ԲԱՆԲԵՐ ԵՐԵՎԱՆԻ ՀԱՄԱԼՍԱՐԱՆԻ. ԻՐԱՎԱԳԻՏՈՒԹՅՈՒՆ
2023. № 2. 76-85 *Քրեական իրավունք*
https://doi.org/10.46991/BYSU:C/2023.14.2.076

CERTAIN ISSUES RELATED TO THE CORPUS DELICTI OF ISSUING A MANIFESTLY UNJUST JUDGMENT, VERDICT, OR OTHER JUDICIAL ACT

ARMAN HOVHANNISYAN

In the scopes of the present article, certain issues related to the offense of issuing a manifestly unjust verdict, judgment, or other judicial act has been discussed. Analyzing the crime of issuing a manifestly unjust verdict, judgment, or other judicial act, it has been noted that in many countries there is no such crime in the section of crimes against the interests of justice. In the countries that have it, the formulation of the crime is diverse. Though some authors think that the judicial acts mentioned in the Article 482 of the Criminal Code have to resolve the case on the merits, in our opinion, certain other acts like the decision to choose a preventive measure should also be included in the scope of acts. The requirement of having the judicial act reviewed and annulled by higher instances is not mandatory in RA, however, the analysis of the article in detail makes this requirement necessary to prevent abuses. Though certain countries do not require motives as a mandatory element of this crime, we think that motives should be required for the proper qualification of the crimes.

Key words: *making of a manifestly unjust judicial act, verdict, judgment, other judicial act, acts resolving the case on the merits, to be annulled, mercenary, other personal interestedness, group interests*

This scientific article aims at starting the discussion of issues related to the corpus delicti of "Issuing a manifestly unjust judgment, verdict, or other judicial act", which causes serious problems in practice. The relevance of the topic is expressed by the fact that almost no judicial acts have been issued in RA under this article, and corpus delicti has not undergone serious analysis.

As the first part of the article has been included in the new RA Criminal Code in almost the same wordings, assertions (judgments) made in regard to the former wordings of corpus delicti made in this article are equally applicable now too.

Pursuant to Article 91 of RA Constitution[1] of 1995 *"In the Republic of Armenia justice shall be administered solely by the courts in accordance with the Constitution and the laws."*

And pursuant to Article 97 *"When administering justice, judges and members of the Constitutional Court shall be independent and shall only be subject to the Constitution and the law."*

The complex analysis of the mentioned articles proves that in the newly independent Republic of Armenia, a request was made before the state at the constitutional level to ensure the existence of a strong and independent judicial system. It is not a coincidence that the mentioned articles were equally included

[1] See https://pdf.arlis.am/1

in the constitutional amendments of 2002[2].

In the Constitution adopted in 2015, the status of judges and administration of justice were given greater importance, but the above-stated requirements with slightly different wordings were preserved in articles 162 *(In the Republic of Armenia, justice shall be administered only by courts in compliance with the Constitution and the laws)* and Article 164 *(When administering justice, a judge shall be independent, impartial and act only in accordance with the Constitution and the laws.*

A judge may not be held liable for the opinion expressed or judicial act rendered during the administration of justice, except where there are elements of a crime or disciplinary violation.) of the Constitution.

To ensure these constitutional requirements, a whole chapter is devoted to the crimes against justice interests in both the previous and current criminal codes. The corpus delicti, which is the subject of this research, has also been included in that chapter.

The article 352 of the Criminal Code of former edition[3] defined responsibility *for issuing a manifestly unjust judgment, verdict, or other judicial act by a judge with mercenary or other personal motives.* The article also stipulated the qualified types of the corpus delicti. In particular, the second part stipulated responsibility *for the same deed, which had negligently caused serious consequences, whereas the third part – for the same deed, which had willfully caused serious consequences.*

The article is included in the new criminal code almost identically. The only difference relates to the motive – *the circumstance of acting based on group interests*[4] was added. Thus, article 482 of the new criminal code determines responsibility *for issuing a manifestly unjust judgment, verdict, or other judicial act by a judge starting from mercenary, other personal, or group interests.* Unlike the former code, the new code does not contain aggravating and more aggravating circumstances. Under the conditions of the new code, in case of intentionally causing other consequences, the act must be qualified by a combination of relevant articles.

The corpus delicti in question is also included in the criminal codes of a number of other countries with similar wordings. In particular, article 305 of the RF criminal code determines responsibility *for issuing a manifestly unjust judgment, verdict, or other judicial act by a judge or judges*, and by the second part responsibility is determined *for the same act which has caused imprisonment or other serious consequences*[5].

