norms providing for the fundamental individual rights and freedoms as

[5]See Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 197.

[6]Ibid.

[7]A very similar definition may be found in the works of scholars from other jurisdictions beyond Central Asia. See, for example, Чучаев А.И. Уголовное право. Общая часть. Учебник для бакалавров [Criminal Law. General Part: Textbook for Undergraduates]. М.: Проспект, 2016. С. 232. Козаченко И.Я. Уголовное право. Общая часть. Практикум [Criminal Law. General Part. Practicum]. М.: Юрайт, 2014. – 454 с.; Бекмагамбетов А.Б., Ревин В.П. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2015. – 504 с. A detailed description of excuses and justifications based on article-by-article review may be found in Борчашвили И.Ш. Комментарий к Уголовному кодексу Республики Казахстан. Общая часть (том 1) [Commentary to the Criminal Code of the Republic of Kazakhstan. General Part. Volume 1]. А.: Жеті жарғы, 2015. – 504 с.

[8]Чучаев А.И. Уголовное право. Общая часть. Учебник для бакалавров [Criminal Law. General Part: Textbook for Undergraduates]. М: Проспект 2016. С. 232-233.

inherent and belonging to everyone; those rights would include, *inter alia*, right to life, right to human dignity, personal freedom and inviolability, right to property,[9] and so on.

The following types of excuses and justifications have been incorporated so far in the criminal law of Kazakhstan and Uzbekistan in total, meaning, between the two taken together: necessary defense (self-defense); extreme necessity; causing harm while apprehending a person who has committed a criminal offence; carrying out operative measures or covert investigative actions; obeying an order or instruction; justifiable risk; physical or psychological compulsion (duress); and insignificance of the act. The respective sections in the criminal codes have been titled as "Criminal offences" (Kazakhstan)[10] and "Circumstances Excluding the Criminality of the Act" (Uzbekistan).[11] All of these types are considered further below in the text.

In general, if one takes into consideration the criminal legislation of Central Asian states, several common elements or features of excuses and justifications may be found. First of all, the human conduct which amounts to the action that is qualified as a circumstance excluding the criminality of the act (i.e., as an excuse or justification) is always conscious and volitional except for cases of insurmountable compulsion (duress). The volitional element here is expressed in the objective action. Often that conduct constitutes a purposeful behavior. Second, the human conduct is lawful and not criminal, and it may even be considered as socially useful or at least acceptable. Although such behavior inflicts harm in this or that form, it comes as a forced harm and it is notably useful because it is aimed at the protection of interests of individuals, society at large as well as the state. Third, the human conduct discussed here is carried out in a particular context when corresponding grounds for infliction of harm are present. Fourth, the harmful conduct must satisfy certain criteria or conditions of lawfulness that are established by criminal law and that are different for different circumstances. Only when all of these conditions are met one may draw a conclusion to the effect that a particular excuse or justification is present that excludes the criminality, and hence, the criminal responsibility and corresponding punishment. In other words, all the criteria must be satisfied in order to recognize the inflicted harm as lawful. If they are not met then the human behavior may be qualified as criminal.

When compared with other national legal systems, the concept of excuses and justifications in at least some European criminal legal jurisdictions such as United Kingdom and Germany is described as a form of criminal law defense. Excuses and justifications are understood there as two distinct categories of criminal law defenses. The said distinction between the two categories appears still to be important, as a minimum at the doctrinal and theoretical level. What also deserves mentioning is that various underlying theories have been developed and applied in supporting or justifying the excuses and justifications in criminal law such as the so-called explanatory theory, public bene-

[9]Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 197-198.

[10]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, Part 5, full text in Russian is available at https://online.zakon.kz/document/?doc_id=31575252&pos=70;-48#pos=70;-48 (last visited 13 April 2022).

[11]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, Part 3, Chapter IX, full text in Russian is available at https://lex.uz/ru/docs/111457 (last visited 13 April 2022).

fit theory, moral forfeiture theory, moral rights theory, lesser harm theory, deterrence, causation and character theories as well as the free choice, or personhood theory.[12]

It may be useful to review those theories for comparative purposes and juxtapose them with the approaches in criminal law in Central Asian national legal systems but that would be outside of the scope of this particular article. It suffices to say here that the equivalent of excuses and justifications in Kazakhstan and Uzbekistan's criminal law dubbed as circumstances that exclude criminality of the act have not been distinguished in the respective criminal legislation on the matter of whether each individual defense qualifies as an excuse or a justification. There have been no observed practical or judicial reason for that; for the sake of fairness, it also makes sense to note that apparently this dichotomy in other jurisdictions have become more and more blurred over time and nowadays the both excused and justified actors are treated in the same manner in the criminal courts in those jurisdictions.[13]

2. Types of Excuses and Justifications implemented both in Kazakhstan and Uzbekistan

This section will briefly look at those types of excuses and justifications that have been incorporated in the criminal law (in the sense of criminal *lex*) of both Kazakhstan and Uzbekistan.[14] They include the following ones: (1) necessary defense (self-defense); (2) extreme necessity; (3) causing harm while apprehending a person who has committed a criminal offence; (4) obeying an order or instruction; (5) justifiable risk, and (6) physical or psychological compulsion (duress).

