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RESEARCH ARTICLE

STATE INSTITUTE OF RECONCILIATION IN THE MODERN CRIMINAL LAW OF FOREIGN COUNTRIES.

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Abstract

In article analyzes the state of the reconciliation institute in the modern criminal law of foreign countries and makes recommendations for improving the Legislation of the Republic of Uzbekistan. Particular attention is paid to the expansion of victims' rights in the reconciliation to demonstrate how the institution.

The rate of exemption from criminal responsibility has appeared in the national criminal law in connection with the reconciliation of the parties over a decade ago, it was an important step in the development of the angle foot. Moreover, criminal and the criminal procedural legislation, in the development of a more humane and at the same time effective ways to resolve conflicts generated by crime. The practice of the Institute of re-conciliation, in our country has shown that reconciliation with the victim - a very effective tool of modern criminal policy. In connection with the criminal law reform legislation of the Republic of Uzbekistan is the actual consideration of the current state of the application of Art. 66^1 of the Criminal Code, as well as the status of implementation of the conciliation procedure forms in foreign countries.

Consider reconciliation with the victim in criminal law based on allocation of the two main systems of today's developed countries: the common law and continental law.

In common law countries, one of the objectives of criminal law (as a branch of public law) is «to establish the public interest and the protection of private interests (to protect the private interests)[1]». By private, include rights of victims of crime. That is the result of criminal substantive law must necessarily be the infliction of harm to the victim (the victim).

Victims of Crime in the United States do not require a special procedure of recognition of the official status. Due to this fact the view was expressed about the admissibility of harm to the victim in the US legislation[2] providing as a victim both physical and legal persons.

Despite the different definition of the legal status of the victim in the federal legislation and the legislation of

1 The Encyclopedia Americana. Vol. 1. – Danbury, 1987. – P. 172.
2 See A.V. Pariy The victim of the crime on pretrial stages of the US criminal proceedings (rather-legal research): Abstract. Dis. ... Cand. jurid. Sciences. - Volgograd, 1997. - P. 7, 17.

individual states, there is a tendency to unify crime victim status throughout the United States. This was reflected in the adoption in 1982 of a special federal law «On the protection of the victim and the pigs - nesses», as well as the adoption of a draft amendment to the US Constitution. In countries where victims may be legal entities, the same spread in their regard[3].

The priority of the criminal policy, both in the Republic of Uzbekistan, and in many foreign countries, is the protection of individual rights and freedoms. Violations of personal rights and their violation of the direct - governmental collectively determine the status of a victim of crime.

During the 70's, 80's XX century trend of increased attention from the international community for the protection of social human rights as evidenced by a number of normative documents adopted by the UN General Assembly. Convention for the protection of human rights and interests, obliged to develop legal mechanisms not only suppression of criminal acts, but also the procedures causing harm to the victim, which in turn, coupled with mandatory signs forms institute of reconciliation of the parties and is the basis punitive methods of punishment. At the same time the fact of reconciliation with the victim, liberating tortfeasor from criminal liability, is regarded as one of the main manifestations developing in the western countries of "restorative justice" in criminal cases[4].

As rightly pointed N. Christie, gets a special importance under - detailed discussion of "what can be done to the victims first and foremost criminal, in the second place - the local community, and the third - the state[5].

"The grounds for the person's release, the offender from criminal liability in criminal cases in the court proceedings are stipulation of the act list of the articles under Part 1 of Art. 66^1, admission of guilt and reparation of damages to the injured person[6].

The laws of foreign countries, the solution of this issue is somewhat different. The material and legal basis of the institution in the criminal law of the countries of Anglo-Saxon legal system is a "minor" offense.

State of the continental law system more clearly define the base of such a reconciliation.

The European legal tradition considers reconciliation with the victim mandatory grounds for exemption, from criminal responsibility for a number of offenses: usually in their list includes various types of offensive and defamatory actions (defamation), as well as to the physical integrity of the individual.

This common language in the criminal law that those crimes "cannot lead to criminal prosecution except on the complaint of the victim." At the same time, for special reasons («public interest"), criminal prosecution for the same offense may be, and the public nature of that reconciliation is not binding fact for the trial[7]. In later criminal legal acts of the European countries, there is a tendency not to link reconciliation act as an expression of the will of the victim with the obligatory compensation for damage.

