

# WRONGFULNESS OF THE ACT AND CURRENT ISSUES OF LEGAL REGULATION

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## INTRODUCTION

The dispute over the legal problems of responsibility for the commission of an unlawful act has been going on for many decades. Socio-economic, political, confessional and other features of state development are invariably reflected in the content and forms of responsibility. Liability for the commission of an unlawful act is a normatively fixed form of state coercion. Responsibility for the commission of an unlawful act is the State's response to the unlawful act committed by a person. An obligatory feature of responsibility is the enshrined in the law measure for adverse impact applied in case of committing an offence by a person.

As part of legal personality, legal capacity is the defining moment, while capacity and delinquency are derived from it. If a person is legally incapable, then no action to exercise rights and responsibility for the non-fulfillment of duties is out of the question. Delinquency is a person's ability to take responsibility for their actions, primarily for the offense committed (AVDEEV et al., 2020). Delinquency is determined by the state considering the psycho-physiological capabilities of an individual, based on the social maturity of an individual and is established upon the attainment of a certain age.

Conditions for the onset of responsibility presuppose the implementation in the categories of delictuality and delinquency. The problem of legislative regulation for a person's delinquency is related to his awareness to the fact of committing an offence and his mental attitude towards the negative consequences of this unlawful act. Delinquency acts as an element of legal capacity. Delinquency is expressed in the ability of a subject to be aware of his own misdeeds and its negative results, to be responsible for his own deeds of unlawful nature and bear legal responsibility for them.

It is worth saying that the establishment of the lower age criterion for delinquency actualizes public attention on the regulation for the age limit of delinquency. The problem of international legal regulation in relation to responsibility for the commission in an unlawful act is relevant regardless of whether the state belongs to the Romano-Germanic, Anglo-Saxon or Muslim legal systems (AFANASYEVA, 2006). The key criteria for holding a physical person criminally liable are reaching the age established by criminal law and the absence of mental disorder. It is thought that the problem is to determine the signs of delinquency among individuals. These signs are diverse and are not limited to the officially established age and mental criteria. Property status of a person, health status, occupation, marital status, gender is suggested as additional signs.

Criminal offence should be considered as a socially harmful, unlawful act of a delinquent subject. To bring a person to legal responsibility, he must be recognized as a subject of law, that is, an individual or organization, which may be the bearers of subjective rights and obligations.

Therefore, the question naturally arises regarding the fact that all physical participants of social relations have rights and may bear duties. Legal responsibility is understood as the obligation of a person to undergo negative measures. Delinquency of a person means the potential ability of the subject to bear legal responsibility for the offense committed. The meaning of the legal category of "delinquency" is that if a person is not capable of bearing responsibility independently and cannot be a subject of responsibility, on whom this responsibility will be imposed.

### THE INTERNATIONAL LEGAL FRAMEWORK REGULATING THE STATUS OF PERSONS SUBJECT TO LIABILITY

The International Covenant on Civil and Political Rights, adopted by the UN in 1966, states that "everyone has the right to recognition everywhere as a person before the law". The Inter-American Convention on Human Rights provides for the inviolability to rights such as recognition as a person before the law and freedom of religion.

According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985), the minimum age of criminal responsibility should not be set too low, considering aspects of emotional, spiritual and intellectual maturity. International law implies the establishment of "legal equality" where the legal status of an individual is based on legal capacity, legal ability and legal personality.

At the international level, attention is mainly paid to the status of a natural person. Let us pay attention to the understanding of the legal regulation for the status of a physical person. A physical person is a person with a will and a mind. A physical person possesses social, psychological, physiological and biological qualities. The general approach to the status of a physical person is based on the fact that this person is a human being, acting as a living being, who possesses: the gift of speech and thinking; the ability to create tools and use them in the process of labor.

One of the conditions for bringing a person to responsibility for a crime is the establishment of the subject. The subject of a crime is related to such signs as: the recognition of the person subject to criminal liability, establishing the guilt of a person in the commission of a crime (AVDEEV, 2013b). Understanding the subject of crime has become a central focus in the science of criminal law. The disclosure for the concept of the subject to the crime requires an appeal to the doctrine of law. Thus, the term "subjects of law" is reflected in the legislation taking into account the natural law doctrine. Since all human beings are equal by nature, their equality must be enshrined in law.

