Lecture-10. The concept of an offense. Types of responsibility

Based on even a literal interpretation of the term "offence", we can conclude that we are talking about non-compliance with the legal norms established in the state. Moreover, such non-compliance can be both in relation to directly prescribed norms of legislation, and in relation to the so-called. "documents" - for example, internal regulations and rules in organizations, contracts, etc. - after all, it is obvious that it is not possible to directly prescribe in the legislation all possible cases and features of the activities of individuals and organizations due to the huge number of layout options for various provisions and norms of legislation, therefore, in such cases, the legislator is limited to either establishing minimum requirements for the content of such “documents”, or describes the most general requirements for their creation and use, leaving the rest of the content at the mercy of, for example, the parties to the contract, etc.

Nevertheless, in the most general form, any offense has a set of features, the absence of at least one of which allows us to speak about the absence of the very fact of an offense.

It should be especially noted that due to the rapid development of the IT industry in the Republic of Kazakhstan and the borrowing for the use of many generally accepted and commonly used terms in the rest of the world (“cloud technologies”, “blockchain”, etc.), these terms are sometimes absent in the legislation of the Republic of Kazakhstan and their definitions, which, however, does not mean that since there is no such term in the legislation, then there is no legal regulation of these processes, and therefore there can be no talk of an offense. For example, the use of cloud technologies according to the IaaS (Infrastructure as a Service) model is not directly provided for and is not described in the legislation of the Republic of Kazakhstan, however, from the point of view of jurisprudence, this action is defined as the result of the provision of information storage and processing services, and this, in turn, is already regulated by the Civil Code RK in terms of the rights and obligations of the parties to this service (i.e. regulation of the contract / transaction between the one who provides and the one who consumes this service), personal data legislation (in terms of the obligation to place databases with PD in the territory of the RK) etc. etc. Thus, the legislation of the Republic of Kazakhstan, without containing direct formulations of regulation and definition of certain processes, in most cases still has some analogy of regulation of these processes or some of their individual parts, which in turn allows us to talk about the possibility of offenses in this parts and as a whole.

Obviously, if there is a violation, then there is a punishment for it, otherwise the absence of punishment would contribute to an unlimited number of repetitions of such a violation by the same or different persons, and then the meaning of the legal regulation of such processes would be lost - why do you need to follow the rules and norms, if there are no consequences for their violator either from other persons, organizations, or even from the state represented by authorized bodies?

Thus, the following types of liability for offenses are distinguished, which are reflected in the legislation:

- disciplinary / labor;
- civil law;
- administrative and legal;
- criminal law.

Each of the above types of liability has its own specific features. The types of responsibility and their features will be discussed in detail in subsequent questions of the lecture.

Just like any process has a certain algorithm/scheme, any offense also has its own scheme/algorithm. In its most general form, the scheme of an offense looks like this: the subject of the violation - i.e. the one who violates (physically sane person, legal entity, state body, etc.) - a certain danger to society, i.e. encroachment on the established rules of conduct (by law, contract, rules) - the guilt of a person in committing a violation by him (active actions, negligence, negligence, etc.) - violation by him of the established norms (law, contract, rules, etc.) as a result of this; etc.), including the onset of adverse consequences (if there is a causal relationship between his actions / inaction and the consequences) or, in some cases, only the fact of a violation without consequences.

In the most general form, the signs of a violation (the composition of the violation), as well as the grounds for bringing to any of the above types of liability are:

1. The subject of the violation is a specific person (or several persons, including legal entities) who has committed unlawful actions (violation of the law, terms of the contract, etc.) and must be held responsible for this in the manner prescribed by law. The subjects may include different persons: citizens and foreigners, authors of computer programs, media workers, civil servants, etc. persons are brought only to administrative and civil liability.

2. The subjective side of the violation - how the offender is aware of his offense - characterizes the mental attitude of the subject to the committed illegal action or inaction. This sign includes various elements - not only legal, but also psychological signs, such as the purpose and objectives of illegal actions, their motive, desire, form of guilt (intent, etc.), etc. To characterize the subjective side, two forms of guilt matter: intentional or careless.

A violation committed intentionally is an act when a person is directly aware of the social danger of his acts and consequences. In turn, intent can be direct or indirect, and, accordingly, the violation is recognized as committed:

- with direct intent - if the person was aware of the social danger of his actions (inaction), foresaw the possibility or inevitability of socially dangerous consequences and desired their occurrence;
- with indirect intent - if the person was aware of the social danger of his actions (inaction), foresaw the possibility of socially dangerous consequences, did not want, but consciously allowed the onset of these consequences, or treated them indifferently.

Violation committed through negligence is an act committed through arrogance or negligence:

- due to arrogance - if a person foresaw the possibility of socially dangerous consequences of his actions (inaction), but without sufficient grounds, thoughtlessly counted on preventing these consequences;
- by negligence, if the person did not foresee the possibility of socially dangerous consequences of his actions (inaction), although with due care and forethought he should have and could have foreseen these consequences.

3. The object of the violation is what the offender encroaches on. The object of the violation includes information and legal relations, as well as closely related relations, which are protected by the current legislation and to which public damage is caused by a specific offense or only a threat of damage is created. The direct objects of an offense in the information sphere include a variety of phenomena - information itself, information resources, IKI, IS, EIR, printed materials, archival documents, software, topologies of integrated circuits, communication networks, and much more.

4. The objective side of the violation is how the offender committed the violation, and is manifested in the external side of this negative phenomenon, i.e. expressed primarily in how the subject perceived this manifestation, etc. At the same time, it is important to analyze the negative action or inaction itself, the resulting consequences, the causal relationship between them, the place and time of the commission of illegal acts, the condition, instrument, methods, etc. The objective side contains a number of elements: the behavior of the offender, the place and time of the commission of the offense, moreover, information offenses include both action and inaction, expressed, for example, in the failure to take certain measures to protect information, as well as illegal excess or non-use of one's powers to prevent information security breach.

The above are the most common signs of a violation. In some cases, only parts of the above signs take place, mainly when it comes to civil liability:

1) illegal action (inaction);
2) the presence of harm;
3) a causal relationship between the action (inaction) of a person and the unlawful consequence (harm) that has occurred;
4) wine.

However, only the presence of all signs, even if only parts of them, indicates the presence of a violation and, as a result, the possibility of being held accountable.

It should be especially noted that repeated prosecution for the same violation is not allowed. However, there are cases when, as a result of a violation, several types of liability arise, for example, when a materially responsible employee causes damage to the organization as a result of non-compliance with internal rules, etc., the employee, along with disciplinary liability, can be brought to civil law in terms of compensation damage caused to such a company as a result of non-compliance with the established rules, etc. Similarly, when committing a crime, the violator, by a court verdict, will be obliged to compensate the harm caused to the victims, etc.