



THE ROLE AND SIGNIFICANCE OF THE MANDATORY FEATURES OF THE SUBJECTIVE SIDE OF THE CORPUS DELICTI IN THE QUALIFICATION OF AN ACT

Altiev Razzok Saidovich,

Acting Associate Professor of the Department of Criminal Law,
Criminology and Anti-Corruption of Tashkent State University of Law,
Doctor of Philosophy (PhD) in Law

Orcid: 0000-0001-5613-4532, E-mail: razzoq.lawyer@gmail.com

Annotation

The article discusses the mandatory features of the subjective side of crimes and their role and significance in the qualification of an act in the criminal legislation of the Republic of Uzbekistan. The author from a scientific and theoretical point of view analyzes the concept and signs of guilt, motive and purpose, their types. In particular, the problems of determining criminal intent and motivation of the perpetrator in committing crimes with various forms of guilt are comprehensively considered. The author analyzes similar and distinctive aspects of various forms of guilt and presents his scientific and theoretical conclusions.

Keywords: Corpus delicti, subjective side, guilt, motive, direct intent, indirect intent, negligence, carelessness and presumption.

The definition of a crime is of great importance in criminal law. It is sufficient to note that committing an act that possesses all of the characteristics of a crime constitutes the basis of criminal liability. One of the characteristics of crime is the subjective aspect of crime.

The mental activity of the person directly related to the commission of the crime constitutes the subjective side of the crime, so it is his internal in nature (relative to the objective side). N.D. Sergievsky specifically claimed that a crime consisting of inaction can express itself through its inner side, "that is, the subjective mood that influences a person's behavior". The the processes occurring in the mind of the offender are characterized as the subjective aspect of the crime and they cannot be directly observed by the human senses. This will be known only by analyzing and evaluating the behavior of the offender and the circumstances in which the crime was committed.

With the aid of legal signs like motive, purpose, and guilt, the content of the subjective side of the crime is made clear.





Each of these signs has a unique psychological component and legal relevance, but they all represent an internal process that takes place in a person's psyche during the preparation stage and during the commission of a crime. Together they form the subjective basis of criminal liability.

As a rule, the content of the subjective side is established in the legal documents in the form of qualifying signs related to a specific crime. Nevertheless, each specific circumstance in a given situation has its own significance, which has a direct bearing on the applicability and implementation of criminal punishment.

Therefore, as specified in the provisions of the Special Part of the Criminal Code, each sign of the subjective side functions as a structural sign of a specific crime. The limits of criminal liability vary if there are no relevant signs of the subjective side or if they are inconsistent with the content of the law. This indicates the high importance of subjective factors.

It is crucial in both theory and practice to identify the signs that describe the subjective side of a crime. Because it enables the classification of the crime, the determination of the kind and degree of social danger of the act and the perpetrator, and the assignment of a punishment corresponding to the severity of the crime.

Determining the signs of the subjective side is crucial not only for the correct assessment of the social danger of the act, but also for distinguishing between the criminal and unintentional harm, preventing the imposition of objective accusations, and establishing the reality of the matter.

Although guilt, motives, and goals of the crime are different concepts, they are linked to one another and influence one another in that they each highlight a different aspect of the psychological nature of the crime. They constitute the content of the subjective side of the crime only as a set of legally significant signs; and they describe the psyche of the activity and the inner nature of the crime.

A person's **motive** is their inner motivation to commit a crime. The outcome that a person seeks to achieve by committing a crime is the purpose of the crime. Guilt is the main sign of the subjective side of the crime and has a number of signs. Unlike other signs of crime, which may be observed and characterized in various ways, guilt is the internal attitude of a person to the act being committed and the consequences arising from this act. Therefore, it is required to establish if the subject of the crime is actually guilty of committing the crime after establishing the object, objective side, and subject of the crime. As a result, the criminal legislation thoroughly examines questions linked to guilt and its manifestations in addition to the corpus delicti.



The value of the subjective side is determined by the fact that it serves to justify a subjective, that is, a guilty accusation (as opposed to an objective - innocent accusation).

