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## SPECIFICITIES OF REGULATORY FRAMEWORK FOR LIABILITY FOR ENDANGERMENT IN CRIMINAL LEGISLATION OF SOME POST-SOVIET STATES

**Abstract. Purpose.** The purpose of this article is to study the specificities of the regulatory framework for liability for endangerment in the criminal legislation of some post-Soviet countries (Republic of Azerbaijan, Republic of Belarus, Republic of Armenia, Georgia and Republic of Kazakhstan). **Results.** The article analyses the experience of establishing criminal liability for endangerment of such post-Soviet states as the Republic of Azerbaijan, the Republic of Belarus, the Republic of Armenia, Georgia, and the Republic of Kazakhstan. Given the different degrees of social dangerousness, it is proposed to use the experience of the Republic of Belarus and Georgia and to distinguish between the acts of deliberate abandonment of a person in danger without aid and putting the victim in harm's way by the perpetrator according to different parts of Article 135 of the Criminal Code of Ukraine. Moreover, the latter socially dangerous act is proposed to consider as a qualified corpus delicti of endangerment. The author supports the idea, implemented in the law on criminal liability of the Republic of Kazakhstan and to supplement Article 135 of the Criminal Code of Ukraine with Part 4, providing for such a specially qualified corpus delicti of endangerment, as the acts provided for in the previous parts of Article 135 if they caused the death of two or more persons. **Conclusions.** It is concluded that the experience of some post-Soviet states in establishing criminal liability for endangerment is quite interesting and deserves special attention in the context of modernisation of the current version of Article 135 of the Criminal Code of Ukraine. In particular, the ideas of expanding the sanction of Part 1 of Article 135 of the Criminal Code of Ukraine with such basic alternative punishments as correctional (Criminal Code of the Republic of Azerbaijan) and community service (Criminal Code of Georgia), to distinguish the act of abandonment from putting the victim in harm's way by the perpetrator between different parts of the article (Criminal Code of the Republic of Belarus and Georgia), to supplement Article 135 of the law on criminal liability with other specially qualified corpus delicti of endangerment (Criminal Code of the Republic of Kazakhstan) etc.

**Key words:** law, endangerment, crime, criminal code, punishment, corpus delicti.

### 1. Introduction

For many centuries in the territory of modern Ukraine, the socially dangerous act of endangerment has been criminalised. Currently, criminal liability for committing this crime is provided for in Article 135 of the Criminal Code.

Recently, frequent discussions in academic circles arise regarding the need to introduce a number of amendments to the current version of Article 135 of the Criminal Code of Ukraine. The study of the specificities of the regulatory framework for liability for endangerment in the criminal legislation of foreign countries is

potentially capable of demonstrating the ways of modernisation of Article 135 of the Criminal Code of Ukraine, and of establishing its main shortcomings and controversial provisions.

In the context of this article, we will consider the specificities of the regulatory framework for liability for endangerment in the criminal legislation of individual countries that were part of the USSR. The relevance of such study is due to the fact that the collapse of the USSR became the starting point for the independent development of legislation (including criminal legislation) of the States that were part of it. Almost 30 years have passed since then, so, of course,

the legislation of each of them has undergone significant changes. Some of these countries even have similar problems as Ukraine.

It should be noted that the issue of analysing foreign experience in establishing criminal liability for committing a socially dangerous act has been and is under focus in the works by domestic scientists such as Yu.V. Alexandrov, V.V. Babanina, I.O. Bandurka, Yu.V. Baulin, V. I. Borysov, A.A. Vozniuk, O.A. Hrytenko, V.K. Hryshchuk, V.P. Yemelianov, O.S. Ishchuk, I.M. Kopotun, M.Y. Korzhanskyi, V.M. Kuts, O.M. Lytvynov, I.I. Mitrofanov, Ye.S. Nazymko, A.M. Orleans, Yu.V. Orlov, Ye.O. Pylypenko, V.F. Prymachenko, E.L. Streltsov, V.V. Sukhonos, Ye.V. Fesenko, P.L. Fris, M.I. Khavroniuk, V.V. Shablysty, N.M. Yarmysh, and others. Despite this, the experience of the post-Soviet states in terms of establishing criminal liability for endangerment remains insufficiently researched.

