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ANALOGY OF THE LAW IN GEORGIAN CRIMINAL LAW

Punishment is the strictest measure imposed by state for the commission of a crime. Crime itself is an extreme form of offence, which most disturbs the public peace. This is why the state intervenes far into human rights through punishment. In general, the more unacceptable and intolerable is the revealed action for the state or the society, the more temptation arises for revenge. In the case of crime, the state intervenes further in human rights, invading these rights creates the temptation to take an unjustifiably harsh approach. Punishment in revenge acquires only a repressive character and it is devoid of any practical utility. Consequently, if there was not restraining mechanism to protect human rights, then the state and society would have a fertile ground for arbitrariness. That is why the criminal code of all civil states applies the principle, there is no crime without law (nullum crime sine lege). As an extreme measure of the state's response in terms of human rights violations if an n action, no matter how intolerable it is for the state or society, is not provided in the Criminal Code, can not be considered as a crime and be punishable.

According to Georgian Criminal Code, Article 7 'the grounds for criminal liability shall be a crime, i.e. an unlawful and guilty act provided for by this Code'. Observing the given norm, we can distinguish several circumstances: First, base for liability is crime; Second, crime involves three signs: a) The composition of the action (according to this Code … Action), b) contradiction, c) guilt. Third, the given norm excludes the use of criminal law by analogy, since the act, which is provided by the Code, is declared as a crime. By enforcing this article, the legislature does not allow the possibility for a state to infringe on human rights on the basis of an analogy, a fictional crime, no matter how intolerable it may be to anyone

On the grounds of the stated article, evidently, the basis for the liability represents a crime, comprising of the following three features: composition of an action, criminal misconduct and guilt. Criminal Law of Georgia and theory, likewise the dogmatics of German Criminal Law recognize three-step system of a crime. Furthermore, similar to the German Criminal Code, the Georgian Criminal Code defines and determines the circumstances excluding unlawfulness and guilt, in particular, the chapter VIII of the Criminal Code is dedicated to the circumstances excluding criminality of an action, whereas the chapter IX deals with the circumstances excluding guilt.

The legislator has established the following circumstances excluding criminality of an action: self-defense, seizure of the offender, extreme necessity, justified risk. As for circumstances excluding and mitigating guilt – release from criminal liability due to age, due to mental illness, diminished capacity, mistake of law, execution of order or instructions. This are the circumstances for excluding criminality of an action

despite the action of a particular person may include the composition of the action but do not include guilt or contradiction. Based on this criminal liability is excluded. The exclusion of criminal liability on the basis of such a systemic approach (which derives from German dogma) is in itself interesting for the Georgian classical school of criminal law.

Though when touching the aspects of criminal liabilities in the context of law analogy, the articles 32 and 38 of the Code in force require to be paid special attention in this regard, which defines unlawfulness and circumstances of exoneration based on the principle of analogy of law. In accordance with the Article 32 «A person shall not act unlawfully if he/she commits an act provided for in this Code under such other circumstance which, although not specifucally mentioned in this Code, fully satisfies the requirements for lawfulness of this act», and in accordance with the Article 38 «A person shall act culpably if he/she commits an act provided for in this Code under such other circumstances that, although not specifically mentioned in this Code, fully satisfies the requirements for non-culpability of this act».

Based on the abovementioned legal provisions, on the basis of law analogy in the Criminal Legislation of Georgia the Supra-Statory principles are reinforced. In particular, the act might be formally provided for in the Criminal Code, but committed under such circumstances excluding the unlawfulness or culpability. Herewith, such circumstances might not be known or specifically mentioned in the Code. But the Judge shall apply the Criminal law analogy on the basis of the development of the Judicial Law and release such person who has committed such specific act from the criminal liability.

In the Georgian Criminal Code, the use of the analogy of law in favor of the individual should be considered a step forward. He gave an important impetus to the Georgian theory and practice to determine the circumstances excluding specific contradictions and charges and to develop appropriate criteria for their exclusion. Georgian criminal theory actively discusses circumstances that exclude wrongdoing and guilt, such as the consent of the victim, the alleged consent of the victim, conflict of duties, competition of duties, confiscation of the item, tragic collision, etc. Clearly, these circumstances and criteria are not currently regulated by the legislature in the Code, however, this should not become an artificial barrier for a criminal charge of a person. Circumstances scientifically developed in theory may also find legislative reflection in the future. However, the analogy of the law before that is an important guarantee to exclude from the action of a person an offense or an act committed to be considered honorable and not to accuse the perpetrator. Such an approach is an important guarantee to prevent unjustified and unjustified invasion of human rights.

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THE SOCIAL DIMENSION OF THE RIGHT TO EDUCATION

The political and constitutional regime change which occurred at the end of 1989, the Republic of Moldova legal system went through a twofold process: on the one hand, the recurrence to the Moldovan people`s democratic traditions by reintroducing certain principles and legal remedies abolished during the communist period; secondly, the resumption of contact with the legal systems of contemporary western states, and as a consequence, the importation of standards developed in these systems in the aftermath of the Second World War, as well as ratifying and enforcing in a short time span the international provisions in the field of human rights. This double process has created a number of discrepancies, caused either by neglecting the resumption of some functional and, at times, cutting edge solutions of the interwar legal system, as well as the adoption of certain international norms without an accurate adjustment to the objective circumstances present in the post-communist Moldovan society.

Human rights are not just a matter of national, but also international law. The legal analysis in this field implies not only searching to determine their nature, but also their extent and limitations.[1]

Therefore, since the second half of the nineteenth century, education has ceased to be a «purely private matter», as it was considered in light of classical liberal theories, as John Stuart Mill stated in his work «*On Liberty*»[2]. Nevertheless, the first constitution which the international doctrine recognizes as being essential for asserting education as a human right is the Soviet Constitution of 1936. Its influence went beyond the constitutions of countries within the „soviet bloc», making so that the adoption of the Universal Declaration of Human Rights under the auspices of the United Nations – shortly after the end of World War II and also in the wake of the Cold War that was to hang over international politics for the next half century –