The subjective side of the crime has historically been of significant legal importance: First, it separates criminal behavior from non-criminal behavior as an integral component of the framework of criminal liability. For instance, innocent harm, that is, the commission of an act that can be punished only if it is intentional is not considered a crime (Article 24 of the Criminal Code). In addition, an act provided by the criminal law, but committed without the purpose specified in this norm (Articles 169 - 171 of the Criminal Code) or based on other motives other than those provided for by the law (corresponding clauses of Article 277 of the Criminal Code) does not cause criminal liability.

Second, the subjective aspect of the crime enables the differentiation of identical crimes based on their objective features. Examples of crimes that differ in their degree of guilt include manslaughter resulting from negligence and intentional killing beyond the bounds of necessary defense (Articles 102 and 100 of the Criminal Code). Additionally, there is only a difference in terms of purpose between desertion (Article 288 of the Criminal Code) and the arbitrary abandonment of a military unit or place of service (Article 287 of the Criminal Code).

Thirdly, the actual content of the facultative signs of the subjective side of the crime, even if they are not specified in the norms of the Special part of the Criminal Code, to a large extent determines the level of social danger of the crime and the person who committed the crime. Therefore, the nature of liability and the amount of punishment shall be appointed taking into account the requirements specified in articles 55, 56 and other similar articles of the Criminal Code.

A conclusion regarding the social danger and illegality of the committed act, as well as the guilt of the perpetrator, can be reached by determining the subjective aspects of a crime, which concludes the analysis of the real signs of criminal behavior.

The subjective aspect of a crime is particularly significant within the context of criminal law because

- in the first place, it helps determine the category of crimes (Article 15 of the Criminal Code);
- secondly, with the aid of the subjective side, a correct and thorough criminal-legal assessment (qualification) of the act is provided;
- thirdly, the differentiation and individualization of criminal liability and punishment are substantially determined by the subjective side;



- fourthly, the subjective side benefits in the application of the institutions of criminal liability and exemption from punishment, amnesty and pardon, restoration and removal of convictions.

In order to define the crime, establish criminal liability, and impose punishment, it is crucial to consider the subjective aspects of the crime. That is why it has been emphasized several times by the supreme judicial authorities (to the lower courts) to carefully examine the content of the subjective aspect of the crime: the form of the guilt, the content and direction of the intention, the motive and purpose of the crime. Guilt is widely acknowledged as the primary sign of the subjective side of crime. It was rightly recognized by the legislator as a prerequisite for criminal liability. The principle of liability for commission of crime (guilt) is enshrined in Article 9 of the Criminal Code, which emphasizes that the Criminal Code only allows for subjective accusation.

Guilt is a person's mental attitude towards the socially dangerous act specified in the criminal law committed by him/her and its consequences. Consciousness and willpower make up the elements of guilt as a mental attitude, which together make up its content. Thus, guilt is characterized by two components: intellectual and volitional. There is no definition of guilt in criminal law, but it is defined as guilt of intentional or guilt of careless nature. The degree to which a person is guilty depends on their level of cognition (intellectual) and volition (volitional) when committing a crime.

Intentional crimes are the most frequent and serious kind of crimes. Intentional behavior intended to cause harm to society increases the likelihood that this harm will actually be caused. A person who commits an intentional crime typically picks a course of action or omission with the intent to cause harm. Intention reflects the actual course of action programmed in the previous stage, but unlike the planning stage, intention reflects the detailed social and legal characteristics of actions to achieve the goal.

In accordance with current criminal law, intent can be direct and indirect. Both direct and indirect intentions share the same intellectual component. Because, by definition, a person is aware of the social danger of his action and foresees its consequences.

Many eminent legal experts believe that the subjective awareness of the unlawfulness of the act being committed should be included in the content of the intellectual aspect of intent, which is a very good concept. In criminal law, the division of intention into direct intent and indirect intent is of great theoretical and practical importance. Distinguishing between direct intent and indirect intent is necessary for the correct qualification of the act, determination of its level of danger, as well as individualization of the punishment.





