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THE CRIMINAL CODE OF MONGOLIA. THE GENERAL PART. CRIME

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Introduction. In a number of positions, the Criminal Code of Mongolia is recognized as more progressive than the Criminal Code of the Russian Federation. Therefore, it is no coincidence that there is a noticeable increase in the number of publications devoted to legislative decisions of the Criminal Code of Mongolia, which are of undoubted interest in scientific discussions on key criminal law issues.

General provisions. The Criminal Code opens with Chapter 1 "General provisions", which sets out the goals, principles of the criminal legislation of Mongolia, the rules of its operation in space and time. The Criminal Code of Mongolia enshrines only three principles: legality, justice and guilt. The law explicitly states that it is not allowed to bring a person to criminal responsibility for opinions or beliefs. The issue of the time of commission of ongoing and ongoing crimes has been resolved. The rules on the statute of limitations of a crime have been moved to this chapter.

Crime. The foresight of an act in the criminal law is called an indispensable condition for the recognition of an act and omission as criminal, and, in particular, a careless act. The concepts of a continuing crime and an ideal set of crimes are revealed. Only two categories of crimes are fixed: serious and minor. The form of guilt for the purposes of categorization of crimes in the Criminal Code of Mongolia is insignificant. The very forms of guilt (intent and negligence) are named in art. 2.3. At the same time, intent is not divided into types. The Criminal Code of Mongolia defines the concept of damage and harm caused by a crime. The chapter ends with the regulations on the unfinished crime.

Complicity. It is noteworthy that the form of guilt of the crime committed is not specified in the law. A mediocre performer is a person who has committed a crime by using not only a person who has not reached the age from which criminal responsibility begins, an insane person, but also other persons who have not committed a crime in complicity with the perpetrator and do not realize that a crime is being committed, or livestock or other animals. The perpetrator of a crime is also recognized as a person who inclines another person to commit a crime under the influence of physical or mental coercion.

Circumstances precluding the criminality of the act. This institution has found regulation in Chapter 4 of the Criminal Code. It can distinguish significant differences from the Russian Criminal Code in regulating necessary defense, extreme necessity, coercion, reasonable risk, and execution of an order.

The procedure, grounds for criminal prosecution and exemption from criminal liability. Chapter 6 contains regulatory requirements that define: (1) signs of the subject of the crime – an individual; (2) general rules for bringing to criminal responsibility and (3) special rules for sentencing; (4) rules for exemption from criminal liability and punishment.

Liability of legal entities. Chapter 9, which closes the General Part, is devoted to their responsibility, which defines the grounds for bringing legal entities to criminal responsibility; types of criminal liability; guarantees of its inevitability. The basis for the imposition of punishment is the sole or joint decision of authorized officials representing a legal entity, or actions or omissions committed in the interests of a legal entity that contain signs of an appropriate corpus delicti.

Conclusions. Modern Mongolian criminal legislation, while maintaining continuity and honoring legal and cultural traditions, has a qualitative originality. The normative prescriptions proposed in it are of interest to Russian criminal law science and the legislator. Undoubtedly, the experience of Mongolian criminal law regulation can and should be taken into account by the domestic legislator.

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1. Introduction. The legal culture and elements of the legal technique of Mongolian law are similar to the legal system of Russia, primarily due to the neighborhood and historically established friendly relations [1, p. 49; 2, p. 134-137; 3, p. 38]. At the same time, national systems of criminal law enforcement are in many ways unique, since they were formed against the background of socio-political upheavals, which gave scope for large-scale legal experimentation [4, p. 44]. Currently, there are noticeable desires of individual scientists and Mongolian law schools to identify two more vectors: western (European) and Asian (Japan, Korea) [5, p. 80].

Mongolia has a Criminal Code of 2015, which was adopted on December 3, 2015 (entered into force on July 1, 2017) and is characterized by many innovations. Omsk Academy of the Ministry of Internal Affairs of the Russian Federation and the University of Internal Affairs of Mongolia for the first time translated the full text of the Criminal Code of Mongolia (as of August 1, 2020) [6].