(1) Necessary defense, or self-defense

In Kazakhstan's Criminal Code, the notion of necessary defense has been defined as follows: "Lawful protection of the personality and rights of the defender and other persons, as well as the interests of society and the state protected by law from socially dangerous encroachment, including by causing harm to the encroaching person."[15] In fact, this concept is considered so important that the legislator felt the need to include a reference to necessary defense in the Constitution[16] while the Supreme Court of the Republic of Kazakhstan issued a normative resolution clarifying the concept of necessary defense and its proper application in law.[17] In its Resolution, the Court stated that "Necessary defense is an inalienable constitutional right of everyone to be protected

[12]For an illustrative description of all those theories, see Dressler J. Understanding Criminal Law. 7th ed. LexisNexis Law School Publishing, 2015. P. 187-191.

[13]Dressler J. Understanding Criminal Law. 7th ed. LexisNexis Law School Publishing, 2015. P. 187.

[14]The main part has been structured in this way by the author so that to avoid fragmenting the article into too many sections and hence to make the reading process easier and simpler for the readers, instead of breaking the main part into sections each focusing on one particular type of the circumstances excluding the criminality of the act.

[15] Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 32, para. 1.

[16]Constitution of the Republic of Kazakhstan, adopted on 30 August 1995, full text in Russian is available at https://online.zakon.kz/document/?doc_id=1005029&pos=5;-88#pos=5;-88 (last visited 13 April 2022), art. 13, para. 1.

[17]Normative Resolution of the Supreme Court of the Republic of Kazakhstan #2 "On Application of the Legislation on Necessary Defense", issued on 11 May 2007, full text in Russian is available at https://online.zakon.kz/document/?doc_id=30105428&pos=5;-106#pos=5;-106 (last visited 13 April 2022).

from socially dangerous encroachments on life, health, property, housing, property and other human rights and interests protected by law."[18] Its objects of protection include individual rights, as well as public and state interests.

According to Criminal Code, all persons equally have the right to necessary defense, regardless of their professional or other special training and official position; this right belongs to a person, regardless of the possibility of avoiding a socially dangerous encroachment or seeking help from other persons or state bodies.[19] As for the exact criteria or conditions that the harmful conduct must satisfy in order to be considered as an excuse / justification (as mentioned above in section 1), those encompass the following: (1) the encroachment (infringement, attack) in question must be publicly dangerous; (2) the encroachment must be imminent (real threat or already started); (3) the encroachment must be real ("valid"); (4) the inflicted harm must be inflicted only onto the encroaching person / attacker; and (5) the protection must not exceed the limits of necessary defense.[20] Some of these criteria have been partially clarified in the said normative resolution of the Supreme Court while most of those are explained by the criminal law experts and scholars.[21]

In Uzbekistan, even if the concept of necessary defense has not been mentioned in the constitutional law, it was well defined in criminal law: "Protection of the personality or rights of the defender or another person, the interests of society or the state from unlawful encroachment by causing harm to the offender, if the limits of necessary defense were not exceeded."[22] Interestingly enough, Uzbekistani criminal legislation clarifies that "deliberately provoking an attack with the intention to cause harm is not a necessary defense".[23] Similarly to Kazakhstan's law, the Criminal Code of Uzbekistan has the following provision: "The right to necessary defense belongs to a person, regardless of the opportunity to seek help from other persons or authorities or to avoid encroachment in any other way."[24] In light of the earlier announced planned reforms in the sphere of criminal law and criminal procedure, it appears only logical to suggest to keep tracing the developments in what concerns the relevant principles of the general part of criminal law.

(2) Extreme necessity

Para. 1, art. 34 of the Criminal Code of Kazakhstan provides that "Causing harm to the interests protected by this Code in a state of extreme necessity, that is, to eliminate a danger that directly threatens the life, health, rights and legitimate interests of a given person or other persons, the interests of society or the State". This particular provision involves a so-called balancing situation of "extreme necessity", i.e., eliminating the danger to the protected interests is possible only by inflicting lesser harm to other protected in-

[18] Ibid., para. 1.

[19] Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 32, para. 1.

[20] Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 199-209.

[21] Ibid.; see also Чучаев А.И. Уголовное право. Общая часть. Учебник для бакалавров [Criminal Law. General Part: Textbook for Undergraduates]. М: Проспект, 2016. – С. 239-243.

[22] Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 37, para. 1.

[23] Ibid., para. 4.

[24] Ibid., para. 3.

terests. In other words, what is expected of the individual subject of the law here in order to qualify his or her conduct as an excuse / justification is choosing the lesser of two evils.