The jurisprudence embodies the transition from natural to legal equality, the proclamation of formal equality for people in the law. The categories - "physical person", "moral person" in French law, "legal person" in German law are introduced into the scientific turnover (IVANOV; SHAGIEVA; GRUDTSINA, 2016). A subject of law is a person who may have rights. A person is a bearer of rights. The legal status of a person consists of legal capacity. Within the framework of the German doctrine there is an identification of legal personality with legal capacity, the legal concept of a person coincides with the concept of legal capacity. Legal capacity as a category unites all persons. What "separates" persons is their gender, age, incapacity.

The French Declaration of the Rights of Man and the Citizen of 1789 states that people are born and remain free and equal. This determines the same legal capacity and the same distribution of responsibilities. Therefore, the law includes citizens of the state, foreign citizens and stateless persons in the status of a physical person. Foreign legislation reflects the issue of the criteria for legal capacity, which depends on a person reaching a certain age and mental state. Legal personality is formed by two key elements - legal capacity and legal competence (LEVINA et al., 2017). Legal capacity is the potential probability of a person to have subjective rights and legal duties. Legal capacity is an actual ability of physical entity to exercise subjective rights, fulfill legal responsibilities and be responsible for the realized violations by volitional and conscious actions. Legal capacity arises when an individual is of sound mind and reaches the age of majority. This legal property is predetermined by a person's mental state.

Legal capacity is subject to termination if a court finds a citizen to be incapacitated. This means that due to a mental disorder, the person in question is unable to understand the meaning of his or her actions and to control them. A narrower concept with respect to legal capacity is de facto legal capacity, which means the ability of a citizen to bear legal responsibility for the harm caused as a result of his unlawful actions. Legal personality is understood as the ability of a person: 1) to be a party to a legal relationship; 2) to bear legal responsibility for the actions committed.

Common at the international level mandatory attributes of bringing a physical person to responsibility are: 1) the status of an individual; 2) the person's sanity; 3) the attainment of the age provided for by national legislation. Taking into account the legal experience on the example of Roman law, a certain age limit, related to the presumption of achievement by a child of the necessary mental development, sufficient for the ability to understand the meaning of his actions, serves as the attributes (JESCHEK, 2010).

For example, part 1 of article 828 of the German Civil Code establishes that a person under the age of seven years is not liable for any damage that he may cause to another by his actions. Various countries in the civil law family have different approaches to setting minimum age limits for delinquency, including Greece at age 10, Poland at age 13, the Netherlands and Russia at age 14 and so forth.

Another criterion for delinquency is the presence of property, sufficient for the compensation of harm and in the possession of the child, when there are no other sources of compensation for harm (Article 828 of the Civil Code of the Federal Republic of Germany, Article 2047 of the Civil Code of Italy). It is worth paying attention to the problem of regulating the sanctity of a physical person, which involves considering: 1) age; 2) state of mental health; 3) level of socio-psychological development. The main thing is his ability to give an account of his actions, to direct his will when committing a crime.

Consequently, the understanding of the provisions contained in international legal documents shows the relevance for the problem in the legal regulation of legal personality and delinquency at the international level.

### CURRENT PROBLEMS OF INTERNATIONAL LEGAL REGULATION REGARDING THE STATUS OF PERSONS ABLE TO BEAR CRIMINAL RESPONSIBILITY

Legal capacity and legal ability are the most important conditions for the emergence of criminal legal relations (AVDEEV, AVDEEVA, 2014). In this regard, the importance for the legal fact of the commission of a crime is actualized. Continental law has developed a general concept of tort liability for the harm caused (DUBOVİK, 1993). Currently, the two main legal systems of the family of continental law - French and German - operate with the concepts of a single general tort and universal liability for it.

If we consider the norms of the German Criminal Code (as amended in 1998), the basic principles in determining criminal responsibility are the principle of legality, which has four elements. "The beginning of certainty" (*lex certa*) means that the criminal law must clearly define the characteristics of unlawful behavior and the limits of its punishability, i.e. establish the preconditions for criminal responsibility, ensure the "prohibition of turning for the worse" (*lex praevia*), "prohibition of conviction under customary law" (*lex scripta*), "prohibition of analogy" (*lex stricta*).