In the doctrine of the Criminal Code of Mongolia, it was assessed as a voluminous and complex normative legal act executed at the modern level, based on a unified legal approach, a coherent system of principles and systematic legal technique [7, pp. 107-109]. According to a number of positions, the Criminal Code of Mongolia is recognized as more progressive than the Criminal Code of the Russian Federation [8, p. 119], therefore, a noticeable increase in the number of publications is seen [9; 10; 11, 12; 13] and monographic studies [14] devoted to legislative decisions of the Criminal Code of Mongolia.

The Criminal Code of Mongolia (hereinafter referred to as the Criminal Code) consists of General and Special Parts, including 30 chapters (9 and 20, respectively). The final chapter 30 "Other" contains only one article defining the effective date of the current Mongolian Criminal Code - July 1, 2017.

2. General provisions.

The Criminal Code opens with Chapter 1 "General provisions", which sets out the goals, principles of criminal law, and rules of its operation. The objectives of the Criminal Code are defined as the protection of human rights and freedoms guaranteed by the Constitution of Mongolia, public and national interests, the constitutional order, ensuring national security and the safety of mankind from criminal encroachments, as well as the prevention of crimes (Article 1.1 of the Criminal Code of Mongolia).

The Criminal Code enshrines only three principles: legality (art.1-2), justice (p. 1.3) and guilt (art. 1.4). But in part 2 of art.1.3 it is established that when recognizing an act as a crime and imposing punishment, discrimination against a person (yalgavarlan gaduurkhahguy) is not allowed depending on his nationality, language, race, age, gender, social origin, condition, property and official position, attitude to religion, beliefs, gender, education and disability. Thus, the legislator includes the principle of justice and the principle of equality of citizens before the law [15, p. 358].

The establishment of criminal liability of legal entities is also reflected in the content of the principles of the criminal law. Thus, according to Part 1 of Article 1-3, criminal liability applied to a specific individual or legal entity who has committed a crime must correspond to the nature and degree of his public danger, the category of the crime, as well as the form of guilt. At the same time, bringing a person who has committed a crime on behalf of or in the interests of a legal entity to criminal liability cannot become the basis for releasing a legal entity from criminal liability (part 4.3).

It is noteworthy that by revealing the content of the principle of guilt, the legislator not only reproduces the idea of criminal liability only for crimes in respect of which the court has established the guilt of a person (Part 1 of Article 4), and the prohibition of objective imputation (Part 2), but also formulates in Part 3 the concept of innocent harm (similar to the requirements of Part 1 of Article 28 of the Criminal Code of the Russian Federation). In addition, the law explicitly states that it is not allowed to bring a person to

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criminal responsibility for opinions or beliefs (Part 4).

The Criminal Code itself resolved the issue of the time of commission of ongoing [17] and ongoing crimes (Part 3 of Article 1.8). The rules on the limitation period of a crime (Article 1.9) [18] have been moved to this chapter, which, among other things, contain a special rule (Part 5) establishing a five-year limitation period for crimes consisting of tax evasion.

3. Crime (Chapter 2 of the Criminal Code).

A culpably committed socially dangerous act or omission provided for in a Special part of the Criminal Code (Part 1 of Article 2.1) is recognized as a crime.

More attention is paid to the sign of illegality. In part 3 of this article it is emphasized: an act or omission that has caused harm or damage, which has signs of guilt, but is not provided for in a Special Part, is not considered a crime. In Article 2.2, the foresight of an act in the criminal law is called an indispensable condition for criminalizing an action and inaction (Part 1) and, in particular, a careless act (Part 2). The same article reveals the concepts of a continuing crime (Part 3) and an ideal set of crimes (Part 4).

