

the right to temporary protection in the EU during the Russian invasion of Ukraine are leveled.

Therefore, we believe that a procedure should be developed for expedited consideration of the acquisition of statelessness and for the period of its consideration to work out the issuance of documents confirming legal stay in Ukraine and the ability to cross the border due to martial law so that people can take advantage of temporary EU protection.

REFERENCES:

1. Безгромадянство в Україні. URL: <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2021/10/Statelessness-Update-2021-UNHCR-Ukraine-UKR2.pdf>.
2. Особи без громадянства. URL: <https://www.unhcr.org/ua>.

УДК 340.132

Adam Makharadze
*Professor of the Faculty of Law and Social Science
Batumi Shota Rustaveli State University, Georgia*

ANALOGY OF LAW AND COMPETITION OF DUTIES AS AN EXCLUSIONARY CIRCUMSTANCE

According to the current Georgian Criminal Code, it is prohibited to prosecute a person on the basis of the analogy of the law. A crime that is recognized as a ground of responsibility under Article 7 of the Criminal Code is considered to be only an act provided for by the Code. An action, no matter how intolerable and unacceptable to the public, since it is not provided for in the Code is not a crime. Consequently, there is no legitimate right of the state to use punishment as the most extreme form of state invasion of human rights. "It is not a crime without law" It is this civil legal principle that ensures the temptation of the state not to allow retaliation against a person even if he has committed unbearable behavior. Actions similar to the crime (which are not provided for in the Code) provoke a severe reaction in the society, the state using the punishment, as the most severe response to it tries to neutralize it. Therefore, if the analogy of the law were allowed, the repressive state machine would turn into a seeker of envy and the punishment would be stripped of its practical utility function.

Accordingly, the prohibition of the analogy of criminal law against a person must be considered fully justified.

However, the Georgian legislature issues an analogy in favor of the individual, which deals with the circumstances of exclusion of law and guilt and they are regulated by Articles 32 and 38 of the current Criminal Code. Based on the mentioned norms, the principle of supremacy is strengthened in the Georgian criminal legislation on the basis of the analogy of the law. In particular, an action may formally be provided for in the Criminal Code, but it may have been committed in circumstances that preclude wrongdoing or guilt. However, such circumstances may not be known and are not referred to by direct names in the Code. But the judge is obliged to apply the analogy of criminal law on the basis of the development of judicial law and to absolve the perpetrator of a specific action from criminal liability. According to Article 32 of the current Code, «a person who commits an action provided for in this Code in the presence of other circumstances, which, however, are not mentioned by name in this Code, shall not act unlawfully». But fully satisfies the conditions of the legitimacy of this action, «based on this norm, which is based on the principle of analogy of law, a person can be released from criminal liability». For example, in a competition of duties that is close in content to a conflict of duties, however, it is also significantly different from the latter. A conflict of duties occurs when two or more legal benefits are simultaneously threatened and two or more duties are to be performed simultaneously and a person is unable to perform them simultaneously. In the event of a conflict of duties, it is up to a particular person to decide which action to prioritize, for example, two patients whose lives are equally endangered were brought to the doctor at the same time. Here the doctor is in a conflict of duties. A situation like the conflict of duties is not directly regulated by the Criminal Code. Therefore, when considering similar cases, the judge should develop judicial law and based on the principle of analogy of law under Article 32 of the Criminal Code, a person should be released from criminal liability, as a lawful circumstance precluding a contradiction.

We must separate the competition of duties from the collision of duties. In case of a conflict of duties, in addition to the value of the legal benefits, the content of the duty is also taken into account. In both cases legal virtues that are in danger of extinction must be of equal value. For example, two lives, health of two individuals, two properties, and so on. But not property and life, or health and property, etc. In the case of confusion, when for example, the nanny damages the property but saves the child, will be released from criminal liability not on the basis of a conflict of duties, but on the basis of extreme necessity. Since more important value is saved at the expense of less important legal good. But, if the obligated individual behaves in the opposite way and saves property instead of life, then the nanny will be held liable on

a common basis. There will be no circumstance to exclude the contradiction. In short, in the event of a conflict of duties, legal benefits must be of equal value.

The justice of an obligation to act cannot be determined solely by the value of the legal benefits. But also the issue of competition of duties is gaining importance here, which gives different legal meanings to the action taken in case of equal legal benefits and it is the correct legal assessment of competition of duties that is the important guarantee of how, based on the analogy of law, a person should be released from criminal liability. Before we start to clarify the competition of duties, it is necessary to clarify the criminal content of omission. It is a known that inaction results in criminal liability when there is an obligation to act. Such an obligation may arise from the law, from the performance of a professional or official function, from a recent relationship, contract, previous action, etc. These issues are quite well addressed in the legal literature. In the mentioned cases, the person has the function of a legal guarantor and when, the function of this guarantor to protect a legally prescribed good is not performed by the individual, it results in criminal liability. The duty to act in criminal law is also related to the moral duty, which is also called joint responsibility and it is derived from the formula: «People should help each other in need». Such cases are grounds for criminal liability for non-assistance. We can distinguish two types of duties in terms of action: one related to the function of legal guarantor, which is established before the criminal law, and second, solidarity, which, according to moral norms, turns non-performance of duty into a criminal offense.

Since we have found out the criminal content of the duty we can already cite specific examples and discuss in more detail the competition of duty as the lawful circumstance precluding the right of contradiction.