A crime shall be recognized as committed with a direct intent, if a person who committed it, was aware of its socially dangerous consequences and desired their emergence (Part 3 of Article 21 of the Criminal Code)

The intellectual aspect of this type of intention often lies in foreseeing the inevitability of the onset of socially dangerous consequences. The subject of the crime who wants to commit a criminal act does not doubt that his intention will be realized in practice, the occurrence of socially dangerous consequences and their inevitability.

In cases of crimes committed with the direct intent, the consequences of the crime are displayed as much as possible. This can happen when a person chooses a method of committing a crime that can lead to one or another consequence.

The volitional element of the direct intent, which describes the direction of the subject's will, is defined in law as the desire to cause socially dangerous consequences. A desire is seeking for a certain result. Desire, as a sign of direct intent, consists in striving for certain consequences.

The definition of direct intent itself focuses on crimes that have a material component. Therefore, desire is associated with socially dangerous consequences, in which certain harm is done to the object of the crime. At the same time, many intentional crimes have formal content. In these crimes, a person wants to commit certain criminal acts. Understanding the social danger of an act means understanding its real meaning and social significance. It entails comprehension of the nature of the object of the crime, the content of the crime committed (inaction), as well as the actual circumstances (time, place, method, environment) of the crime. The criminal has the opportunity to recognize the social danger of the committed act by reflecting all of these components in his/her mind.

Realizing that an act is socially dangerous is not the same as realizing that it is an offense, that is, prohibited by criminal law. Most of the time, when a crime is committed intentionally, the offender is aware that they are breaching the law. However, the law does not include awareness of the illegality of the committed act in the content of this form of guilt, therefore, in (extremely rare) cases where the committed act is not recognized as illegal, the crime can be recognized as intentional. The distinction between direct intent and indirect intent has to do with the willpower. Indirect intent does not involve the desire to cause socially dangerous consequences. It involves the conscious anticipation of them or the indifference to the onset of these consequences. This does not mean that the person will react to negative consequences. If the person who committed the crime knew the social danger of his action (inaction), foresaw the possibility of socially dangerous consequences, although he did not want





to, knowingly treated it with indifference, such a crime is considered to have been committed intentionally (Article 21 of the Criminal Code).

Realizing the socially dangerous nature of an act committed with indirect intent has the same meaning as with the direct intent. But the nature of foreseeing socially dangerous consequences with direct and indirect intent is not compatible with each other.

A socially dangerous consequence in indirect intent is often a by-product of the perpetrator's criminal actions, which are aimed at achieving another goal that is outside the scope of this crime. The criminal does not seek to cause socially dangerous consequences. However, as the legislator noted, the lack of desire to cause harmful consequences only means the absence of direct interest in their occurrence, which cannot be understood as an active unwillingness of these consequences, a desire to avoid their occurrence. In fact, a conscious assumption allows the criminal to cause a certain chain of events with his actions and consciously, that is, to develop a chain of causes that leads to the beginning of socially dangerous consequences. Conscious anticipation is an active experience associated with a positive volitional attitude to the consequences, in which the offender agrees in advance with the onset of socially dangerous consequences, ready to accept them as a payment for achieving the final goal of the act. This is a positive, approving attitude to the consequences, bringing the conscious assumption closer to the desire, turning them into types of voluntary content of the same for.

Direct and indirect intent are the same type of guilt, so there is much in common between them. The intellectual element of both types of intent is characterized by the awareness of the social danger of the committed act and the anticipation of its socially dangerous consequences. The volitional element of direct and indirect intent is common, and it is a positive, approving reaction to the onset of foreseeable socially dangerous consequences.

The distinction in the content of the intellectual element of direct and indirect intent lies in the inequality of foreseeing the consequences. The direct intent is normally characterized by foreseeing the inevitability (and sometimes the real possibility) of socially dangerous consequences, whereas the indirect intent is characterized by foreseeing only the real possibility of such consequences. But the main difference between direct and indirect intent is that the volitional attitude of the subject to the consequences is manifested in different ways. With the direct intent, a positive attitude towards them is expressed in a desire, while with a wrong intention it is expressed in a conscious assumption or indifferent attitude.



There are other types of intent such as premeditated intent, sudden intent, clear intent, unclear intent, and alternative intent.

In **premeditated intent** the perpetrator does not commit the act immediately after the intent appears, instead, a person waits for a certain period of time so that s/he can prepare to commit a crime and make a firm decision in this regard.