As in case of the criteria for the necessary defense, there are also crucial conditions of lawfulness pertaining to both the threat of danger and protection that need to be satisfied for the situations of extreme necessity, too. Those include the following: (1) any sources of danger including natural causes may qualify; (2) the danger must be real and not imaginary; (3) the harm is inflicted onto the third persons and their property; (4) inflicting the harm was the only way to eliminate the threat, and (5) the inflicted harm was lesser than prevented harm.[25]

Uzbekistan's law defines extreme necessity as causing harm to the rights and interests protected by law, committed in a state of emergency, that is, to eliminate the danger that threatened the person or rights of this person or other citizens, the interests of society or the state.[26] Similar to what Kazakhstan's Code says, here the legislator also describes the notion of exceeding the limits of extreme necessity by stating that it represents an infliction of harm to the rights and legally protected interests, if the danger could be eliminated by other means, or if the harm caused is more significant than the prevented one.[27] But unlike in Kazakhstan, the Criminal Code of Uzbekistan explicitly states that when assessing the legitimacy of an act committed in extreme necessity, the nature and degree of the preventable danger, the reality and proximity of its occurrence, the actual ability of the person to prevent it, his state of mind in the current situation and other circumstances of the case are taken into account.[28] In other words, it provides a codified guidance for the process of qualification for the law appliers when they have to deal with cases of this nature.

(3) *Causing harm while apprehending a person who has committed a criminal offence*

Kazakhstan's criminal law deals with this concept in the following manner: "It is not a criminal offense to cause harm to a person who has committed a criminally punishable act during his apprehension for delivery to state bodies and to prevent the possibility of his committing new attacks (encroachments), if it was not possible to apprehend such a person by other means and if, at the same time, the measures necessary for this were not exceeded."[29] It is curious to note that according to leading experts in the area of criminal law in this country, detaining physical persons who have committed a criminal offence is a moral duty of all nationals (i.e., citizens) while for certain special bodies of state power this duty is professional.[30] At that, causing the harm is justified by the motives and objec-

[25]See for more details Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 217-219.

[26]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 38, para. 1.

[27]With the difference being that for Kazakhstani law exceeding those limits would occur only if the infliction of harm is clearly inconsistent with the nature and degree of the threatened danger. See Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 34, para. 2.

[28]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 38, para. 4.

[29]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 33, para. 1.

[30]Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal

tives such as stopping the carrying out of unlawful activities in the future, punishing the person who has committed the encroachment, as well as restoring justice.

Conditions to be satisfied in order to recognize causing such harm as lawful would be: (1) actual commission of criminal offence by the person towards whom that harm is inflicted; (2) the offender's attempt to escape from those who wanted to detain him or her; (3) the apprehension is carried out with a certain purpose (to deliver the offender to state bodies and to prevent the offender from committing new criminal violations); (4) inflicting the harm was the only way to suppress the offender's attempts to escape, and (5) the proportionality of the inflicted harm to the criminal offence.

Uzbekistani definition is more concise: "It is not a crime to inflict harm during the apprehension of a person who has committed a socially dangerous act, with the aim of transferring him to the authorities, if the measures necessary for detention were not exceeded."[31] But the relevant provision here further specifies that under the "exceeding the measures of apprehension" one should understand a *clear* [emphasis added] discrepancy between the means and methods of apprehension, the danger of the act and the person who committed it, as well as the situation of apprehension, as a result of which harm is intentionally inflicted on the person that is not caused by the need for apprehension.[32] Furthermore, when assessing the legitimacy of causing harm during the apprehension of a person who has committed a publically dangerous act, his actions to avoid apprehension, the strength and capabilities of the apprehended, his state of mind and other circumstances related to the fact of apprehension must be taken into account.[33] Hence, here again we observe the effort on the side of the regulator to provide the indicators for the evaluation of the lawfulness and the respective qualification of the action in question in a codified manner.

(4) Obeying an order or instruction

Article 38 of the Criminal Code of Kazakhstan stipulates that causing harm to the interests protected by the Code by a person acting in pursuance of an order or instruction binding on him is not a criminal offense.[34] Thus, the defense of "I was following the order(-s)" is established in the criminal law here. Burt then, who would be responsible under criminal law for infliction of that harm? The Code provides that criminal liability for causing such harm is to be borne by the person who actually issued the unlawful order or instruction.[35]

One should, of course, distinguish also between the lawful execution vs. unlawful execution of a command. It is important because the executors should not be fearing responsibility for the harmful consequences brought by the proper execution of an order. Moreover, one needs to make a distinction as to the differences between the order and the instruction. The first one may be explained as an official command of the body of power. The second one is to be understood as an expression of the superior's will.

Law of the Republic of Kazakhstan. General Part]. A.: Жеті жарғы, 2016. С. 210.

[31]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 39, para. 1.

[32]Ibid., para. 2.

[33]Ibid., para. 3.

[34]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 38, para. 1.

[35]Ibid.