German criminal law implements two main goals: 1) "peacemaking", "channeling and balancing society's need for revenge or retaliation" through an organized public response to crime; 2) "tentative", subjecting the offender to criminal punishment and demonstrating to society the inviolability of the rule of law and strengthening public law-abidingness. Among the criteria for the legality of criminal law are the principles of guilt ("no punishment without guilt"), the connection of criminal law with constitutional provisions on fundamental human rights, the principle of proportionality in the application of criminal law; the constitutionality of determining the range of protected or to be protected material goods, the principle of protection (real principle), orienting the action of criminal law to protect the interests of its legal community.

The principle of retroactivity applies, according to which no new law worsening the situation of a person (with the exception of changes in the law on the measure of correction and safety) may be applied (GOLOVNENKOV, 2013). It is noteworthy that the universal principle of the punishability of an act in the interest for the entire world community applies. Thus, § 6 of the German Criminal Code contains a list of acts committed abroad against legal goods protected by international agreements and establishes the rule of German criminal law on the basis of a binding interstate agreement in the Federal Republic of Germany.

The German Criminal Code contains the following gradation of criminal offences. The German Criminal Code provides for a distinction between criminal offenses and misdemeanors, the essence in the division of which consists in determining the minimum penalty. In the German doctrine there is a psychological theory of guilt, based on which the primary role is played by the subjective-spiritual attitude of the subject to the act committed.

German law proceeds from the principle of personal responsibility. This means that only a person who has reached a certain age and is sane is recognized as the subject of a criminal act. Under the German Criminal Code, the general age of criminal responsibility is 14 years. Minors are recognized as "not sane". Their actions are not subject to legal assessment (§ 19 of the German Criminal Code). However, the Juvenile Justice Act of 1953 provides for a gradation of the subject age, in particular from 14 to 16 years, from 16 to 18, from 18 to 21 years. For each of these age groups, peculiarities of legal consequences are established.

At the same time, the German Criminal Code does not contain a definition of a person's sanity. As a result, the rule of insanity associated with a mental disorder (§ 20 of the Criminal Code of Germany) applies. The condition of insanity excludes guilt. The medical criterion is a morbid mental disorder, profound disorder of consciousness, dementia and "other severe mental disorder". The legal criterion for insanity is: 1) a person's inability to understand the wrongfulness of an act; 2) a person's inability to act "with knowledge of their wrongfulness". It is noteworthy that § 21 of the Criminal Code of the FRG contains a reference to "diminished sanity" which is a ground for mitigation of punishment.

German criminal law does not regulate the liability of legal persons. If a criminal act is committed by an employee of a company acting on behalf of the owner or other authorized person in the interests of a legal entity, liability is "transferred" to the management of the company under the rules of § 14 of the German Criminal Code ("Execution of an act for another person").

Insanity under the Criminal Code in the Federal Republic of Germany is distinguished according to two criteria: 1) by virtue of age - under the age of fourteen years (§ 19); 2) mental condition - due to mental disorder, profound disorder of consciousness or dementia or other severe mental disorder that excludes the ability to understand the illegality of the act performed (§ 20). Regarding the peculiarities regarding the legal regulation of delinquency in France, the Criminal Code of 1992 establishes three types for deviant criminal behavior of an individual subject to criminal liability. Under Article 111-1 of the French Criminal Code there is a three-tiered gradation of criminal acts according to their seriousness (crime, misdemeanor, criminally significant "violation").

A criminal act of a person is regarded as an active behavior of the person, which implies his "physical initiative". The virtue of French criminal law is the classic postulate of Romano-Germanic law, according to which the criminality and punishability of an act are determined solely by law (Article 111-3 of the French Criminal Code). The understanding of the crime is defined through formal (formal-material) signs. The crime is an act of human behavior (material attribute) which violates the norms of the criminal law establishing the punishment (formal attribute). At the same time, the subject must possess "minimal guilt" (the psychological feature). The subject of a crime is subject to liability due to the sign of "unjustifiability" when there are no circumstances that exclude criminal liability.