The Mongolian Criminal Code has abandoned the concept of recidivism. However, the commission of intentional crimes provided for in one chapter of the Criminal Code, two or more times, is recognized as a circumstance aggravating criminal liability (Part 1.2 of Article 6.6). At the same time, the category of the committed crime and the age of the offender do not matter. The categorization of crimes is carried out in Article 2.6 of the Criminal Code, in which only two categories are fixed: heavy and light weight. Crimes of minor gravity are recognized as acts for which the maximum penalty provided for by the Criminal Code does not exceed five years in prison or a more lenient type of punishment is established. The severity of the minimum possible punishment is an indicator of public danger for serious crimes: acts for which the minimum penalty is at least two years in prison are recognized as such. The form of guilt is insignificant for the purposes of categorizing crimes.

Actually, the forms of guilt themselves (intent and negligence) are named in Article 2.3. At the same time, intent is not divided into types and is characterized by: 1) awareness of the illegality of their actions or inaction; 2) the desire to commit them; 3) intentional infliction of harm or damage. Carelessness is divided, in Russian terminology, into frivolity and negligence, but the content of their intellectual moment also includes awareness of the illegality of their actions or inaction. A mixed form of guilt is causing harm and damage by negligence as a result of intentional actions or inaction (Part 1 of Article 2.4).

The Criminal Code of Mongolia gives the concept of damage and harm caused by a crime (part 1-3 of Article 2.5) In Part 4 of this article, the unified amounts of damage provided for by the Criminal Code of Mongolia are defined: large (tugriki, in the amount of not more than less than fifty thousand units); significant (in the amount of at least ten thousand units); small (in the amount of no more than three hundred units). One penalty unit is equal to one thousand tugriks (Part 3 of Article 5.3 of the Criminal Code).

The chapter is completed by the regulations on the unfinished crime (Articles 2.7, 2.8). Criminal liability does not arise for actions or omissions to prepare crimes for which a penalty of imprisonment of up to three years is provided. The punishability of preparation is limited to one third of the maximum penalty imposed for the crime committed, and attempts are limited to two thirds. An attempt at a crime in the Criminal Code of Mongolia is directly recognized as the actions of a person who has given an obviously illegal order or instruction, in case of non-fulfillment (Part 3 of Article 4.6).

In Parts 3, 4 of Article 2.8, similar domestic regulations on voluntary refusal to commit a crime and its criminal consequences are set out.

4. Complicity.

The institution of complicity is presented in Chapter 3 of the Criminal Code. It offers an original solution to the problems discussed in Russian science [19; 20]. Complicity in a crime is recognized as the intentional joint participation of two or more persons in the commission of a crime (Part 1 of Article 3). The form of guilt of the crime committed is not specified in the law. Complicity in a crime is also recognized as a preliminary conspiracy to

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commit a crime or intentional joint actions without prior conspiracy to commit a crime (Part 3 of Article 3.1).

As in Russian criminal law, accomplices are recognized as the perpetrator, organizer, instigator and accomplice. It is noteworthy that a mediocre performer is recognized as a person who has committed a crime by using not only a person who has not reached the age from which criminal responsibility begins, an insane person, but also other persons who have not committed a crime in complicity with the perpetrator and do not realize that a crime is being committed, or cattle or other animals. The perpetrator is also recognized as a person who inclines another person to commit a crime under the influence of physical or mental coercion (Part 2 of Article 4.4).

Since the Mongolian legislator has provided for criminal liability for legal entities as well, the Criminal Code specifically stipulates that the executor is an authorized official who has the right to make a decision for a legal entity that made a decision or gave permission on behalf of or in the interests of a legal entity to commit a crime by using another person whose actions or inaction contain signs of composition crimes. In this case, an official of a legal entity who committed a crime together with the head of the legal entity, if he knew that the decision of the head was illegal, is recognized as a co-executor.