In a **sudden** (spontaneous) **intent** the perpetrator commits the act immediately after the intent appears. Often, robbery, assault and some crimes against the person are committed under the influence of this type of intent.

Articles 98 and 106 of the Criminal Code provide for liability for intentional killing and infliction of serious or medium bodily injury in heat of passion, when the intent to commit a crime appears suddenly. Crimes committed in heat of passion is a mitigating circumstance.

The perpetrator who commits a crime under the influence of **clear** (concrete) **intent** knows the expected consequences of his act. For instance, a perpetrator shooting a victim at close range understands the inevitability of the crime.

The perpetrator with **unclear intent** realizes that his act will cause socially dangerous consequences, but the amount of damage is not clearly defined in his mind. To illustrate, a pickpocket who steals may not know how much he is stealing. In such cases, the act must be qualified based on the actual consequences.

An alternative intent is a specific type of intent, a mental attitude of an individual toward an action in which he perceives the possibility of two possible consequences, each of which has the same value for him. In such cases as well, the act must be qualified according to the actual consequences.

In criminal law, negligence (recklessness) one of the main forms of guilt (along with intent). Negligence is considered a less dangerous form of guilt in comparison to intent. However, the danger of negligence and the importance of fighting against it should not be ignored.

Even though it has long been used in the theory and practice of criminal law in the current criminal code, negligence is considered for the first time in the law (Article 22 of the Criminal Code) as forms of presumption or carelessness.

Pursuant to part 2 of Article 22 of the Criminal Code, a crime shall be recognized as committed by presumption (self-reliance), if a person who committed it, foresaw a possibility of emergence of socially dangerous and legally punishable consequences of his behavior, and, consciously ignoring proper precaution, groundlessly presumed that such consequences would not emerge. Thus, the legal definition of criminal presumption has two characteristics:



1. Being able to foresee the possibility of socially dangerous consequences of one's actions;

2. Hoping that these consequences will not occur without sufficient grounds.

Foreseeing the possibility of socially dangerous consequences of one's action or inaction is the intellectual element of presumption, and hoping that these consequences will not occur is its volitional element.

The peculiarity of presumption is that a person foresees the possibility of socially dangerous consequences, but does not want them to happen and does not allow them, but confidently expects that these consequences will not occur. However, the expectation appears to be unreasonable, and socially dangerous consequences occur. The first characteristic combines presumption with an intentional form of guilt, specifically, indirect intent. But it may be noted that if we consider the foresight in presumption from the point of view of content, it is different from the foresight in indirect intent. In presumption, foresight, as a rule, is not very clear, which leads to miscalculations in certain cases to avoid criminal consequences.

On the other hand, considering that the ideas about the closeness of the intellectual aspects of indirect intent and presumption, a logical conclusion can be drawn about the second characteristic of negligence: being aware of the social danger of the act, although it is not included in the content of the definition by the legislator.

According to I.G.Filanovsky, "If the subject can confidently foresee the likelihood of socially dangerous consequences of his actions, he must be aware of the social danger of his actions, because one can predict the risk of consequences only by realizing the risks of actions".

This view is supported by many contemporary legal experts. For instance, V. A. Nersesyan says: "... although such realizing, due to the fact that it does not come directly from the law, although it does not necessarily have to be determined by the court in every case, this is a characteristic of a crime committed with presumption".

S.V. Sklyarov also supports this view: "...if a person can foresee the possibility of socially dangerous consequences of his action (inaction), then he certainly understands their socially dangerous nature. This conclusion can be fully attributed to presumption... ". An individual's awareness of the social danger (harm) of his actions (inaction) is often given as an axiom in contemporary studies of guilt.

The difference between presumption and the intentional form of guilt is traditionally seen in the third characteristic - the unreasonable hope that the consequences will not occur: "presumed foreseeing of socially dangerous consequences... becomes useless (has no effect) by the unreasonable hope that they will not occur". In this regard, the academic literature suggests that a self-reliant person has particular talents that



enable him to allow preventing consequences or is required to calculate on other objective factors due to his profession, specialty, etc.

