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INTERRELATION OF CONCEPTS OF «GUILT»
AND «GUILTINESS»

The guilt is the central concept of criminal law, the main, obligatory sign of any corpus delicti. It determines existence of the subjective party of corpus delicti and in considerable by a measure its contents. The absence of guilt excludes the subjective party and by that corpus delicti. The criminal responsibility is impossible without guilt. Also, it is impossible to define consequence of perfect act without guiltiness of the person . Society has to estimate a

behavior of the criminal as dangerous, harmful, illegal, and to recognize him a guilty. Strengthening of legality in activity of the bodies and public officials conducting crime control first of all depends on the correct solution of a question of wine and guilt. First at all, a strengthening of legality in activity of the bodies and public officials, which are conducting crime control, depends on the correct solution of a question of guilt and guiltiness.

The mental relation of the person to perfect action or failure to act, the provided the CC, and its consequences expressed in the form of intention or imprudence (art. 23 of the CC) is a guilt.

The intention can be direct and indirect (art. 24 of the CC):

- the direct intention if the person realized socially dangerous nature of the act (action or failure to act), expected its socially dangerous consequences and wished their approach;
- the indirect intention if the person realized socially dangerous nature of the act (action or failure to act), expected its socially dangerous consequences and though did not wish, but consciously allowed their approach.

Imprudence is divided into criminal presumption and criminal negligence (art. 25 of the CC):

- imprudence is criminal self-confidence if the person expected a possibility of approach of socially dangerous consequences of the act (action or failure to act), but thoughtlessly expected their prevention;
- imprudence is criminal negligence if the person did not expect a possibility of approach of socially dangerous consequences of the act (action or failure to act) though shall and could expect them.

Near concept of fault as sign of the subjective party of actus reus in the criminal and legal theory and law-enforcement practice also the concept of guilt is widely used. At the same time the guiltiness is the socio-political characteristic of the relation of the person who committed a crime to the act and its consequences.

The extensive discussion about a ratio of the concepts «guilt» and «guiltiness» took place in the 50-s of the last century in legal literature. Such position that the concept «guilt» and «guiltiness» should be distinguished turned out the most pertinent. Each of them

reflects separate aspects of a crime and its structure, existence of guilt and guiltiness should be installed separately and to apply at the solution of the questions connected with criminal prosecution.

Guiltiness of the person is connected with its condemnation, with the fact that it is subject to criminal liability for deeds. Therefore expression «the person, who is guilty of the crime execution», means that the behavior of this person is negative from the point of view of both the law, and public opinion, its act is estimated as socially dangerous and that it is necessary to apply criminal sanction to such person. And, on the contrary, formal existence of guilt for lack of guiltiness admits the basis for release of the person from criminal responsibility.

It should be noted that often the sufficient attention is not provided to differentiation of these concepts. Even the legislator quite often, speaking about «guilt», actually means «guiltiness». For example, according to art. 69 of the CC the improvement of the situation of the person at assignment of punishment for the circumstances that mitigate the punishment, is possible «when the accused recognize his guilt». Obvious that it does not mean that the defendant has to recognize commission of a crime by him deliberately or on imprudence, and the fact that he has to agree with an assessment of his act as socially dangerous and deserving condemnation.

Thus, the concepts «guilt» and «guiltiness» characterize the same phenomenon, but from different positions:

- the guilt is legal characteristic, and guiltiness - the sociopolitical characteristic of committed act;
- the guilt is a qualitative valuation of the internal relation of the person to committed act - it exists in one of the forms (intention or imprudence) provided by the law, or it is absent. Guiltiness is a quantitative assessment of the encroachment - it can be more or less heavy;
- the guilt concerns exclusively internal mental relation of the person to the act and its consequences, and guiltiness is both a self-assessment, and an assessment of behavior of the person from the other members of society, it extends also to an assessment of the personality;

- the guilt is ascertained only on the basis of the features defined in the CC, and guiltiness «is measured» also taking into account factors which are beyond the law, and it is a reflection of public and state interests at some point (for example, the guiltiness of the person who committed the theft grows in the conditions of public disaster);

- the guilt plays a crucial role at the qualification of deeds, and guiltiness - when determining its legal consequence.

Obvious that the installation of guiltiness plays an important role at clarifying the circumstances that exclude villainy of crime during the release of the person from criminal responsibility, at assignment of punishment and release from it and it serving. Such key value as guiltiness of the person is in the field of) of classical jury trial, one of the main functions of which is establishment of whether the person is guilty or not.