The co-executor is also recognized as the organizer of the commission of a crime, i.e. the person who initiated, planned or directed the commission of a crime, organized the distribution of responsibilities or the participation of co-executors, as well as the person who created an organized criminal community (Parts 1, 2 of Article 3.3), as well as the person who created or led an organized criminal group (Part 2 of Article 3.8). The latter is also subject to punishment for her creation of an organized group and her leadership.

The Criminal Code has also found a solution to the question of the criminality of the acts of accomplices. Thus, the punishment for the instigator should be no milder, and the punishment for the accomplice should not be stricter than the punishment that is imposed on the perpetrator of the crime. Thus, the instigator is equalized in terms of public danger with the perpetrator of the crime, and the least dangerous type of accomplice is recognized as an accomplice.

The law names two forms of complicity: group commission of a crime (regardless of the presence of collusion) and an organized criminal group. The concept of an organized group is of undoubted interest. Firstly, such a group is a stable association consisting of previously united persons; secondly, there must be at least three such persons; thirdly, such a group must be created in order to obtain benefits; fourthly, the way to profit is through the constant commission of crimes (Part 1 of Article 3.8).

A member of an organized criminal group is criminally responsible not only for the crimes committed by it, but also for joining an organized group. A person who joined the activities of an organized criminal group and committed a crime is also recognized as such. The law provides for the possibility of commutation of punishment or release from punishment of a member of an organized criminal group, provided that: 1) confessions of guilt; 2) surrender; 3) assisting in the disclosure of crimes committed by an organized criminal group, providing information or other cooperation with competent authorities (Part 6 of Article 3.8).

5. Circumstances excluding the criminality of the act (Chapter 4 of the Criminal Code).

There are also six such circumstances, as in the Criminal Code of the Russian Federation: necessary defense (Article 4.1), encroachment committed for the purpose of detention and restraint (Article 4.2); causing harm if absolutely necessary (Article 4.3); coercion and influence (Article 4.4); reasonable risk (Article 4.5); execution of an order or instructions (art. 4.6). But there are also significant differences: first of all, in terms of determining the criteria for the legality of the harm caused [21; 22; 23].

Firstly, the Criminal Code abandoned the concept of "exceeding the limits of necessary defense." Actions containing elements of a crime, directed against an attack and other illegal actions against the life or health of the defending person or other persons are not considered a crime. At the same time, actions involving resistance to the lawful actions of a law enforcement officer who has the

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right to use firearms with physical force and special means in accordance with the law in the performance of official duties and investigation of cases, or a security service employee who has the right to use firearms, physical force and special means in accordance with the law, are not recognized as necessary defense. in accordance with the law in the performance of official duties. An employee of a law enforcement agency in the Criminal Code is understood to be an employee of the police, intelligence, enforcement of court decisions, a special state security service, an authorized person who is granted a special right by law, as well as an inspector for the protection of natural resources (note to Article 4.2).

Secondly, exceeding the measures necessary to detain a person or suppress criminal acts, the infliction of unlawful harm by a law enforcement officer is recognized.

Thirdly, acts committed under the inevitable influence of other persons, as a result of the use of violence or threat of violence, or causing harm or damage to the rights or legitimate interests of this person, family members or other persons, are not recognized as a crime, unless the threatening danger was clearly exceeded.

Fourth, the scope of application of such a circumstance as a reasonable risk is limited. It is permissible only when performing industrial or research work to achieve socially useful results, and sufficient preventive measures to prevent harm should be provided for in the law or standard.

And, finally, fifthly, the actions of a person who has given an obviously illegal order or instruction are recognized as an attempt at a crime in case of non-fulfillment.

6. The procedure, grounds for criminal prosecution and exemption from criminal liability (Chapter 6 of the Criminal Code).

Chapter 6 of the Criminal Code of Mongolia is quite unusual. It contains regulatory requirements that define: 1) signs of the subject of the crime – an individual; 2) general rules for bringing to criminal responsibility and 3) special rules for sentencing; 4) rules for exemption from criminal liability and punishment.