The purpose of this article is to study the specificities of the regulatory framework for liability for endangerment in the criminal legislation of some post-Soviet countries (Republic of Azerbaijan, Republic of Belarus, Republic of Armenia, Georgia and Republic of Kazakhstan).

## 2. Peculiarities of the regulatory framework for liability for endangerment

Let us begin with the experience of the Republic of Azerbaijan. The law on criminal liability of this state was adopted in late 1999 (entered into force on September 01, 2000). This legal regulation consists of two parts: General and Special.

According to the Criminal Code of the Republic of Azerbaijan, the act of endangerment is criminalised and is included in Chapter Eighteen 'Crimes against life and health' of Section VIII 'Crimes against the person' (Criminal Code of the Republic of Azerbaijan (approved by the Law of the Republic of Azerbaijan, 1999)).

Therefore, as in the Ukrainian law on criminal liability, the generic object of this criminal offense is social relations ensuring human life and health.

Article 143 of the Criminal Code of the Republic of Azerbaijan has the same title as Article 135 of the Criminal Code of Ukraine and provides for three alternative types of punishment (a fine of 1500 to 2000 manats or correctional labour for up to 2 years, or deprivation of liberty for up to 6 months) for deliberate abandonment of a person in a life-threatening or health-threatening condition or deprived of the opportunity to take measures for self-preservation in cases when the perpetrator had the opportunity to assist this person

and was obliged to take care of him or her, or he or she him-/herself put the victim in harm's way (Criminal Code of the Republic of Azerbaijan (approved by the Law of the Republic of Azerbaijan, 1999)).

Therefore, unlike Article 135 of the Criminal Code of Ukraine, Article 143 of the Criminal Code of the Republic of Azerbaijan consists of only one part and does not provide for qualified *corpus delicti* of endangerment.

In our opinion, such a decision of the legislator of the Republic of Azerbaijan looks quite controversial, because, for example, in case of death of a person who was endangered, the degree of social dangerousness of a criminal offense increases significantly, and therefore, the establishment of qualified *corpus delicti* of this crime is not just appropriate, but even a necessary step on the part of the state.

In addition, considering the degree of social dangerousness of endangerment, we believe that the decision to establish a penalty in the form of a fine in the sanction of Article 143 of the Criminal Code of the Republic of Azerbaijan is inappropriate, because we assume that in most cases this measure of state coercion is insufficient for further re-socialisation of the convicted person. The idea of establishing punishment in the form of correctional labour looks interesting.

Regarding the content of the sanction of Article 143 of the law on criminal liability of the Republic of the South Caucasus, the decision not to provide for imprisonment is surprising. This situation may theoretically lead to the fact that in a number of cases the offender, firstly, will receive a measure of coercion insufficient for correction, and, secondly, during the serving of the sentence will continue to pose a potential danger to social surrounding.

Moreover, similar to the domestic provision, Article 135 of the Criminal Code of the Republic of Azerbaijan characterises *corpus delicti* of criminal offense in the form of endangerment by a sign of knowledge.

Allowing for the judicial practice, V.M. Savytska came to the conclusion that Ukrainian courts in criminal cases consider knowledge as a feature that characterises the intellectual moment of intent, and therefore is part of this mandatory feature of the subjective side of a criminal offense as guilt, and is a full awareness of the offender of certain facts or circumstances (Savytska, 2020).

The indication of knowledge is extremely important, as it enables to bring to criminal liability the person who has endangered the victim due to negligence.

Thus, the provision of the Criminal Code of the Republic of Azerbaijan, which enshrines

criminal liability for endangerment, contains both debatable and quite interesting provisions. In particular, the experience of this Caucasian State in terms of expanding the sanction of the relevant provision by adding such an alternative type of punishment as correctional labour seems interesting.

Next, the experience of the Republic of Belarus in establishing criminal liability for endangerment should be analysed. The law on criminal liability of our northern neighbour was adopted in July 1999. This legal regulation consists of a General and a Special Part.

### **3. Endangerment in the criminal legislation of the Republic of Belarus, Georgia and Kazakhstan**

As in the legislation of the previous state, the Republic of Belarus provides for criminal liability for endangerment. Article 159 of Chapter VII 'Crimes against human' of the Special Part of the Criminal Code of the Republic of Belarus is entitled 'Endangerment' and consists of three parts.