In order to determine the lawfulness or unlawfulness of the order, the following requirements are used: the issued command must be given in an established order of issuing (giving out) the command; the order must be properly formalized, either in written or in an oral form; the order must be legal – both by form and in content. The criminal unlawfulness of the order can be determined by its non-correspondence to the aims and purposes of the power body and by the violation of human rights and freedoms.

Criminal law of Uzbekistan says that it is not a crime to cause harm in the lawful execution by a person of an order or other instruction, as well as official duties.[36] It is important to note that just as is the case with Kazakhstan's law, in Uzbekistan a person who has committed a crime on a *knowingly* criminal order or other instruction shall be subject to liability on a general basis.[37] Accordingly, it is important that the person executing the command / order / duties is not aware of their illegality, i.e., unlawfulness. This is an important precondition since being aware of the order's illegality and ensuing ramifications of that changes the entire responsibility paradigm for the executor: he or she would know what happens if and when they proceed with the performance of what is unlawfully required, and he or she still go ahead with this.

(5) Justifiable risk

It is not a criminal offense to cause harm to the interests protected by Kazakhstan's criminal law at a reasonable risk in order to achieve a publically useful goal. This is what article 36 of the Criminal Code states with respect to the category of human conduct that could be qualified as justifiable risk. This provision also defines what counts as a justifiable risk: "The risk is recognized as justified if the specified goal could not be achieved by actions (or inaction) not related to the risk and the person who allowed the risk took sufficient measures to prevent harm to the interests protected by this Code."[38] Further, the risk is not recognized as justified if it was obviously associated with a threat to life or health of people, an environmental disaster, a public disaster or other grave consequences.[39]

Based on the applicable legal provisions, the following conditions serve as necessary requirements in order to qualify the risk as justifiable: (1) there must be a publicly useful purpose; (2) that purpose must be impossible to be achieved by other, safer means; (3) the risk-taking individual must have taken all necessary precautionary measures in order to prevent possible harm to the interests protected by criminal law; (4) there should be no threat to lives of many people or threat of ecological catastrophe or public disaster; (5) taking the risk must be justifiable based on knowledge, experience, sober judgment and real possibility of a favorable outcome.[40]

Compared to Kazakhstan's criminal law and its rather brief provisions as concerns the concept of justifiable risk, Uzbekistan's Criminal code contains more exhaustive elements which include not only the definitions of which human behavior may involve

[36]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 40, para. 1.

[37]Ibid., para. 2.

[38]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 36, para. 2.

[39]Ibid., para. 3.

[40]Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 228.

a justifiable risk, or the definitions of that risk – again, more encompassing definition than the one in Kazahstan, but also certain exceptions from criminal responsibility including when the desired purpose has not been reached and when the business / entrepreneurship and other commercial risks are implied.

More specifically, according to article 41, para. 2, of the Criminal Code, the risk is recognized as justified if the committed action corresponds to modern scientific and technical knowledge and experience, and the set goal could not be achieved by actions not related to the risk and the person who allowed the risk took the necessary measures to prevent harm to the rights and legally protected interests. This is a quite meticulous description which takes into account such aspects as science and technics / technology and their state of progress. This better corresponds to the principle of legal certainty as does the following provision: "In case of a justified professional or economic risk, liability for the harm caused does not arise even if the desired socially useful result was not achieved and the harm turned out to be more significant than the pursued socially useful goal."[41]

(6) Physical or psychological compulsion (duress)

Regarding this key category, even compared to other provisions in the criminal legislation of Kazakhstan, the relevant stipulation in the Criminal Code represents perhaps the most succinct one. It goes as follows: "It is not a criminal offense to cause harm to the interests protected by this Code as a result of physical or mental coercion, if as a result of such coercion the person could not control his actions (inaction)."[42] It goes without saying that when it comes to physical compulsion criminal law here implies the irresistible (i.e., insurmountable) physical compulsion, i.e., an impact on a person that deprives him or her of the opportunity to act at his/her own discretion, namely, to freely control their own actions. In other words, such a compulsion forces the person to do something against his or her will without a real possibility to successfully resist the duress.

The physical compulsion will be recognized as an applicable criminal legal defense (an excuse or a justification) that excludes criminality of the act if it satisfies the following requirements: (1) there must be an actual physical duress; (2) that duress must be directed towards limiting the physical functionality of the duressed person; (3) reality of physical coercion; (4) the compulsion must be of an insurmountable nature.[43]

As for the mental duress, it represents an impact on an individual by way of using verbal and/or visual means (words and gestures), symbolic communication, arms demonstration, threats. As a result of such mental / psychological duress the person may commit criminal offences. However, unlike physical compulsion, the person who is finding himself or herself under mental duress, always has a possibility to choose their line of action.

Regarding Uzbekistan's criminal law, this type of excuses and justifications constitutes a relatively new, at least, the most recent addition: article 41[1] of the Criminal Code titled "Physical or mental coercion or threat" has only been introduced in 2018.

[41]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 41, para. 2.

[42]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 37, para. 1.

[43]Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 230.

