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**PHILOSOPHICAL BASIS OF CONCEPTS OF GUILT IN CRIMINAL LAW**

**Summary.** The article presents the author’s view on the issue of influence of philosophical views on the emergence of the concept of guilt and its further evolution in the theory of criminal law.

**Keywords:** theory of criminal law, concept of guilt, philosophical basis.

**Formulation of the problem**. At the beginning of XX century on the formation of a science of criminal law in Russia, GS Feldstein said: "In the absence in Russia for a very long period of scientific specialization, very deep insights and, moreover, it is original and related to the substance of the criminallaw, expressed by people who stood far away from the law in the technical sense of the word "[1, 5]. In this regard, it is important to emphasize that the source of philosophical thought was and continues to be an important component of the evolutionary development of scientific views on criminal law in general and wine, chastnosti.Izlozhenie base material. Philosophical view on the issue of guilt formed from the days of ancient antiquity, when philosophers thought about the meaning of guilt, the moral component of its content when the fault is inseparably linked with the violation of moral standards, a sense of responsibility for committing a misdemeanor. The concept of conditionality polis laws objective of global laws was developed by Heraclitus (c. 530 - 470 years. BC. E.), For whose views as to the ancient representatives in general, characterized by consideration of the legal issues and of all the earth, human affairs and relations in close connection and unity with the global, cosmic processes. Therefore, the polis laws were interpreted as a reflection of the cosmic order, entrepre-malis search for cosmic origins polis norms and regulations. According to Heraclitus, the world phenomena inherent in the contacts and "hidden harmony" in principle accessible to human knowledge. The basis for orderly connection of opposites and orderliness of the world as a cosmos is fire - a universal equivalent vzaimoperehodyaschih opposite phenomena and measure the world order in general [2, 401-402]. It can be assumed that, in accordance with the teachings of Heraclitus, wine and culpable conduct are also considered in close connection and unity with the global, cosmic processes, and the fire appeared equivalent of crime and punishment, the guilty and the innocent behavior. The true intentions of the person who has the desire, motivation committed crimes have always had value to determine the anti-social orientation of the individual offender. Democritus Reflections on the matter as follows: "Being a good person is not only to do injustice, but do not want it ... Honest and dishonest man knows not only what he does, but also from the fact that he wants to" [3, 157]. From this saying that the philosopher attached great importance to the person's intentions, and therefore intent, in volitional components include a desire. Sophists were deep and bold innovators. They turn away from the divine to the objective-subjective and complex human phenomena and problems was a great historical achievement. They have made a fruitful attempt to look at the world through the eyes of men [4, 404]. The fundamental principle of views with-Fisto was formulated Protagoras (ca. 481 - 411 years. BC. E.): "The measure of all things - people exist, that they exist and do not exist, they do not exist" [5, 405] . Apparently, so instead of sophistry divine and cosmic explanation of all phenomena and concepts of guilt attached to "misconduct," "misbehavior" of man. In the philosophical writings of Socrates and Plato justified the concept of "involuntary guilt", the essence of which is to ensure that "no one does evil on their own." Any virtue, according to Socrates, - this knowledge. Xenophon wrote about Socrates: "He claims that the justice and every other virtue is knowledge, and that a fair and all that is accomplished by means of virtue, is morally perfect, and that, therefore, knowing the great moral and not prefer anything to him otherwise, and ignorant not make it, but if they want to make, you will run into errors. If the fair and all the great moral and performed by virtue, then, obviously, justice and every other virtue is the law "[6, 408]. Therefore, the blame can hardly recognize the virtue. Therefore, would not contradict the views of Socrates, that those responsible for acts committed out of ignorance.Plato saw the crime product transient painful state of mind, and the punishment - a measure of treatment [7, 37]. Pleasure and pain philosopher recognized source of virtue and vice. "... The first children's feelings, - said Plato - is pleasure and pain, and thanks to them first and appear in the soul of virtue and vice. As for the true understanding and lasting opinion, happy is he in whom they appear even in old age "[8, 100]. In classical antiquity (V-IV centuries BC.) An idea of ​​the deliberate violation of rules , of the free will of man, which is manifested in the commission of the offense. Thus, Aristotle distinguished concepts such as "will", "intend", "desire", "passion", "sudden, random and intentional action" and to establish the correlation between them. As noted philosopher, intent primarily associated with virtue and it is better than by the action to judge character. Sudden action he called arbitrary, but not intentional, distinguished between the intention and desire. "Those seem wrong - Aristotle - who called the intent desire, or passion, or the will, or a certain kind of representation, since unreasonable beings have no intention, and have the desire and passion, and incontinent acts under aspiration tion, but not intentionally, while vozderzhny contrast, acts intentionally, but not under the influence of desire. <...