Part 1 of Article 135 of the Criminal Code of the Republic of Belarus states:

1. Failure to provide a person in danger with the necessary and clearly urgent assistance, if it could have been provided by the perpetrator without danger to his or her life, health or health of other persons, or failure to notify the relevant institutions or persons of the need for aid – shall be punishable by community service or a fine, or correctional labour for up to one year' (Criminal Code of the Republic of Belarus, 1999).

Therefore, in the law on criminal liability of the Republic of Belarus the legislator of this state decided to combine *corpus delicti* of endangerment and failure to assist. It should be noted that in the Criminal Code of Ukraine, these criminal offenses are delimited by Articles 135 and 136, because these socially dangerous acts, although quite similar in content, nevertheless, differ from each other in objective and subjective terms. At the same time, failure to assist a person in danger is a priori a form of endangerment.

These arguments indicate the ambiguity of the decision to combine the criminal offenses of endangerment and failure to assist a person in a life-threatening condition.

Part 2 of Article 159 of the Criminal Code of the Republic of Belarus (Criminal Code of the Republic of Belarus, 1999) provides for punishment in the form of arrest or deprivation of liberty for up to 2 years with or without a fine for deliberate abandonment of a person who is in a life- or health-threatening condition and is deprived of the opportunity to take measures for self-preservation due to minority, old age, illness or due to his or her helpless state, in cases

when the perpetrator had the opportunity to assist the victim and was obliged to take care of him or her.

The disposition of this provision is partially similar to the provision of Part 1 of Article 135 of the Criminal Code of Ukraine, however, unlike the latter, it does not contain an indication of criminal liability for endangerment a person in case when the perpetrator put the victim in harm's way. This fact is explained by including this criminal offense in the content of Part 3 of Article 159 of the Criminal Code of the Republic of Belarus by the Belarusian legislator.

It should be noted that the sanction of Part 2 of Article 159 of the Criminal Code of the Republic of Belarus differs significantly from Part 1 of Article 135 of the Criminal Code of Ukraine. For example, if the domestic provision establishes for punishment such as restriction or deprivation of liberty, the Belarusian provision establishes two main punishments (arrest or restriction of liberty) and additional one – a fine.

Thus, the law on criminal liability of Ukraine provides for more severe penalties for endangerment (which, given the degree of social dangerousness of this act, we consider rather a positive difference). Moreover, another alternative punishment in the form of arrest enshrined in the sanction of Part 1 of Article 135 of the Criminal Code of Ukraine could be of interest.

As noted above, Part 3 of Article 159 of the Criminal Code of the Republic of Belarus establishes criminal liability for deliberate endangerment by a person who, through negligence or with indirect intent, put the victim in a harm's way. The sanction of this provision provides for punishment in the form of arrest or imprisonment for up to 3 years with a fine (Criminal Code of the Republic of Belarus, 1999).

The idea of establishing a more severe punishment for the act of endangerment by a person who him-/herself put the victim in harm's way generally looks quite interesting. Indeed, the creation of such conditions indicates a persistent anti-social behaviour of the perpetrator, so perhaps it is appropriate to qualify this crime of endangerment as provided for in Article 135 of the Criminal Code of Ukraine. Moreover, such a distinction between acts in the form of endangerment and putting the victim in harm's way has already been practiced in the content of legal regulations that have been in force in different historical periods in the territory of our state (for example, the Criminal Code of the Ukrainian SSR in 1922 (The Criminal Code of the Ukrainian SSR, 1924)).

Next, the experience of establishing criminal liability for endangerment in another post-Soviet state – Georgia is considered. It was Georgia that became one of the first states of the former USSR (of course, along with the Baltic States), which not only declared intentions, but also took real steps in building a democratic society.

The law on criminal liability of Georgia, as in the case of the above-mentioned states, was adopted in 1999. Chapter XXI of the Special Part of the Criminal Code of Georgia is entitled 'Endangerment of Human Life and Health'. Criminal liability for the act of endangerment is provided for in Articles 127-128 of the Chapter.

Article 127 (Criminal Code of Georgia: dated July, 1999) provides for punishment in the form of a fine or house arrest for a term of months to two years, or imprisonment for a term of up to two years for putting a person in a harm's way who is deprived of the opportunity to take measures for self-preservation.