An individual as a subject of a crime under the Mongolian Criminal Code must reach the age of criminal responsibility and have sanity.

The general age of criminal responsibility in Mongolia, as in Russia, is 16 years. Persons who have reached the age of fourteen at the time of the commission of the crime are subject to criminal liability for relatively simple crimes, the public danger of which is quite obvious (murder, intentional infliction of serious harm to health, rape, theft, robbery, etc.). An exhaustive list of such crimes is provided in Part 2 of Article 6.2. It is much narrower than in Part 2 of Article 20 of the Criminal Code of the Russian Federation, but it reasonably includes such acts as violation of public peace (Article 20.16), unlawful access to computer information (Article 26.1), manufacture or sale of programs or technical means with illegal access to a network of computer information (Article 26.2), creation, use and distribution of malicious software (Article 26.3). At the same time, teenagers who have committed these crimes, who, due to mental retardation, are not able to fully realize the illegality of their actions or inaction or the harm caused by their act, are allowed not to be punished.

Insanity, as in Russia, is recognized as a condition of a person in which he does not realize the actual nature and social danger of his actions or is unable to direct them due to a mental disorder or dementia. The legislator refused to single out the types of mental disorders. At the same time, insanity is not associated with the time of commission of a socially dangerous act: according to part 4 of Article 6.3 of the Criminal Code, a person who became insane after committing a crime is prescribed compulsory medical measures by the court. In case of recovery, such a person is subject to punishment.

Compulsory medical measures may also be prescribed to a person who has committed a crime while intoxicated, if the court determines the state of alcohol or drug dependence.

7. Liability of legal entities.

The responsibility of legal entities, which is actively discussed in the Russian doctrine [24; 25], is devoted to the closing General part of the Criminal Code of Mongolia, Chapter 9, which defines the grounds for bringing legal entities to criminal responsibility; types of criminal liability; guarantees

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of its inevitability [26]. In addition, Part 4 of Article 5.1 of the Criminal Code ("Purposes of criminal liability") establishes that a legal entity is criminally liable if this is provided for by a Special part of the Criminal Code.

The basis for sentencing a legal entity is a single or joint decision of authorized officials representing a legal entity, or actions or omissions committed in the interests of a legal entity that contain signs of an appropriate corpus delicti. Part 2 of Article 9.1 specifies that such a crime can be committed: 1) by an official who has the right to make a decision on behalf of a legal entity; 2) by another person on behalf of this official by making a decision or giving permission on behalf of or in the interests of a legal entity; 3) actions or omissions committed by non-fulfillment of duties assigned by law.

It is important that bringing a legal entity to criminal responsibility is not a reason for the release from punishment of an authorized official who made a decision or gave permission on behalf of a legal entity.

The only type of punishment established for legal entities is a fine in the amount of ten thousand to four hundred thousand units. Coercive measures may be attached to it in the form of: 1) deprivation of the right (prohibition of carrying out one or more types of activities for a period of one to eight years, or measures in the form of deprivation of the right provided for in a Special part of the Criminal Code); 2) liquidation; 3) confiscation of property or income of a legal entity.

The Mongolian legislator creates substantial guarantees of the inevitability of criminal liability of a legal entity (Article 9.7) in the event of the transformation of a legal entity that should have been criminally liable.

In addition, holders of shares to whom property has been distributed, or a person with common interests who unreasonably received property, property or non-property rights of any form and in any way from a legal entity, as well as other persons transferring property, property or non-property rights without repayment, if an intentional liquidation of a legal entity has been committed, are subject to criminal liability. persons in order to evade criminal liability during the proceedings of the case.

8. Conclusions.

Modern Mongolian criminal legislation, while maintaining continuity and honoring legal and cultural traditions, has a qualitative originality. The normative prescriptions proposed in it are of interest to Russian criminal law science and the legislator. Undoubtedly, the experience of Mongolian criminal law regulation should be taken into account by the domestic legislator.

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