> ... Desire to counteract the intention and desire is not opposed to the drive. Finally, the desire for pleasure and pain, the intention is not concerned either with suffering, with no pleasure, even less intention to be called a passion for what is going on under the influence of passion, the least it seems intentional. But the intention and the will not be called, even though it seems related to it. The intention is never the case with the impossible, and if a man said that he intends to do the impossible, it would seem foolish. Desire [will] not be the impossibility of such immortality. Will can continue to touch and what did not in our power, for example, [we want] to actor or athlete won, but no one is a mind as such, but only to what he thinks, in his power. Moreover, the will has a purpose in mind, the intention is - means "[9, 193-194]. The above statements support the conclusion that the period of ancient philosophy was crucial for the formation of criminal law doctrine of guilt. Concepts such as "intentional violation", "unintentional fault" and "tragic guilt", I think, served as the prototype of intent, negligence and harm the innocent in their modern interpretation of the criminal law. The philosophy of Aristotle, we believe, had a great influence on the look of guilt known Russian scientist SV Poznyshevym [10, 114]. Moral component content guilty today also demanded criminal science. In particular, Professor BT Razgildiev considers it necessary that-be had the moral aspect of the wine, and it would be reflected in her self-sign [11, 112]. In the Old Testament recognized mental, subjective ground of responsibility, along with the objective: a person can only be held responsible for the fact that the injury must also determine the nature of his mental attitude to the offense, which is used in evaluating the signs that indicate the presence or absence of intent. The terms "guilty" and "guilty" means the evaluation of behavior as "blameworthy" or "perfect." Guilt is seen as a general indication that the person committed the alleged offense, his actions (inaction) was a source of harm. This term is more points to an objective, causal connection with the acts of consequences, for example, in the book of Exodus says: If an ox gore a man to death for the first time, the "boss's fault," but if this case is not the first "and its owner, having been informed that not kept it, "or" master <...> put to death ", ie master fault. The terms "guilty", "not guilty" to indicate whether or not the owner take care of their responsibilities ox. In the Book of Exodus also found the phrase "not guilty of death", used when one struck the other and the latter fell sick, but not dead, and having recovered, got up and began to walk with a stick. In this case the impact "will not be guilty of death: but he shall pay for the loss of his job and give it to treatment." The phrase "not guilty of death" means no offense worthy of punishment by death, in other words, the wine in question as a general assessment of the offense. Of the types of fault recognized only direct intention, which defines the term "evil intent" and "intention" indirect intent is not recognized, it was equivalent to negligence, and all that does not indicate a direct intent ("evil intent", "intention"), there negligence or accident. For example, murder is described as: "Who hit the man, so that he die, shall be put to death. But if any man lie not in wait <...> then I will appoint thee a place where escape the killer. And if someone with the intent to slay his neighbor treacherously, even from my altar take him to his death "[12, 61-62]. In our view, the recognition of the Christian doctrine of mental, subjective basis of the responsibility, along with objective, namely, the idea that "a person can only be held responsible for the fact prichineniyavreda must still establish the nature of his mental attitude to the deed," played a major role in the formation of the psychological concept of guilt. Augustine of Hippo - one of the founders of the Christian philosophy in his "Confessions" talked about "escape sin" as follows: "It is also a crime - when eager to harm, insult people or to cause injustice: the enemy wants to take revenge on the enemy, robber robs the traveler to profit at the expense of others, terrible person killed, fearing trouble from him, the poor rich man out of jealousy, a man successful rival out of fear that he will be equal to him, or of chagrin that he was equal to him, enjoying one another's misfortune example is audience for gladiatorial games, and scoffers izdevateli, all shoots of sin that thrives on passion to excel, to see and enjoy, whether man possessed one of them, two or all three at once "[13, Book 3, VIII, 16]. Thought Aurelius Augustine of punishment rooted also go into the idea of ​​original sin, he, in particular, wrote: "And I created not the punishment, but" the sin that dwelleth in me, "as punishment for the sin committed by the free will: I was the son of Adam "[14 eighth book, X, 22]. Christian teaching has a greater influence on secular institutions. The legal system was first canon law, a first set of canons came in 1234, the dominant Christian track and scientifically, because it was a fundamental principle of theology jurisprudence [15, 30]. In the later Middle Ages, Thomas Aquinas (1225 - 1274 gg.), Analyzing the question of motivation of human behavior came to the conclusion that the structure of the act consists of four elements: the desire for something, an effort of will, choice, definition of motives, thinking mode of action, and approving itself of action. According to the teachings of Aquinas man's actions must be performed on the basis of his mind, which is the basis of human freedom, which is realized within the boundaries outlined by God [16, 5]. However, there were several other philosophical views. For example, Niccolo Machiavelli (1469 - 1527 gg.) Based on the fact that "we have to manage, because the Romans condemned differently, depending on the difference between guilt, so you must do so, seeing the difference of our guilt and rebels" [17, 9] . The above saying of Machiavelli suggests that the philosopher attached great importance to different kinds of guilt, guilt. And only in the XVII century. department of philosophy from theology, law and political science [18, 30]. Dutch jurist and philosopher Hugo Grotius in his treatise "On the Law of War and Peace" (1625) pointed out that the natural law, in essence, is the right of the divine, that is, its source is the will of God. The law of God, wrote the philosopher, "was given to the human race three times: immediately