Therefore, similar to the Criminal Code of the Republic of Belarus, in the law on criminal liability of Georgia the acts of endangerment of the victim and putting the victim in harm's way are delimited by different provisions (in case of the Criminal Code of the Republic of Belarus, by parts of one article, and in case of the Criminal Code of Georgia, by different articles of the Special Part). Moreover, even the sanction of Article 127 of the Criminal Code of Georgia is quite similar to the sanction of Part 3 of Article 159 of the Criminal Code of the Republic of Belarus, because both provisions provide for basic alternative types of punishment such as imprisonment and detention (in case of Georgia, house arrest). The main difference between these elements of the legal provisions is that in the law on criminal liability of Georgia for the commission of this crime the least severe type of the main alternative punishment is a fine, while in the sanction of Part 3 of Article 159 of the Criminal Code of the Republic of Belarus it is detention (a fine can be imposed only as an additional punishment).

It seems that in view of the increased degree of social dangerousness of the act in the form of putting the victim in harm's way by the perpetrator (even in comparison with abandonment of a person in a life-threatening condition and being deprived of the opportunity to take measures for self-preservation), the sanction of the Belarusian provision looks more successful, because the imposition of a fine for committing this criminal offense, at least in the vast majority of cases, is insufficient.

Article 128 of the Criminal Code of Georgia is called 'Endangerment'. This provision states:

'Abandonment of a person who is in a life-threatening condition and is deprived of taking measures for self-preservation, if the perpetrator was obliged to take care of him or her and was able to provide assistance, –

shall be punished by a fine, or correctional labour for a term up to one year, or community service for a term of 120 to 140 hours, or house arrest for a term of 6 months to 2 years, or imprisonment for a term up to 2 years' (Criminal Code of Georgia: dated July, 1999).

It follows from the content of the stated provision that the criminal offense provided for in Article 128 of the Criminal Code of Georgia is considered as more dangerous than that contained in Article 127 of this legislative act. Moreover, the decision of the Georgian legislator to provide for punishment such as community service in the sanction of Article 128 of the Criminal Code looks interesting. In certain cases, this type of punishment can be quite effective, because it has a double benefit: 1) it disciplines the perpetrator of endangerment and contributes to his or her further re-socialisation; 2) it plays an excellent preventive function for potential criminal offenses, because to a certain extent it hits their reputation, has a certain demonstrative and instructive role.

As in the above-mentioned Criminal Code of the Republic of Azerbaijan and the Republic of Belarus, the law on criminal liability of Georgia does not contain qualified elements of endangerment such as the commission of these actions by a mother in relation to a new-born child, if the mother was not in a condition caused by childbirth, and the death of the person who was endangered or other serious consequences, which, in our opinion, is a certain drawback of these legislative documents.

Let us consider the legislative provisions regarding the establishment of criminal liability for endangerment of a Central Asian state, the Republic of Kazakhstan.

The Criminal Code of the Republic of Kazakhstan was adopted in July 2014. Traditionally, this legal regulation consists of General and Special Parts. Article 119 'Endangerment' of Chapter I 'Criminal offences against a person' of the Special Part of the law on criminal liability of this state consists of 4 parts.

The disposition of Part 1 of Article 119 is almost identical to the disposition of Part 1 of Article 135 of the CC of Ukraine. However, in contrast to the domestic provision, the sanction of Part 1 of Article 119 of the Criminal Code of the Republic of Kazakhstan provides for milder types of punishment: a fine of up to 10 monthly calculation indices or correctional labour in the same amount, or community service for up to 120 hours, or detention for a term of 45 days.

Part 2 of Article 119 of the Criminal Code of the Republic of Kazakhstan provides for punishment in the form of a fine of up to 2000 monthly calculation indices or correctional labour in the same amount, or restriction of liberty for up to 2 years, or imprisonment for the same period for committing through negligence the actions listed in Part 1 of this provision, if they caused severe or moderate harm to the health of the victim (Criminal Code of the Republic of Kazakhstan, 2014).

If the above actions caused the death of a person who was endangered, the actions of the perpetrator are qualified under Part 3 of Article 119 (Criminal Code of the Republic of Kazakhstan, 2014), which provides for punishment in the form of restriction of liberty for up to 3 years or imprisonment for the same term.

It is clear that the consequence of the crime of endangerment described above carries a higher degree of social dangerousness than causing grievous or moderate bodily harm, therefore, such a principle of construction of Article 119 of the Criminal Code of the Republic of Kazakhstan, at least, deserves attention.