In it, the definition of such a duress is formulated as follows: "It is not a crime to cause harm to the rights and interests protected by this Code, caused as a result of physical or mental coercion or the threat of such coercion, if, as a result of such coercion or threat, the person could not control his actions (inaction)."[44] One difference from Kazakhstan's criminal law needs to be mentioned here: the notion of the threat of compulsion is expressly included in article 41^1 while in Kazakhstan that is not the case – although it is implied and understood that a threat to mentally coerce may be recognized as qualifying the conduct of the coerced as falling under the ambit of article 37 of the Criminal Code of the Republic of Kazakhstan.

One thing must be kept in mind for an attentive reader: in Kazakhstan's definitions in the general part of its criminal law (*lex*) when it deals with excuses and justifications the legislator always refers to a "criminal offence" whereas in Uzbekistan it is always a "crime" (i.e., "it is not a *crime*"). The explanation is simple: after the latest major criminal legal reforms in Kazahstan a new category of criminal offences has been introduced, namely, a criminal misdemeanor ("ugolovnye prostupki") in addition to a crime. In Uzbekistan, no such reform has been conducted – at least, not yet, and the only category of criminal offence in Uzbekistani criminal legislation is a crime.

3. Excuses and Justifications implemented only in Kazakhstan

Carrying out operative measures or covert investigative actions

This category of excuses and justifications represents the most recent addition to the list of circumstances excluding the criminality of the act. It was formulated and added by the legislator in 2016, not long after the latest major reforms involving the adoption of the entirely new edition of the Criminal Code had taken place in 2014 and entered into force in January 2015. According to Professor Borchashvili, introducing this significant category into the Code as a separate article has been conditioned by the necessity to ensure clear and direct guarantees to the subjects of operative and searching activities in their fight against organized forms of criminality.[45]

There are two groups of such subjects. The first one includes the employees of the authorized state bodies (interior bodies, national security bodies, exterior intelligence bodies, military intelligence, anti-corruption service, state security service and economic investigations service), the second comprises other physical persons who cooperate with those bodies, and act only on the instruction of the latter (any individual persons). As for covert investigative actions, the following individuals are authorized to carry those: the investigator, the interrogator, and the official of the body of inquiry authorized to conduct pre-trial investigation.

According to para. 1, article 35 of the Criminal Code, an act that caused damage to the interests protected by the Code, committed, in accordance with the law of the Republic of Kazakhstan, in the course of carrying out operational search and counterintelligence activities or covert investigative actions by an employee of an authorized state body or on behalf of such a body by another person cooperating with this body, is not a criminal offense if that act is committed for the purpose of preventing, detecting, disclosing or investigating criminal offenses committed by a group of persons, a group of

[44]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 41^1, para. 1.

[45]Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 221.

persons by prior agreement, a criminal group, for preventing, opening and suppressing intelligence and (or) subversive actions, and also if the harm caused to law-protected interests is less significant, than the harm caused by the specified criminal offenses, and if their prevention, disclosure or investigation, as well as the exposure of persons guilty of committing criminal offenses could not be carried out in any other way. Group element implied in this provision serves as an important qualifier because the criminal law here allows for carrying out of operative measures or covert investigative actions only in case of the group commission of criminal offences.

4. Excuses and Justifications implemented only in Uzbekistan

Insignificance of the act

The insignificance of the act has been explicitly formulated in the criminal law of Uzbekistan – in Chapter IX of the Criminal Code, as the first type of circumstances excluding the criminality of the offence: "An action or inaction is not a crime, even if it falls under the definition of an act provided for by this Code as a crime, but does not pose a public danger due to its insignificance." This appears to be progressive conceptual provision that may cover minor actions such as for example, stealing a loaf of bread – i.e., someone else's property, from a store.

Curiously enough, a similar provision is established in the criminal legislation of Kazakhstan: "An action or omission is not a criminal offense, although it may formally contain features of any act provided for by the Special Part of this Code, but due to its insignificance does not pose a public danger."[46] However, this provision does not figure in the list of excuses and justifications (arts. 32-28 of the Criminal Code); it has been formulated as part of the article that establishes definitions of crimes and criminal misdemeanors. However, one may conclude that it can be important from scholarly and doctrinal perspective of criminal law; from practical perspective, the effect of this provision remains the same as of an excuse / justification: it does remove the criminal element from human conduct.

Results of the research

1. The concept of excuses and justifications, or circumstances excluding the criminality of an offence, is understood and implemented in both Kazakhstan and Uzbekistan with the use of generally similar logic and following the same principles of criminal law, albeit there are also important differences.

2. There are differences in the way this institution of criminal law is doctrinally explained and practically implemented in Central Asia (Kazakhstan, Uzbekistan) and national legal systems outside of the post-Soviet space such as certain European systems.

3. A definite trend is observed towards the expansion of the number and types of excuses and justifications in both Kazakhstan and Uzbekistan.