Thus, in the French Civil Code, as early as 1804, Article 1382 introduced the concept of the general tort. By virtue of this, every act of a person who causes harm to another obliges the person through whose fault the harm occurred to compensate the damage. Thus, according to French researchers, a child who has not reached the abstract "age of understanding" cannot

be found guilty and, therefore, cannot be held independently responsible for his actions. Both individuals and legal entities are recognized as subjects of criminal responsibility. Under the French Penal Code, individuals under the age of 13 (Article 122-8 of the French Penal Code) are not subject to criminal liability. The “general criminal rules” apply to persons over the age of 16.

Under Article 122-1 of the French Criminal Code, the medical criterion of insanity provides for the presence of a mental or nervous-psychological disorder in a physical person, by virtue of which the person lacks the ability to understand or control his actions (the legal criterion). The principle of “diminished sanity” applies, which entails, for psychological or neuropsychological reasons, an insufficient ability to understand or control one's conduct.

Under the French Criminal Code, there are rules that establish the “specialization” of the subject. The status of a special subject depends on physical characteristics (sex, age), the presence of nationality (France, another state), the presence of legally significant relations between the perpetrator of harm and the victim (relatives, property official and other relations), professional characteristics (official status of the person), the assignment of certain responsibilities (security rules and etc.), participation in the administration of justice (judge, witness and etc.) (AVDEEV et al., 2016).

The French Criminal Code prescribes exclusion from criminal liability for a person who at the time of the implementation of the act is subject to any mental or nervous-psychiatric disorder, deprived of the ability to understand or control their actions (Article 122-1). It is noteworthy that delinquency under the Criminal Code of the Russian Federation is for the most serious crimes from age 14; for other crimes from age 16; for military crimes from age 18; for unlawful conviction from age 25.

Doctrinal analysis of foreign legislation highlighted the following urgent problems that need to be resolved. The subject of a crime should be considered only a physical sane person who has reached a certain age. In addition to these attributes, researchers point to the need to find him guilty of committing an act that poses a public danger. In this connection, it is worth noting that liability for the commission of a crime will be imposed on a physically sane person who has attained the age at the time of the crime and possesses the characteristics enshrined in the law. When determining the age of persons for criminal liability, the level of a person's consciousness, his ability to understand the social danger of his actions and the ability to lead them will be taken into account.

For example, the full legal capacity of citizens is established by the Constitution of the Russian Federation and comes upon reaching 18 years old. At the same time, sectoral legislation at the international level provides for the variation of age limits. Thus, within the framework of the criminal legislation in the Russian Federation, criminal liability, as a general rule, commences when a person reaches the age of 16. However, for certain types of crimes there is a lowering of the age to 14 years.

The age of the subject to the crime must take into account the degree of personality formation, when a person acquires a sufficient level of spiritual, emotional and intellectual maturity that allows him to realize the degree of social danger in his actions. The definition of the minimum age for criminal liability in the law should be based on the sufficient level of intellectual, spiritual and emotional development of a person, the level of development for legal consciousness, the ability to understand sufficiently the public danger in his actions, the ability to direct his actions.

The next aspect concerns the sanctity of the individual. The principle of the presumption to be sane provides for the recognition of any natural person who has reached the age of criminal responsibility as sane. The state of mental health is decisive for the establishment of sanity. The following persons may be recognized as sane: a) having absolute mental health; b) suffering from certain mental diseases; c) having defects of mental development.

The problem at the present stage is that in apartment buildings, private cottages the number of contained reptiles is growing. This poses a threat of harm to the health and property of others. Harm caused by a dog released from its chain, or when the dog is specially trained to bring other people's things, is becoming frequent. In this way, the dog is used by the owner as an instrument of crime. For example, according to current Russian law, if the harm was caused by animals or objects, then the physical person is responsible when the guilt is established.



The confirmation is the law enforcement activity. As a consequence of this, animals that have caused harm to public relations protected by law, as well as objects cannot be recognized as persons capable of responsibility. If a person has committed a crime in a state of insanity he is not subject to criminal liability. Therefore, a person recognized as insane cannot be assigned a criminal punishment. As a result, the appointment of compulsory measures of medical nature becomes relevant. This is predetermined by the possibility of this person causing harm to other persons.