If the above actions of the perpetrator caused the death of 2 or more persons, he or she shall be liable under Part 4 of this provision, the sanction of which provides for punishment such as restriction or imprisonment for up to 5 years (Criminal Code of the Republic of Kazakhstan, 2014).

The idea to qualify endangerment, which led to the death of two or more people, as spe-

cific looks interesting. In particular, Part 2 of Article 115 of the Criminal Code of Ukraine is based on a similar principle.

Given the exceptional degree of social dangerousness of such a criminal offense, we assume that the consolidation of the relevant provision in Article 135 of the Criminal Code of Ukraine (as part 4) would be quite a reasonable step.

#### 4. Conclusions

Therefore, it should be noted that the experience of some post-Soviet states in establishing criminal liability for endangerment is quite interesting and deserves special attention in the context of modernisation of the current version of Article 135 of the Criminal Code of Ukraine. In particular, the ideas of expanding the sanction of Part 1 of Article 135 of the Criminal Code of Ukraine with such basic alternative punishments as correctional (Criminal Code of the Republic of Azerbaijan) and community service (Criminal Code of Georgia), to distinguish the act of abandonment from putting the victim in harm's way by the perpetrator between different parts of the article (Criminal Code of the Republic of Belarus and Georgia), to supplement Article 135 of the law on criminal liability with other specially qualified corpus delicti of endangerment (Criminal Code of the Republic of Kazakhstan) etc.

We consider the analysis of the experience of the regulatory framework for liability for endangerment in the EU Member States to be a promising area for further research.

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## ОСОБЛИВОСТІ РЕГЛАМЕНТАЦІЇ ВІДПОВІДАЛЬНОСТІ ЗА ЗАЛИШЕННЯ В НЕБЕЗПЕЦІ У КРИМІНАЛЬНОМУ ЗАКОНОДАВСТВІ ОКРЕМИХ ДЕРЖАВ ПОСТРАДЯНСЬКОГО ПРОСТОРУ

**Анотація.** *Метою* статті є дослідження особливостей регламентації відповідальності за залишення в небезпеці у кримінальному законодавстві окремих держав пострадянського простору (Азербайджанська Республіка, Республіка Білорусь, Республіка Вірменія, Грузія та Республіка Казахстан). *Результати.* У статті проаналізовано досвід встановлення кримінальної відповідальності залишення в небезпеці таких держав пострадянського простору, як Азербайджанська Республіка, Республіка Білорусь, Республіка Вірменія, Грузія та Республіка Казахстан. З огляду на різний ступінь суспільної небезпеки запропоновано скористатись досвідом Республіки Білорусь та Грузії та розмежувати діяння у вигляді завідомого залишення без допомоги особи, яка перебуває в небезпечному для життя стані від поставлення винним потерпілого в небезпечний для життя стан різними частинами ст. 135 КК України. При цьому останнє суспільно небезпечне діяння пропонується розглядати в якості кваліфікованого складу залишення в небезпеці. Підтримано ідею, яка реалізована в законі про кримінальну відповідальність Республіки Казахстан та доповнити ст. 135 КК України ч. 4, в якій передбачити такий особливо кваліфікований склад залишення в небезпеці, як діяння, передбачені в попередніх частинах ст. 135, якщо вони спричинили смерть двох або більше осіб. **Висновки.** Зроблено висновок, що досвід окремих держав пострадянського простору в частині встановлення кримінальної відповідальності за залишення в небезпеці є доволі цікавим та заслуговує на окрему увагу в контексті модернізації чинної редакції ст. 135 КК України. Зокрема, доречними виглядають ідеї розширити санкцію ч. 1 ст. 135 КК України такими основними альтернативними покараннями, як виправні (КК Азербайджанської Республіки) та громадські роботи (КК Грузії), розмежувати різними частинами статті діяння у вигляді залишення без допомоги особи, яка перебуває в небезпечному для життя стані від поставлення винним потерпілого в небезпечний для життя стан (КК Республіки Білорусь та Грузії), доповнити ст. 135 закону про кримінальну відповідальність іншими особливо кваліфікованими складами залишення в небезпеці (КК Республіки Казахстан) тощо.

**Ключові слова:** закон, залишення в небезпеці, злочин, кримінальний кодекс, покарання, склад кримінального правопорушення.

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