4. Some of the codified provisions in the applicable criminal legislation of Uzbekistan with respect to excuses and justifications contain more conceptual and / or detailed elements as compared to that of Kazakhstan.

5. The principle of humanism has been explicitly mentioned in the criminal law of Uzbekistan while this is not the case for Kazakhstan's criminal law; however, this in no way implies that it has not been implemented in the latter.

[46]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 10, para. 4.

Discussion

The legal institution of excuses and justifications excluding the criminality of the act has traditionally been perceived in many different legal systems as one of the crucial categories serving the purposes of, first of all, the best possible and correct qualification of criminal cases, as well as availing the system of a legal possibility to apply and fulfil one of the most significant but, unfortunately, sometimes underestimated principles: principle of humanism. The latter, by way of being implemented in different ways and through various legal tools, allows, *inter alia*, for liberalization of criminal law.

The research undertaken for this article has shown that the concept of excuses and justifications is perceived and implemented in both jurisdictions reviewed – Kazakhstan and Uzbekistan, with the use of generally similar logic and following the same principles of criminal law. However, there are certain differences easily noticed when looking at the structure of how this legal institution works in *lex* in these two states. Those differences become most apparent when one compares the two structures of excuses and justifications under review at the conceptual level: in Kazakhstan, they figure in that part of the Criminal Code that generally deals with all the key aspects of the notion of criminal offence (a.k.a. criminal violation), that is, Part 2 titled "Criminal Offences", whereas in Uzbekistan the category of excuses and justifications "received" their own separate part and chapter (!), namely, Part Three titled "Circumstances Excluding the Criminality of the Act" and Chapter IX titled "The Notion and Types of Circumstances Excluding the Criminality of the Act".

This shows a difference in approaches from the respective legislator. Kazakhstan's legislator opted for a comprehensive approach in its legal technique deciding to incorporate all the general key components and elements of what is called a criminal offence including both crimes and misdemeanors. Uzbekistan's legislator, instead, preferred to include into the General Part of the Criminal Code all the crucial institutions and categories in a more specified manner as to the structure; in other words, specific criminal legal categories such as excuses and justifications as well as other related institutions (for example, the grounds for criminal responsibility) are formulated in separate specific parts and chapters on their own. Whether or not this approach will be preserved in Uzbekistan is right now left to speculation since there are currently (i.e., at the time of writing this article) ongoing reform of criminal law and procedure.

Another point to be noted is that if we track down the development and progress of criminal legislation in both Kazakhstan and Uzbekistan we will notice an obvious trend towards the expansion of the range of circumstances that exclude the criminality of an offence: in the former jurisdiction, the category of carrying out operative measures or covert investigative actions was incorporated in the Code in 2016; in the latter, the most recent addition was the concept of physical or psychological compulsion (duress) in 2018. Moreover, some of existing provisions are supplemented with further specific additions.[47] The author of this article views this as a positive / progressive development which permits a better and/or fuller realization of the principle of humanism in criminal

[47]For example, the provisions on the justifiable risk in the criminal law of Uzbekistan have also incorporated, in 2012, a specification that non-fulfillment of contractual obligations by business entities to banks and other financial organizations for the services provided to them, including loans issued, associated with entrepreneurial and other commercial risks, would not constitute a basis for criminal liability of employees of banks and other financial organizations. Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 41, para. 5.

law. It is hoped that the trend remains and the upcoming reforms such as the one in Uzbekistan will only reinforce that tendency.

Furthermore, the principle of humanism proper needs to be mentioned as well. First of all, the Criminal Code of Kazakhstan does not contain any list of criminal law principles although principles and norms of international law are referred to.[48] The fact that they are not normatively formulated in a codified legislative act definitively does not mean that they entirely non-existent in the law. They are implemented but, according to some criminal law experts, it is a task for the legal theory to formulate those principles and not for the *lex*.[49] Furthermore, inclusion of the exhaustive list of principles in a normative act, albeit desirable as a matter of positive law, will probably not absolutely guarantee their fullest / utmost fulfilment in practice.

Second, the principle of humanism which is inherently connected to the principles of legality and justice is expressed in that the individual as the highest value is protected by the entire system of criminal law.[50] In Uzbekistani criminal legislation (i.e., Criminal Code) it has been described in a rather detailed manner as follows: "Punishment and other measures of legal influence are not intended to cause physical suffering or humiliation of human dignity. A person who has committed a crime must be punished or another measure of legal influence applied, which is necessary and sufficient to correct him and prevent new crimes. Severe penalties may be imposed only if the objectives of the penalty cannot be achieved through the application of milder measures provided for by the relevant article of the Special Part of this Code."[51] It appears important to sustain here that, written or not, all the principles of criminal law – principles of legality, equality of all before the law, democracy, humanism, justice, culpable responsibility, and inevitability of criminal responsibility have to be fully and unequivocally observed if one is to successfully realize the main tasks of criminal law (protective, preventive and educational). Legal institutions such as excuses and justifications, grounds for exemption from both criminal responsivity and criminal punishment, mitigating circumstances, and others, are all serving to contribute to the proper realization of those tasks and full implementation of the above-said principles including the principle of humanism.