For example, the Swiss Penal Code, 1937 (the acting amended) stipulates that, if the act is punished "only on the complaint of the victim", each "whose interests have been violated," may "apply for punishment of the person" - i e. essentially the victim himself determines the presence of a criminal act as such (Art. 28) [8].

In addition, the Swiss Criminal Code establishes a special period of time within which a complaint may be filed - three months from the date when the victim became aware of the act (Art. 29). However, the most important for us

3 Trubitsina E.O., Grenkova, Dementieva E. Rights of victims in countries capitalistic Socialist legality. - 1990. - № 10. - P. 64.

4 See. Voskobitova L.A. Judicial branch: origin, evolution and typology. - Stavropol, 2001. - P. 118-120.

5 Kristi N. Conflicts as property // Juvenile Justice. Development prospects. Vol. 1. - M., 1999. - P. 39.

6 The Criminal Code of the Republic of Uzbekistan (as amended June 1, 2014) - T. 2014. - P. 251 - 253.

7 Such provisions are found for example in Articles 1-5 of chapter V of the Swedish Criminal Code.: 1962 see the Criminal Code of Sweden. - M., 2000. - P. 22-23.

8 The Criminal Code of Switzerland. - M., 2000. - P. 11-12.

is the fact that the complaint for at least one of the partners equally on the principle of "indivisibility" complaints of pursuit-sulk all collaborates.

Thus, the Swiss criminal law recognizes the right of victims defining the subject of the criminal legal relationship for a number of criminal acts, and his will is a prerequisite for the presence or absence of the state prosecution and as a whole, respectively, the criminal liability of the tortfeasor. A similar procedure for filing a complaint on the fact of the crime stipulated by the criminal law in Germany in Section 4.[9]
As in the Criminal Code of Switzerland, German criminal law states that a review of the application is grounds for termination of the criminal prosecution and, accordingly, the criminal legal relations in general.

Similar provisions are known and the Criminal Law of the Netherlands (Section VII) [10]. It is noteworthy that the Criminal Code of the Netherlands in parag. "E" h. 2 tablespoons. 74 authorizes the Prosecutor to set the condition of the subject of compensation to the victim of damage as a basis for further reconciliation with the victims. Implementation of such conditions is the basis for «criminal proceedings for an offense exception " .

But the most interesting for us is that the base can be applied not only to the traditional private prosecution, but also to all other criminal offenses and crimes punishable by not more than two years' imprisonment (i.e. to the crimes which under the legislation of the Republic of Uzbekistan can be attributed even to the grave). Criminal law in Spain knows the unique basis of the termination of criminal liability pardon the guilty victim (parag. 4, Art. 130). In this case, it is not a simple expression of the will of the victim, which is mandatory for the court (if it is "prescribed by law") and terminates the legal relationship material responsibility.

Thus, the Spanish Penal Code, being one of the newest of the European criminal-law documents, most fully reflected the basic trend of development of criminal-legal status of the victim - a tendency to maximize not only their rights, but also recognition as an independent and meaningful criminal legal entity. The trend recognition for reconciliation with the victim reason to release from criminal responsibility for a series of cremations typical for post-socialist countries of Eastern Europe.

Thus, Art. 89 of the Criminal Code of Belarus establishes that a person has committed a crime, not representing big public danger, may be exempt from criminal liability if he reconciled with the victim[11]. In contrast to the legislation of Uzbekistan, it is not required to establish the fact that a person has committed a crime legally "first", and to make amends for the harm crime.

However, the criminal law of Belarus considers the exemption from criminal liability in connection with reconciliation with the victims not the obligation, and is competent law enforcer.

