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Historical Background that Influenced the Genesis of the Institution of Causing Death By Negligence (Islam, Tsarist Russia and the Ussr)

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Abstract: This scientific article examines the history of the development of domestic criminal legislation regarding the institution of causing death by negligence. In this regard, the individual and most important periods of the capture of Central Asia, which influenced the formation of the criminal legislation of the modern Republic of Uzbekistan, are taken. These stages cover events related to: the influence of Muslim criminal law; the conquests of Tsarist Russia in Central Asia and the influence of Russian criminal legislation at the beginning of the 20th century; with the correlation of the criminal legislation of the USSR and the Uzbek SSR.

Keywords: death by negligence; the right to life; intent; frivolity; westernization; islam; Tsarist Russia.

Man is one of the greatest creatures of the Almighty, and life itself is an invaluable gift. In this regard, the right to life as one of the fundamental human rights is proclaimed in such important documents of the United Nations, namely, in the "Universal Declaration of Human Rights of 1948" and in article 6 of the "International Covenant on Civil and Political Rights of 1966", in such an explanation: "The right to life – an inalienable right protected by law. No one can be arbitrarily deprived of life".

Without a doubt, the right to life, which includes the inadmissibility of encroachment on human life, is understood to include his right to live in favorable living conditions, with a prosperous natural environment, in addition, criteria for the quality of life of the population, the procedure for carrying out abortions, unacceptability and prohibition of euthanasia.

At the same time, article 25 of the Constitution of the Republic of Uzbekistan states that "the right to life is an inalienable right of every person and is protected by law. Encroachment on human life is the gravest crime. The death penalty is prohibited in the Republic of Uzbekistan".

At any time, the deliberate taking of another person's life was considered a disapproving and disgusting act, since this action is intentional and focused, roughly speaking, on achieving the result – the death of the victim. For all that, how things were in the past, when it came to manslaughter, where there was no desire, permission, intention of the person involved.

So, in order to consider the issue in its entirety regarding the development of the institution of criminal liability for causing death by negligence, it is necessary to analyze the history of the formation of criminal law in Uzbekistan, dividing it into three periods, which are more significant and main:

The first period: the conquest of Central Asia by the Arab Caliphate in the VII-VIII centuries, that is, the influence of Muslim criminal law;

The second period: the seizure of the territory of Central Asia by Tsarist Russia and the formation of the Turkestan Region – aspects of Russian criminal legislation at the beginning of the XX century;

The third period: the formation of the Uzbek SSR and its entry into the USSR in 1925 – the ratio of Soviet criminal legislation.

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The influence of Muslim criminal law. Before we consider Muslim criminal law, as part of the study of the history of the institution of criminal liability for causing death by negligence, first of all, we note that the legal culture of Uzbeks is interconnected with the Islamic Sharia.

Strictly speaking, judges of Muslim law did not have the right to directly use the Holy Koran or refer to collections of the Sunnah in solving criminal cases, since only theologians, in other words, theologians explained this kind of dogma, objectively interpreting the essence of the holy Scripture itself.

In fact, most of the provisions of the Holy Quran are of a casual nature and represent specific interpretations given by the Prophet Muhammad himself in connection with special cases. In fact, some regulations have a rather vague appearance, acquiring different meanings due to the content they contain. At the same time, in subsequent judicial and theological practice, as well as in legal doctrine in connection with a fairly free interpretation by different madhhabs, that is, legal interpretations, they were expressed in contradictory, and often in mutually exclusive legal prescriptions [1].

Stating the facts, it should be emphasized that there are three types of murder in Muslim criminal law: absolutely intentional; absolutely unintentional (by mistake) – "hut" and intermediate between intentional and unintentional, when the nature of the crime is difficult to establish.

In particular, regarding manslaughter, we will consider in more detail, referring to the teachings of some madhhabs and the opinions of legal scholars. For example, on the one hand, the Shiites, the actions of the murderer, not aimed at the destruction of other persons, in the case when the murder is still committed, equate this act to premeditated murder. In view of this, the jurist Abu Yusuf, in our opinion, rightly remarks, critically pointing out the fact that murder of this kind should be attributed to manslaughter, because it takes place if a person hits a target, although he did not mean it. In other words, if the perpetrator did not have a murder target, then manslaughter is committed.

At the same time, the scientist Fan Den Berg puts forward such a speculation that "manslaughter can be of two kinds: that is, it can happen when someone only wants to injure another, but unfortunately kills him, or when he does not intend to cause him suffering at all".