Conclusions

Based on the foregoing analysis, discussion and review, the following several conclusions are proposed. First of all, given certain common historical and general background in the early developments of the legal systems of Central Asian states, in particular, Kazakhstan and Uzbekistan, the inclusion of the same key legal institutions in specific branches of law such as criminal law is unsurprising and makes sense. But this is where the similarities end. After the criminal legal systems in each of the jurisdictions considered in the article started crystallizing during the 90s of the last century, they parted ways in terms of legal normative developments, codification and practice.

[48]Criminal Code of the Republic of Kazakhstan, adopted 3 July 2014 and entered into force 1 January 2015, art. 1, para. 2.

[49]Рогов И.И., Балтабаев К.Ж. Уголовное право Республики Казахстан. Общая часть [Criminal Law of the Republic of Kazakhstan. General Part]. А.: Жеті жарғы, 2016. С. 197.

[50]Ibid.

[51]Criminal Code of the Republic of Uzbekistan, adopted 22 September 1994 and entered into force 1 April 1995, art. 7.

Each one acquired their own unique and specific features. The conceptualization of significant categories (such as the concept of criminal offence, criminal responsibility and exemptions from it, etc.) went on in differing ways. Kazakhstan borrowed some of the best practices from foreign systems, e.g., by dividing the all criminal offences into two main classes: crimes and criminal misdemeanors, while Uzbekistan's legislators decided to keep – for the time being – one sole category of crime but opted, from the very beginning, for a more conceptual method of normatively proscribing the applicable criminal legal principles, and to formulate the concrete types of excuses and justifications in a separate chapter in the relevant Code. This is a logical development and may easily be explained by the unique contextual developments in both systems over the last thirty years.

Secondly, criminal law is a dynamic phenomenon, there is no question about that. Law itself, in a more general sense, is not static. Problems arise when public legal norms and rules do not catch up with the ongoing developments and changes in the situation in the life of the society which these rules serve. A timely introduction of necessary adjustments or amendments to criminal norms may hugely help achieve the eventual purposes of the law, be it an introduction of pertaining modifications in the criminal legislation of Kazakhstan due to its recently undertaken obligations flowing out of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, or the future or ongoing reforms in the criminal law and procedure in Uzbekistan. If the progressive trends similar to the one observed within this scholarly work are continued, then that is only to be lauded.

Thirdly, it is suggested that when legal categories similar to the one discussed in this article are developed, or improved, or crystalized, the most advanced and progressive legal techniques are employed. For example, public law branches especially such a functional branch as criminal law relies heavily on the principle of legal certainty. And this is rightly so because criminal law deals with the most serious violations of legal rules. The more specific those rules are the better they can serve the purpose of professional qualification of criminal offences. That eventually increases the efficiency of the work of professional law appliers and decreases the possibility of incorrect qualification or judicial mistakes. The legislators need to be careful and exact in proposing new or amended formulations; titles of the criminal provisions non-matching their content, or incomprehensive and too general stipulations of the prohibited human conduct as well as the criminal sanctions for that conduct will create obstacles and make it difficult to properly interpret and apply the law.

Central Asian states are continuing to shape out their legal systems. That process may be riddled with unsolved issues, unclarified gaps, slow application of legal rules, insufficient practice on certain "dead" articles in the Codes, etc. No one is guaranteed against occasional commission of mistakes including in the sphere of legislative developments but also their practical application. However, it seems that in general the criminal legal systems of at least some states in the region as concerns such progressive legal institutions as excuses and justifications are slowly moving, or starting to move, in the right direction. Whether or not the observed positive trends will persist depends on the principled stance and resolute will of the legislators and political systems in the states concerned. Time will show.

Р.Б. Атаджанов, құқық докторы (PhD), жария және халықаралық құқықтың ассистент-профессоры, халықаралық құқық бакалавриаты бағдарламасының директоры, КИМЭП Университетінің Құқық мектебі (Алматы қ., Қазақстан):
Қазақстан мен Өзбекстанның қылмыстық заңнамасындағы әрекеттің құқыққа қайшылығын жоятын мән-жайлар: салыстырмалы шолу.