It seems that this provision, like similar to the Criminal Code of Uzbekistan Republic, the public, is a kind of «legacy«of the Soviet criminal law does not recognize any dispositive began. A new Latvian Criminal Law , referring to the opportunity to learn - emancipation from criminal liability of the person who committed the criminal offense[12] and " has reached a settlement agreement with the victim " , specially stipulates that the base does not apply in the case of a crime against a minor (Art. 58) [13]. Apparently, reforming the criminal law, the Latvian legislator has not quite consistently taken the pan-European trend to the possibility of reconciliation with the victim in this situation. In any case, the analysis of the sources of modern criminal law of foreign countries allows to conclude that reconciliation with the victim is consistently evolving the basis of exemption from criminal liability due to the development of the private began in the criminal law. Now it is necessary to consider the main types of reconciliation with the victim in the criminal law of foreign countries.

9 German Criminal Code. - M., 2000, pp 56-58.
10 The Criminal Code of the Netherlands. - St. Petersburg, 2000. - pp. 80-81.
11 The Criminal Code of the Republic of Belarus. - Minsk, 2001. - P. 35.
12 Criminal offense in the Criminal Code of Latvia (para. 2, Art. 7) and a crime, not representing big public danger under the Criminal Code of Belarus (Art. 2, Art. 12) recognizes acts similar to a minor offense on the Russian criminal law.
13 Criminal Law of the Republic of Latvia. - Minsk, 1999. - P. 51.

In civil law countries, the reconciliation of the offender with the victim usually takes the form of a public contract. For example, in the Netherlands, Belgium, France, such reconciliation is called "transaction» (transaction), which is understood as an agreement between the offender and the victim, "accompanied by mutual concessions." In common law countries with the "minor violations of the criminal Lawton" (by the way, equal in essence to the administrative delists), applies a reconciliation with the victim as a "fixed penalty procedure» (fixed penalty procedure) [14].

In connection with this production for such «abuses«is generally regarded as an analogue of proceedings on administrative violations[15]. In addition to «fixed penalties system, in continental and Anglo-Saxon law, the 70ies. The twentieth century, used time -sighted - offender reconciliation with the victim, called "mediation » (mediation).The essence of this kind of reconciliation is the full resolution of the conflict between the offender and the victim. Mediation is not clearly fixed in the law of foreign countries due to significant dispositive began in criminal law (especially in common law countries). Nevertheless, it can distinguish the following varieties:

A. «Simple mediation»: the prosecutor is entitled to judgment on the claim of the public and with the consent of the parties to decide on mediation, if it considers that such a measure is capable of providing compensation for harm caused to the victim. Prosecutor may also have recourse to any non-governmental organization in the settlement of the conflict between the victim and the offender (Part 4 of Article 61 of the CPC of France.);
B. «Combined mediation», which are connected by simple lines and mediation transactions. For example, it was found that the prosecutor may terminate a public prosecution if the offender is not only reparation for the victim in the German legislation, but also to make a certain amount of income in the " beneficent institution or to the Treasury. [16]»

Thus, in the countries of both common law and civil law can be traced desire for legislative regulation resolving the conflict between the offender and the victim through various forms of reconciliation.

It is impossible not to note the tendency to smooth out differences between the various forms of reconciliation with the victim in the existing legal systems. In addition, a mechanism to ensure the rights of the victim of the crime, the role of the courts of general jurisdiction.

All this testifies to the further deepening of dispositive began in criminal law developed foreign countries, which is a very positive manifestation of their evolution. In addition, it should be noted a tendency to smooth out differences between the various forms of reconciliation with the victim in the criminal legal material in the existing legal systems.

Finally, it must be said that the development of the reconciliation institute with the victim in national and foreign legislation plays an important role in the state criminal policy, namely the implementation of the above-mentioned idea of «restorative justice », has set out to both comprehensive protection rights of the victim, and achieve greater efficiency of re-socialization of the offender.

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4. See. Voskobitova L.A. Judicial branch: origin, evolution and typology. - Stavropol, 2001. - P. 118-120.

14 For example, according to the instructions of the Ministry of Internal Affairs of Great Britain in 1988, the penalty for causing scratches (depending on the cost and size) of up to £ 50, and tooth loss - from 250 to 850 £ (depending on the location and age of the victim) . See. Golovanov N.A. The witness and victim in the Anglo-American process // Legislation of foreign countries. Overview . Issue 4. - M., 1991. - S. 5.

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