Now let's talk about the carelessness, which is next type of negligence. Carelessness has two main characteristics: firstly, the person did not foresee the consequences of his actions (inaction). Secondly, the person should have and could have foreseen them (Part 3 of Article 22 of the Criminal Code). From the point of view of criminal law theory, these are negative and positive signs (criteria) of carelessness, respectively.

Negligence is the only type of guilt in which a person cannot inevitably or actually, even abstractly foresee the socially dangerous consequences of his act.

The following are the distinctive characteristics of committing a crime out of negligence. A person is unable to anticipate the likelihood that his actions could have socially dangerous consequences as a result of his action (inaction). In circumstances of carelessness, people's actions or omissions are not intended to harm the interests and values that are protected by criminal code. A person often knows the factual aspect of the actions performed, for example, violating safety rules, but at the same time does not realize that these actions (inaction) can lead to socially dangerous consequences. That is, a person could not be aware that his actions are related to breaking a particular safety rule in such circumstances. This could be the result of exhaustion, negligence, a lack of discipline, etc. However, the above does not mean that a socially dangerous act committed due to negligence is not a voluntary act.

The objective criterion of carelessness is normative in character and means that one has a responsibility to anticipate the commencement of socially harmful effects while adhering to the standards of adequate care and consideration. This obligation may be based on the law, official position of the perpetrator, professional functions or mandatory rules, etc. The lack of obligation to foresee the consequences excludes the guilt of the person in their actual occurrence. But the existence of such a duty is not yet a sufficient reason to recognize a person as guilty. The crime occurs if there is an obligation to foresee the consequences (objective criterion of carelessness), and if the person had a real opportunity to foresee the start of socially dangerous consequences in this particular case (subjective criterion of carelessness), but did not realize this and did not take advantage of the opportunity, and so did not prevent the consequences.

The subjective criterion of carelessness means foreseeing the possibility of socially dangerous consequences, taking into account the a person's unique abilities and personal traits in a given circumstance. This indicates that the likelihood of foreseeing the consequences is determined, firstly, by the characteristics of the situation in which the act was committed, and secondly, by the individual qualities of the criminal. The



setting need not be unduly complicated in order for the task of anticipating consequences to be accomplished in theory. The criminal's unique characteristics—his physical prowess, level of development, education, professional experience, state of health, degree of sensitivity, etc. - allow him to take in the information derived from the circumstances surrounding the act, accurately judge the circumstance and his responsibility, and come to a reasonable conclusion. These two circumstances provide the offender the ability to foresee socially dangerous consequences.

Crimes are typically committed with some forms of guilt. But sometimes the legislator increases the liability if it was committed intentionally, due to negligence, it led to additional consequences, which has the value of a qualifying sign.

Article 23 of the Criminal Code provides for the idea of crimes with two forms of guilt (dual-culpability crimes): in the instance if, in result of commission of an intentional crime, the person, who committed it detriments recklessly other socially dangerous consequences causing stricter liability under law, such a crime shall be recognized as committed intentionally.

Following an examination of the norms included in the Special Part of the Criminal Code, it is possible to see two types of content with two different forms of guilt (dual-culpability crimes):

Material type of corpus delicti (material content) of the first type has two consequences, and the second (longer) consequences are more serious than the first, which are necessary signs of ordinary content. Long-term consequences serve as a qualification that significantly increases the social danger of an act. They include part 2 of Article 173 of the Criminal Code, part 4 of Article 104 of the Criminal Code and other contents.

The second type of crimes with a dual form of guilt (dual-culpability crimes) is feature of formal content, that is, it is characterized by a non-uniform mental attitude towards the action that constitutes the main formal content and the consequence that is repeated in the qualified content. In some sections, such as Article 116, part 4 of the Criminal Code, the consequences of formal crimes are stated clearly as death of persons; in other articles, the legislature employs evaluative notions like grievous injury or other serious effects.

The majority of norms state that taking of life by negligence has a long-term consequence. Such a structure of the content bears a special feature - it shows the concept of a double form of guilt with consequences due to an intentional act and carelessness.