Гуманизм қағидаты қылмыстық құқықтың маңызды қағидаттарының бірі болып табылады, оның маңызын асыра бағалау қиын. Осы қағидаттың практикалық көрінісі қылмыстық құқықтағы іс-әрекеттің құқыққа қайшылығын жоятын мән-жайлар институты болып табылады. Бұл тұжырымдаманы қолдану құқыққа қайшы әрекеттің объективтік және субъективтік жақтарын барынша толық бағалауға мүмкіндік береді. **Осы мақаланың өзектілігі** әрекеттің құқыққа қайшылығын жоятын мән-жайлар тұжырымдамасы оны одан әрі дамыту мақсатында жан-жақты зерттеуді талап ететіндігінен көрінеді. Бұл салада құқықтық түсіндірудің доктриналық көздерінің болуы қылмыстық заңнамасы мен құқық қолдану тәжірибесі әлі де одан әрі даму сатысында тұрған елдер үшін ерекше өзекті болып табылады. Мақалада әрекеттің құқыққа қайшылығын жоятын мән-жайлар түсінігі нақтыланады, қылмыстық жауаптылық пен жазадан босату негіздері саласындағы заңнамаға – **бұл зерттеудің пәнін құрайды** – салыстырмалы талдау жүргізіледі, сондай-ақ осы институттың Қазақстан мен Өзбекстанның қылмыстық заңнамасында жүзеге асырылуы мен қолданылуының негізгі аспектілері қарастырылады. Мұндай талдаудың қажеттілігі қылмыстық заңның негізгі құқықтық институттарының қазіргі уақытта екі елде де белсенді дамып келе жатқандығымен айқындалады. **Мақаланың мақсаты** – осы дамуға көз жүгірту және, бар болса, олқылықтарды анықтау, оларды шешу жолдарын ұсыну. Осы екі қарастырылып отырған ортаазиялық қылмыстық-құқықтық жүйені зерттеудің **салыстырмалы әдісі** ағылшын тіліндегі ғылыми мақалада алғаш рет қолданылып отыр. Қысқаша айтқанда, мақалада мынадай **негізгі қорытындылар** жасалды: (1) Қазақстанның да, Өзбекстанның да қылмыстық юрисдикциясына енгізген кезде осы юрисдикциялардың әрқайсысы әрекеттің құқыққа қайшылығын жоятын мән-жайлар институтын іске асырудың өз жолы мен бағыттарын ұстанды, мұны осы елдердегі құқық пен практиканың контекстік дамуының бірегейлігімен оңай түсіндіруге болады; (2) екі мемлекетте де осы институттың дамуында байқалатын үрдістерді құптау керек; 3) әрекеттің құқыққа қайшылығын жоятын мән-жайлар туралы құқықтық нормалар неғұрлым нақты болса, олар қылмыстық құқық бұзушылықтарды кәсіби саралау мақсатына соғұрлым жақсы қызмет ете алады.

Тірек сөздер: қылмыстық құқық; қылмыстық құқықтың жалпы қағидаттары; гуманизм қағидаты; әрекеттің құқыққа қайшылығын жоятын мән-жайлар; әділ сот талқылауына құқық; қылмыстық жауаптылық; қылмыстық жаза; Қылмыстық кодекс; Қазақстан; Өзбекстан.

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Обстоятельства, исключающие противоправность деяния в уголовном праве Казахстана и Узбекистана: сравнительный обзор.

Принцип гуманизма является одним из ключевых принципов уголовного права, значение которого трудно переоценить. Одним из практических выражений этого принципа является понятие обстоятельств, исключающих противоправность деяния

в уголовном праве. Применение данной концепции позволяет добиться наиболее полной оценки объективной и субъективной сторон противоправного деяния. **Актуальность данной статьи** заключается в том, что концепция обстоятельств, исключающих противоправность деяния, требует всестороннего изучения с целью ее дальнейшего развития. Особенно актуально наличие доктринальных источников правового толкования в данной сфере для стран, чье уголовное законодательство и правоприменительная практика еще находятся в процессе дальнейшего становления. В данной статье уточняется понятие обстоятельств, исключающих противоправность деяния, проводится сравнительный анализ законодательства в области оснований освобождения от уголовной ответственности и наказания – что составляет **предмет настоящей работы,** а также рассматриваются основные аспекты реализации и применения данного института в уголовном законодательстве Казахстана и Узбекистана. Необходимость такого анализа обусловлена тем, что уголовное право с его ключевыми правовыми институтами в настоящее время активно развивается в обеих странах. **Цель статьи** – отследить это развитие и выявить пробелы, если таковые имеются, чтобы предложить возможные решения. **Сравнительный метод** изучения двух рассматриваемых центральноазиатских уголовно-правовых систем впервые используется в научной статье на английском языке. Вкратце, в статье сделаны следующие **основные выводы:** (1) при включении в уголовные юрисдикции как Казахстана, так и Узбекистана, реализация института обстоятельств, исключающих противоправность деяния, в каждой из этих юрисдикций шла по своим собственным путям и направлениям, что можно легко объяснить уникальным контекстуальным развитием права и практики в этих странах; (2) следует приветствовать наблюдаемые тенденции в развитии этого института в обоих государствах, и (3) чем конкретнее правовые нормы об обстоятельствах, исключающих противоправность деяния, тем лучше они могут служить цели профессиональной квалификации уголовных правонарушений.

Ключевые слова: уголовное право; общие принципы уголовного права; принцип гуманизма; обстоятельства, исключающие противоправность деяния; право на справедливый суд; уголовная ответственность; уголовное наказание; Уголовный кодекс; Казахстан; Узбекистан.

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