after the creation of man, then the purpose of redemption of the human race after the flood, and for the sake of Christ, then the full redemption of the human race" [19, 31]. The concept of guilt is further developed in the writings of Immanuel Kant (1724 - 1804 gg.). In such works as "Fundamentals of metaphysics of morals", "Critique of Pure Reason," "Religion within the Limits of Reason Alone," "Metaphysics of Morals", the author has shown convincingly that the man is torn between two worlds: the first, a man - the phenomenon of the material world, cell sensuous natural world, and, second, the man is a supersensible, rational and spiritual, moral [20, 166]. Kant was also a philosophy of religion. Considering the fault through the prism of religious philosophy, he identified the intentional, unintentional and innate guilt. The latter consists in the human quest for the evil, non-performance of duty as the need to do good in all possible completeness [21, 166]. However, Kant said: "Since there is complete freedom of initiative will not defined neither the incentive nor anything else of what affitsiruet subject is relative to it all is determined solely by personal confidence in it, that it was aware of ( itself), acting on their own product, that the will is active and is not determined by the incentive nor the alien impressions. Otherwise, I would have to say that I was attracted to or moved by this or that action, which, in essence, means that I suffer, not actions. If God is in control definition-mi will, operates - it is, if the impact of the things the need to determine the will, they are forced ... "[22, 23].On the question of guilt and the concept of the "Philosophy of Right" GWF Hegel says, "I may be required that contained in my intent, and when considering the crime it takes precedence. However, the fault is entirely external condemnation, something I did or did not do, the fact that I am guilty of anything, it does not follow that the crime can be imputed to me "[23, 161]. The above proposition allows us to conclude that its author considered guilty as an estimate of the fact of the act, the external condemnation of the act. Of the types of fault, it is allocated only intent. Proponents of the concept of fault evaluation postulate Hegel were founded. Theory of will and freedom also have shaped the criminal legal views on the concept of guilt. In the XIX century. Friedrich Nietzsche stated: "... a person becomes what he wants to be, it will precede its existence," "because the person believes himself to be free, and not due to the fact that he is really free, he feels regret and remorse." "No one is responsible for their actions, no one is responsible for your being, the judge - is to be unfair" [24, 52-53], - said Nietzsche. Man is free, and about himself, unless he is a slave to his passions and weaknesses. Acts of man may or may disagree with his free will - and then, says IJ Foinitsky, we speak of human action, or do not agree with it, being defined anything external, extraneous him - and then a product of material, physical, not having any rights to the name of human action. Only the following alternative: either total freedom or total lack of freedom.The first is the exclusive property rights, the basis of its moral and legal responsibility, the second characteristic of the rest of the world. The first answer to the question: why, for what? The second control question: why? All the virtues and vices, all the great things and insignificant man, his whole character all its inner spiritual state is created by his personal free will. For them, as for their products it is reward and punishment, praise and blame, but the terms and exhausted his responsibility and his merit. This is the starting point in this direction, knowing only personal morality, personal ethics, and it relies solely basis of human responsibility to ourselves and to others [25, 34-35]. Conclusions.1. Period of ancient philosophy was crucial for the formation of criminal law doctrine of wine and continues to be important at the present time for a proper understanding of the theory of guilt. Concepts such as "intentional violation", "unintentional fault" and "tragic guilt", developed by the ancient philosophers, we think, is the prototype of intent, negligence and harm the innocent in their modern interpretation of the criminal law. Moral component content guilty today also demanded criminal science. In particular, BT Razgildiev considers it necessary that wine had a moral sense, and it would be reflected in her self-sign.2. It can be assumed that, in accordance with the teachings of Heraclitus wine and culpable conduct considered in close connection and unity with the global, cosmic processes, and the fire appeared equivalent of crime and punishment, the guilty and the innocent behavior.3. Aristotle distinguished concepts such as "will", "intend", "desire", "passion", "sudden, random and intentional action" and to establish the correlation between them. As noted philosopher, intent primarily associated with virtue and it is better than by the action to judge character. Sudden action he called arbitrary, but not intentional, distinguished between the intention and desire.4. The recognition of the Christian doctrine of mental, subjective grounds of responsibility along with objective, namely, the idea that "a person may not only be responsible for the fact that the injury must also determine the nature of his mental attitude to the deed," played a major role in shaping the psychological concept of guilt .5. Judgment GVF Hegel that the wine is the assessment of the facts of the act, the external condemnation of the act, the basis of valuation supporters took the concept of fault.

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**Найбойченко В. В. Філософська основа кримінально-правового розуміння провини**

**Анотація.** У статті представлений погляд автора на проблему впливу філософських поглядів на виникнення поняття провини і подальший його еволюційний розвиток в теорії кримінального права.

**Ключові слова:** теорія кримінального права, поняття вини, філософська основа.

**Nayboychenko V.V. Philosophical basis of concepts of guilt in criminal law**

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