There is a problem when a minor is not subject to criminal liability, although he has reached the age stipulated by law, but due to the level of mental development he cannot sufficiently realize the social danger in his actions. In this case, it is necessary to establish the existence of a mental retardation of the minor. For this purpose, a complex psychological and psychiatric examination is appointed. The experts decide on the establishment of the mental condition of the minor.

The next question is related to the recognition of limited sanity, when there are signs of certain abnormalities in the psyche (AVDEEV, 2013a). The court must take into account mental disorder, which does not exclude sanity, when imposing punishment. In this case, there are grounds for imposing compulsory measures of medical nature. Consequently, the law provides for a state of a person that borders between sanity and insanity. Insanity is the state of a person when he is unable to regulate his behavior at a conscious level at the time of committing a socially dangerous act. It is important to consider that the state of insanity for a physical person implies a set with medical and legal criteria. The medical criterion for insanity is the fact of a sickly state of the individual's psyche. In this case the medical criterion for insanity implies the presence of a person's chronic or temporary mental disorder, dementia or other painful state of mind. The legal criterion for insanity is the inability of a person on the intellectual and volitional levels to adequately exercise mental regulation of behavior.

A number of researchers point to the need to be guided by special characteristics that are enshrined in the law (SERGEVNIN; AVDEEV; AVDEEVA, 2015). The responsibility of a special subject should be unified. Such include persons who: 1) use official position; 2) perform managerial functions in a commercial or other organization; 3) occupy a public office and etc. At the same time, a unified approach requires the establishment of responsibility for certain types of crimes for the following persons: 1) parents and teachers of minors; 2) private auditors; 3) notaries; 4) employees of detective and private security services; 5) captains of courts; 6) judges, experts, specialists, victims, witnesses.

Legislators have different approaches to the issue of the status of legal entities. Thus, in the Russian Federation legal entities are not subjects of crimes. Therefore, organizations, institutions or enterprises cannot be found guilty of committing a crime. As for the administrative and civil legislation of the RF, the responsibility of both individuals and legal entities is enshrined. The next problem is the legal assessment for the state of intoxication. The state of intoxication under the Criminal Code of the RF does not exclude criminal responsibility and in some cases is recognized as a circumstance that aggravates punishment. The state of intoxication means a violation of the level for perception and behavior due to the use of alcohol, the introduction of narcotic drugs, psychotropic substances. The rationale for this approach is based on the fact that a person had the opportunity to be aware of the public danger in his behavior, to direct his actions, but with a reduced level of control. However, pathological intoxication is considered as a short-term painful disorder of mental activity. As a result, proving the state of pathological intoxication entails the exclusion for criminal liability on the grounds of insanity.

## CONCLUSION

Legal analysis in the criminal legislation of foreign countries shows different approaches to establishing the age for criminal responsibility and defining the concept of sanity. Legislation of foreign countries establishes different age for mental capacity of individuals as a basis for the onset of constitutional and legal, civil law, family, disciplinary, administrative and criminal responsibility.

The problem of unification for normative-legal regulation in the field of combating delinquent behavior of a person is relevant. As for the legal obligation, its implementation in the form of legal liability pursues as a goal the occurrence of negative consequences associated with the deprivation or restriction in general or special rights for the subject of the offense.

Illegal behavior contradicts or goes beyond the legal prescription and causes harm to society as a result of public danger and damage to the legally protected interests of a person, society and the state. A person's unlawful deed is characterized by guiltiness, consciousness, meaningfulness and controllability of committed socially harmful and socially dangerous actions. The specificity in the social and legal character of an individual as a subject to an offense consists in the regulation of its delinquency, taking into account the sectoral nature of the offense and the degree in which it is socially dangerous. Subject of a crime as a criminal-legal concept is characterized by a set of features sufficient for bringing to criminal responsibility.