The following is what the phrase 'dual form of guilt' (dual-culpability crimes) means legally:



It is possible to decide whether or not there is corpus delicti by analyzing the criminal's subjective response to the long-term consequences of his action (inaction) (if the perpetrator intentionally caused grievous bodily harm, and he did not foresee the death of the victim, and could not have seen it, then he cannot be held criminally liable under part 4 of Article 104 of the Criminal Code).

It is crucial to study the subjective content of crimes with dual form of guilt (dual-culpability crimes), on the one hand, to distinguish them from intentional and careless ones, and on the other hand, from cases that are similar in terms of objective characteristics, that is, to correctly qualify them.

The existence of a dual form of guilt (dual-culpability crimes) in the act for which a person is found guilty allows to assess the degree of dangerousness of his actions (inaction), which affects the degree of punishment.

The individualization of punishment depends on specific characteristics of the criminal's mental attitude to the act, its primary and additional consequences, and the motivations behind the crime.

Therefore, it is important to distinguish dual form of guilt (dual-culpability crimes) from aggregate crimes, crimes with two or more consequences with alternative features of the same composition, crimes of the "mixed" form of guilt, that is, crimes in which the fact of the act itself is a part of a specific offense, and the fact that it causes serious consequences due to carelessness turns the administrative offense into a crime committed as a result of carelessness, other crimes committed due to various combinations of intent and negligence.

REFERENCES

1. Pustoshinskaya O.S. The subjective side of the crime in criminal law // Almanac of modern science and education. 2010 №1 (32) 2010 part 2.
2. Sergievsky N.D. Russian criminal law: a course of lectures. Pg., 1915. p.259.
3. Semenov K.R. Issues of criminal law at the present stage. M., 2014. p. 250.
4. Bragin A.P. Russian criminal law: Educational and methodical complex. - M.: Ed. EAOI center. 2014. - p.426, 2008.
5. Course of criminal law. A common part. Volume 1: The doctrine of crime / Ed. N.F. Kuznetsova and I.M. Tyazhkova. M., 2012. p. 203.
6. Criminal law of Russia. Textbook for high schools. In 2 volumes. Volume 1. General part / Ed. A.E. Zhalinsky. - M., Norma, 2014.
7. Tolkachenko A. A. Problems of the subjective side of the crime / A. A. Tolkachenko. - M.: Zakon and Pravo, 2005. - p.176.





8. Criminal law of Russia. Parts General and Special / Ed. A.I. Raroga. - M. Prospekt, 2013. - p.80.
9. Esakov G. A., Ragulina A. V., Yurchenko I. A. Awareness as a component of the intellectual element of intent: debatable issues // State and Law. 2004. No. 6.
10. Kravchuk V.L. The concept of "guilt" in criminal law // Zakon and Pravo. 2005. No. 5.
11. Criminal Code of the Russian Federation of June 13, 1996 N 63-FZ (as amended on March 30, 2016).
12. Ivanov I. S. On the question of the relationship between the forms of guilt and their main features // Russian investigator. - 2005. - No. 11. - p. 18-24.
13. Veklenko S.V. Essence, content and forms of guilt in criminal law // Jurisprudence. - 2002. - No. 6 (245). - p. 131-140.
14. Petin I. A. Logical foundations of guilt in criminal law // Russian investigator. - 2009. - No. 17. - p. 19-21.
15. Bikeev I. Actual problems of the doctrine of the subjective side of the crime /I. Bikeev // Criminal law. - 2002. - No. 3. - p. 9.
16. Nedopekina T. Problematic aspects of criminal carelessness in law enforcement // Criminal law. - 2009. - No. 5. - p. 52-54.
17. Filanovsky I. G. Socio-psychological attitude of the subject to crime. - L.: Leningrad Publishing House. un-ta, 1970. - p.585.
18. Nersesyan V. A. Liability for negligent crimes. -St. Petersburg: Jurid. Center Press, 2002. - p.478.
19. Sklyarov S.V. Guilt and motives of criminal behavior. -St. Petersburg: Jurid. Center Press, 2004. - p.358.
20. Dage P. S., Kotov D. P. The subjective side of the crime and its definition. - Voronezh: Voronezh Publishing House. un-ta, 1974. - p. 129-130.