For example, the rescuer Peter is on the beach and sees that his son and a stranger are drowning. In the example given, Peter is in a state of conflict of responsibilities, he is equally obliged to save the lives of both his own son and a stranger. The obligation of this action in the first case derives from a close family relationship, in the second case from the performance of official duties. In both cases there is talk of life as a legal good of equal value. Therefore, if the rescuer rescues his own child or an unknown person, it does not matter, on the basis of a conflict of duties he will be released from responsibility. Peter, who was in a state of necessary repulsion, stabbed the attacker and Paul, who was also next to him, with a knife. Both of them were out of blood flow and needed immediate help. The lives of both of them were endangered by Peter's actions. The question therefore arises to what extent did such an action give rise to an obligation to seek help, and is this obligation identical in both cases? The harm done to one person was related to an unlawful attack, while such harm to another person is accidental in nature. Therefore, this issue cannot be resolved in the same way as a tragic collision. There are legal benefits of equal value, though no duty of equal importance is given. It is rightly mentioned in the legal

literature that the importance of duties cannot be determined by the value of legal goods alone. But here the legal, moral, customary requirements and values of the society must be taken into account. The damage caused by the necessary repulsion cannot be equated to and cannot be a counterbalance to the damage done to Paul. Here the performance of both duties for the administration of justice is not identical. The first in its essence must be equated with joint and several liability, and the second with the function of a legal guarantor. Accordingly, the fairness of the competition of norms here requires that Peter is required to assist in the competition of duties first to help the accidentally wounded Paul and then the person who he injured in the necessary repulsion.

To cite another example, in the street Peter wounded Paul in a necessary repulse, this time a car in the street hit a pedestrian and the driver ran away from the scene. Peter sees that both the repulsed Pavle and the pedestrian on the street are dying in front of him. In the example given, Peter injures the attacker under conditions of necessary repulsion, and this result is caused by his direct action, And the pedestrian is hit by a car, as if the priority here is to prevent the damage caused by the necessary repulsion, But in case of necessary repulsion it is the right of the person to inflict damage and he acts for the purpose of defense, The damage caused by this action therefore does not, in our view, necessitate a different duty. In this case it should be his choice which of them to help. Its action should be based on the principle of joint and several liability. Peter will not be the legal guarantor for any of them and it is his choice which person to save. In such a case, both the legal good and the performance of the duty, which in both cases are of a solidary nature, are the basis for the justification of the person on the principle of equality of duties.

Clearly, it should not be difficult to understand the general classic cases when it comes to the function of a legal guarantor and the performance of a joint and several duty. For example, while a rock climbing student supervised by instructor fell off and is hanging on a rope, asking for help. And a neighbor who came to see what happened slipped and fell into a swamp and is drowning. In such a case, the instructor must act as a legal guarantor and save his student.

When discussing the competition of duties, another important question arises: for the legitimacy of the performance of duties, preference should be given to the content of the duties or the value of the legal good, that is, when a person simultaneously derives the function of a legal guarantor from a lesser legal good and joint and several liability for legal value of greater value. In such a case, preference should be given to the value of the legal good, and these cases should be placed within the scope of regulation of the institution of extreme necessity.

Thus, based on the above analysis, we can draw the following conclusions:

1. Georgian criminal law prohibits the use of the principle of analogy of law against a person, and is allowed in his favor.

2. Conflict of duties and competition of duties can be considered as supra-legal circumstances that exclude wrongdoing, which are not regulated by the Code.

3. When separating the competition of duties from the collision of duties, it is necessary to focus on the content of the duties. In the event of a conflict of duties, we are dealing with an equal amount of duty, while in a competition, these duties are unequal.

4. The existence of unequal responsibilities in the competition of duties relating to the function of a legal guarantor or to liability gives rise to a different legal assessment.

LITERATURA:

1. Makharadze A., *Analogy of the Law in Georgian Criminal Law. Materials of V International Scientific Conference «Ukraine in conditions of reforming of legal system: modern realities and international experience»*, Ternopil, Ukraine, 2021

2. Gamkrelidze O., *Criminal Law Problems*, 3rd volume, Tbilisi, 2015 (Georgian);

3. Turava M., *Criminal Law Review*, 9th edition, Tbilisi, 2013 (Georgian);

4. Mtschedlishvili-Hadrach K., *Strafrecht-Allgemeiner, Teil 2, Besondere Erscheinungsformen Der Straftat*, Tbilisi, 2011 (Georgian);

5. Wessels J., Beuke W., *Strafrecht Allgemeine Teil, Die Straftat und ihr Aufbau*, Tbilisi, 2010 (German);

6. *General Part Of Criminal Law*, Editors: G. Nachkebia, I. Dvalidze, Tbilisi, 2007 (Georgian);

7. *General Part Of Criminal Law*, Editors: G. Nachkebia, G. Todua, 2nd volume, Tbilisi, 2016 (Georgian).

УДК 343.13:341.4

Andrei Pântea

PhD in law, Associate Professor,

Head of Public Law Department,

University of European Studies of Moldova

REFLECTIONS ON INTERNATIONAL LEGAL COOPERATION IN CRIMINAL MATTERS: THE RIGHT TO LIFE UNDER THE PROCEDURAL LIMB

The right to life is one of the most important ones, being enshrined in international human rights treaties, including the European convention on human