It is important that when determining the delictiness of an individual, his guilt is taken into account and the nature of the mental attitude to the act is determined, which can be expressed in the form of intent and negligence. This requires the establishment of three signs, including awareness face of illegality committed action, foresight face to the onset for socially harmful (socially dangerous) consequences and the attitude of the person to the consequences that have occurred. In this regard, it should be taken into account that during the formation of a person's motivation for unlawful behavior such factors as biological features of personality (gender, age, state of physical and mental health, state of nervous system, reaction to external stimuli, presence of pathological deviations, character traits, temperament, level of emotional perception, intellectual and mental abilities, etc.) influence.

To date, the reform of criminal legislation based on the postulates of the classical school continues. Conceptual provisions for the legislation of states belonging to the Romano-Germanic legal family have a significant impact on the reform of the criminal law. The main directions in criminal law reform should be the consistent implementation of the principles for the rule of law, guaranteeing the primacy of international law over domestic law, establishing guarantees for the protection of basic human rights, including personal safety and environmental security, and innovations that consider the current needs in the fight against crime. The growth at the international level of organized and transnational crime must be taken into account.

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## Wrongfulness of the act and current issues of legal regulation

Injustiça do ato e questões atuais de regulação legal

Illicitud del acto y cuestiones actuales de regulación legal

### Resumo

É importante que, ao determinar a capacidade debilitante de um indivíduo, sua culpa e a natureza da atitude mental ao ato, que pode ser expressa na forma de intenção e negligência, devem ser levadas em conta. Isso requer o estabelecimento de três sinais, incluindo a conscientização por uma pessoa de ilegalidade de ações cometidas, antecipação por uma pessoa do início em consequências socialmente prejudiciais (socialmente perigosas) e a atitude de uma pessoa para as consequências que ocorreram. Deve-se ter em conta que, durante a reforma do direito penal, deve-se focar na presença da motivação de uma pessoa para o comportamento ilícito e nos fatores que a determinam. Entre esses fatores propõe-se incluir características biológicas da personalidade, incluindo sexo, idade, estado de saúde física e mental, estado do sistema nervoso, reação a estímulos externos, presença de desvios patológicos, traços de caráter, temperamento, nível de percepção emocional, habilidades intelectuais e mentais.

**Palavras-chave:** Sistema legal romano-germânico. Regulação legal, sociedade. Responsabilidade criminal.

### Abstract

It is important that in determining the delictual capacity of an individual, his guilt and the nature of mental attitude to the deed, which can be expressed in the form of intent and negligence, should be taken into account. This requires the establishment of three signs, including awareness by a person of unlawfulness of committed actions, anticipation by a person of the onset in socially harmful (socially dangerous) consequences and a person's attitude to the consequences that have occurred. It should be taken into account that during the reform of the criminal law, close attention should be focused on the presence of a person's motivation for unlawful behavior and the factors that determine it. Among such factors it is proposed to include biological features of personality, including sex, age, state of physical and mental health, state of nervous system, reaction to external stimuli, the presence of pathological deviations, character traits, temperament, level of emotional perception, intellectual and mental abilities.

**Keywords:** Romano-Germanic legal system. Legal regulation, society. Criminal responsibility.

### Resumen

Es importante que al determinar la capacidad delictual de un individuo, se tenga en cuenta su culpabilidad y la naturaleza de la actitud mental hacia la acción, que puede expresarse en forma de intención y negligencia. Esto requiere el establecimiento de tres signos, entre ellos la concienciación de una persona de la ilegalidad de las acciones cometidas, la anticipación por parte de una persona del inicio de las consecuencias socialmente dañinas (socialmente peligrosas) y la actitud de una persona ante las consecuencias que se han producido. Debe tenerse en cuenta que durante la reforma del derecho penal, se debe prestar mucha atención a la presencia de la motivación de una persona para el comportamiento ilícito y los factores que lo determinan. Entre estos factores se propone incluir características biológicas de la personalidad, incluyendo sexo, edad, estado de salud física y mental, estado del sistema nervioso, reacción a estímulos externos, presencia de desviaciones patológicas, rasgos de carácter, temperamento, nivel de percepción emocional, capacidades intelectuales y mentales.

**Palabras-clave:** Sistema legal romano-germánico. Regulación legal, sociedad. Responsabilidad penal.