In addition, if we reveal the concept of murder "hut", then it is a murder committed by accident, more precisely as a result of an error with an absolute absence of thought about murder, but in the case of negligence or negligence. In this regard, the jurist M.I. Sadagdar, as an example, cites a case when a hunter shot at game from afar and accidentally hit a person. On the other hand, in addition to what has been said, the Hanifites also distinguish "tasbib", or rather, murder, in which the person's action is not directed at killing at all, the person did not foresee and was not obliged to foresee the consequences of his action in this regard. For example, a man dug a well on his land, which another person accidentally fell into and died [2].

However, regarding the main issue, more precisely, responsibility for causing death by negligence, we note that in Muslim criminal law since ancient times, when considering such a category of criminal cases, Surah al-Nisa (4:92) was used, according to which a ransom was established. Thus, explaining this case according to the verse, it is important to point out that responsibility for the commission of such a criminal act is qualified in four points:

- "It is not appropriate for a believer to kill a believer, except by mistake. Whoever killed a believer by mistake must free a believing slave and give the family of the murdered man a ransom, unless they sacrifice him".
- "If the believer was from a tribe hostile to you, then it is necessary to free the believing slave".
- "If the murdered person belonged to a nation with which you have a contract, then it is necessary to give his family a ransom and release the believing slave".
- "Whoever is unable to do this must fast continuously for two months as a penance to Allah. Allah is All–knowing, All-wise".

To tell the truth, in the time of the Messenger of Muhammad (s.a.v.) there was no such legal system and justice as in our days, violators of the law of Allah were punished in the form set out in the above verse. There were slaves in that society, and the perpetrators of murder were punished in accordance with these social opportunities and conditions, as provided for in the Holy Koran, or rather, to say that the person who accidentally killed a person had to pay a ransom and free one believing slave. For all that, if there was neither one nor the other, then Allah ordered us to keep a fast.

Due to the absence of a category of slaves in our modern society, in this case, the concept of "liberation of a slave" means and provides for the appointment and payment of compensation in monetary terms [3].

As a result, it is important to specifically mention that it is not appropriate for believers to kill each other under any circumstances. Nevertheless, if a person committed murder unintentionally, then he did not commit a sin and did not violate the prohibitions of Allah, but still, his act remains disgusting and terrible, since the very fact of it causes disgust, despite the fact that a person committed it accidentally [4].

It follows that in the formation and development of criminal law in modern Independent Uzbekistan, the role of Muslim criminal law and Islam in general is ambiguous and incredible. We believe that for that time, the institution of criminal liability for causing death by negligence was disclosed quite comprehensively, while criminal liability for such an act corresponds to the standards of humanity and justice, although not only the principle of "democracy", but also the very concept of "democracy" was absent. Moreover, when imposing punishment under Muslim criminal law in the form of ransom, or rather, in the modern sense, in the form of compensation or a fine, it was necessary to proceed from the real possibility of paying this ransom by a person who committed an illegal criminal act, and it turns out that, again, this nuance is valid to this day in our country judicial practice in criminal matters is applied by judges when imposing punishments.

Aspects of Russian criminal law at the beginning of the 20th century. Anyway, the middle of the 19th century is a time of change for Muslim law, at the same time for criminal law. However, the Islamic world, which had previously been in a closed area, faced a fairly economically developed Western civilization. In this regard, the issue and the task of modernizing legal regulation have been raised. Thus, this period was referred to as the "period of Westernization", more precisely, the borrowing of the Western European way of life.

Undoubtedly, this process was provoked by the conquest of Central Asia by Tsarist Russia and the creation in 1867 of the Turkestan Governor-General in this territory, headed by Governor-General Konstantin von Kaufmann. Accordingly, during this period, Sharia law operated in a limited form. At the same time, sharia norms were in effect in court proceedings by judges, that is, judges of that time.

In addition, the Russian Empire, roughly speaking, dictated its own laws, so the law in the Turkestan region was based on the laws of this empire.

Consequently, let's consider the legal act of the Russian Empire, adopted after the capture of Central Asia and which had an impact on the development of criminal law in modern Uzbekistan.

Therefore, in the history of the development of criminal law in Tsarist Russia, this period is marked by the fact that in 1903 a Criminal Code was adopted, in which the General and Special parts were clearly distinguished. Moreover, in the General Part, such concepts as crime, intent, negligence, preparation, attempt, complicity were given. In addition, this part covered the chapters: on crimes and criminals in general; on punishments; on the definition of punishment for crimes; on mitigation and cancellation of punishment; on the scope of the provisions of this Code.

In addition, the Code of 1903 gave the following definition of a crime: "an act prohibited by law at the time of its commission, under pain of its punishment." The principle that was present in the previous Code and allowed the court to fill in the law in cases of gaps in the law was rejected: "there is no crime; there is no punishment without specifying it in the law". As before, crimes were divided into serious crimes, crimes, and misdemeanors.

Meanwhile, regarding negligence, it can be distinguished that it was divided into criminal negligence and criminal arrogance.

In fairness, with regard to negligence, in this case it means that the person who committed the criminal act did not foresee the consequences, although he could, moreover, should have foreseen them. Regarding arrogance, in a word, the criminal assumed in advance the possibility of consequences, but at the same time, thoughtlessly hoped for their prevention.

It should be noted that in a number of articles of the Criminal Code of 1903 on causing death by negligence, the following is explained: for example, article 42 says: "A person is found innocent if he could not foresee or prevent the act".

In turn, the second part of article 48 states: "A criminal act is considered careless not only when the perpetrator did not foresee it, although he could or should have foreseen it, but also when, although he foresaw the onset of the consequences causing the criminality of this act, he thoughtlessly assumed such a consequence to prevent".

On the other hand, with regard to punishments for causing death by negligence, article 464 of this Code provides that "the perpetrator of negligent causing of death is punished by imprisonment. If the death was caused by the culprit's failure to comply with the rules established by law or a mandatory decree for his type of activity to protect personal safety, then he is punished by imprisonment in a correctional house for a period not exceeding three years or imprisonment in a fortress for a period not exceeding three years. Moreover, the court is given the opportunity to prohibit the guilty person from the kind of activity in which he caused death for a period of six months to three years and publish the verdict".

Consequently, the legal norms of the Criminal Code of the Russian Empire revealed to us the vital fact that at that time, without exaggeration, we note that progress was being made in drafting criminal legislation, since real steps can be felt for the development of criminal law as a whole.

The relationship between the Soviet criminal legislation and the criminal legislation of the Uzbek SSR. First of all, it is important to mention that in 1917, after an armed uprising, Soviet power was established in Tashkent and the Turkestan ASSR was established. In these circumstances, there was a limited, in Soviet form, Europeanization of Uzbek law. Of course, as a result of the Soviet legal expansion, legislation was artificially unified under common standards and Russian legislation began to operate on the territory of the republic.

It must be admitted that the Soviet legal system of Uzbekistan served the interests of the command and administrative planned economy, at the same time, ignored political pluralism, asserted the monopoly of one party and was strongly subordinated to ideology. In addition, the legislative body of the republic only copied union or Russian laws, party and government decisions [5].

Next, consider the Criminal Code of the RSFSR of 1922, regarding the negligent infliction of death. At the same time, at first it is necessary to highlight an important detail that in the process of preparing this code, justice workers not only of the RSFSR, but also of other Soviet republics, including the Uzbek SSR, took a direct part. In this regard, the content of the norms of the Criminal Code of the RSFSR of 1922 and the Criminal Code of the Uzbek SSR, introduced in 1926, had similar sides and largely coincided [6].

Nevertheless, as stated in article 147 of the Criminal Code of the RSFSR of 1922, negligent homicide was punishable by imprisonment or forced labor for up to one year. In turn, if the negligent homicide was the result of conscious non-compliance with the rules of precaution, then the penalty could be increased to three years in prison, and the court could prohibit the convicted person forever or for a certain period of time the activity in which he caused death [7].

Accordingly, first of all, it is necessary to highlight the differences in the names of legal norms, namely: in the disposition of Article 147 of the Criminal Code of the RSFSR of 1922, it is indicated as "Negligent homicide", and in the Code of 1903, this criminal act was referred to as "Reckless infliction

of death". At the same time, it is important to analyze if, in contrast to the Criminal Code of 1903, the more significant advantage of which, as found above, was the division of the "institute of negligence" into such types as criminal arrogance and criminal negligence, then in the Criminal Code of the RSFSR of 1922, only "frivolity" acted as a type of negligence. In this regard, from our point of view, it is worth paying tribute to the Code of 1903, in which this institution was specified in detail.

Thus, in conclusion, it is worth noting that these events have left their indelible mark on the history of our country, in addition, in the development of criminal law and the formation of criminal legislation of Uzbekistan, since many legal norms of the modern Criminal Code of the Republic of Uzbekistan were borrowed from the criminal legislation of the above-mentioned states.

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