By section 339, the criminal code of Germany determines responsibility for the perversion of the course of justice. According to this article, *"A judge, other public official or arbitrator who perverts the course of justice while conducting a trial or making a decision on a legal issue to the benefit or detriment*

[2] See https://pdf.arlis.am/75780

[3] See https://www.irtek.am/views/act.aspx?aid=150015

[4] See https://rm.coe.int/new-criminal-code-guideline-arm/1680a72c57

[5] Seehttps://www.consultant.ru/document/cons_doc_LAW_10699/b9ab9819ab2d12f2938889cc08a5baa909989122/#:~:text=1.%20Вынесение%20судьей%20(судьями)%20заведомо,на%20срок%20до%20четырех%20лет

of a party shall be liable to imprisonment from one to five years"[6].

The Ukraine criminal code, article 375, part one, determines responsibility for *issuing a manifestly unjust judgment, verdict, or other judicial act by a judge*[7]. Unlike the example of Germany, Ukraine does not require any motive to qualify an action by this article. In case of acting out of mercenary or other personal interests or causing serious consequences, the deed is qualified by quality corpus delicti.

The Presence of motives and incentives is not a mandatory element in Kazakhstan either[8].

There are also developed countries, which do not determine criminal responsibility for issuing a manifestly unjust judicial act by a judge. For example, there is a chapter in the criminal legislation of Canada relating to crimes against justice, but this chapter defines only such corpora delicti as *involving officials in corruption, bribing a municipal official, defrauding the government, and other similar crimes*[9].

Similarly, the USA federal criminal legislation has no corpus delicti devoted to the issuing of a manifestly unjust judicial act by a judge[10]. Only *bribing the judge, giving false testimony, disrespecting the court, not appearing as a witness, disrupting the course of the trial, etc.*[11] are considered crimes against justice in the USA.

French legislation also stipulates a separate chapter for crimes against administering justice, in which, nevertheless, the corpus delicti in question is absent[12].

In RA, despite the responsibility stipulated for issuing a manifestly illegal judicial act, it is worrying that no judicial acts relating to the mentioned corpus delicti were found by results of the search in "The Datalex" judicial information system which speaks of the fact that in practice this corpus delicti is not applicable.

First, issuing a manifestly unjust judicial act is a crime of corruption with the high degree of latency. Taking into consideration the possibility of a judicial error, in practice no sufficient mechanisms are developed to understand when issuing a wrong judicial act is a crime and when it is simply a result of a judicial error.

Let's present the relevant issues connected with corpus delicti by analyzing the elements of corpus delicti separately.

The objective aspect of the crime stipulated under the article in question is displayed by issuing an unjust judgment, verdict, or other judicial act[13]. Taking into consideration the circumstance that a judgment and a verdict are acts which are issued by a first instance court when resolving the case on the merits, the

[6] See https://defensewiki.ibj.org/images/d/d7/Criminal_Code_Germany.pdf
[7] See https://yurist-online.org/laws/codes/crime/Criminal_Code_of_Ukraine.pdf
[8] See https://www.vertic.org/media/National%20Legislation/Kazakhstan/KZ_Criminal_Code.pdf
[9] See https://laws-lois.justice.gc.ca/eng/acts/c-46/page-19.html#h-117787
[10] See https://www.law.cornell.edu/uscode/text/18/part-I
[11] See https://criminallaw.uslegal.com/crimes-against-justice/
[12] See https://yurist-online.org/laws/foreign/criminalcode_fr/_doc-5-.pdf
[13] See **Arakelyan Sergey, Gabuzyan Ara, Khachikyan Harutyun, Ghazinyan Gagik, Maghakyan Norik, Margaryan Anna, Simonyan Tigran, Kocharyan Vigen**, Criminal Law of the Republic of Armenia (special part) 2012, Yer., Yerevan Univ. Public..

acts issued by the court which significantly affect the resolution of the case or deal with important rights and freedoms of a person can be considered as other judicial acts mentioned in the article. Such can be the decisions regarding the selection of a restraining measure or its elimination, the postponement of execution of the judgment or elimination of the decision on conditional non-application of a sentence, and decisions on other issues. Simultaneously, those judicial acts which do not affect the outcome of the case and resolve only organizational issues (decisions on the postponement of a court session, the order of holding the session, etc.) are not judicial acts in the sense of Article 482.

There is also a viewpoint according to which issuing a manifestly unjust judicial act supposes issuing of only such judicial acts, which in essence decide the outcome of the case[14]. Acts on arrest or selection of another measure of restraint are not included in the list of such decisions. In the case of the second approach, an illegal decision on arrest can be qualified as an offense under article 478 of the current code, which stipulates responsibility for illegal detention, arrest by a competent person, or for not releasing illegally a detained or arrested person subject to release. In the case of the first approach, the qualification of the deed depends on the motives of the act and the chosen measure of restraint. In our opinion, nevertheless, in this sense the approach adopted in RA is more grounded, as there are numerous judicial acts that do not resolve the case on the merits (are not final acts), but significantly restrict the rights and freedoms of persons (sequestration of property – the right of free disposition of property by a person, the decision on allowing the execution of an evidentiary action – a person's right to inviolability of private life, etc.), therefore, issuing of such acts unjustly should not be left without criminal consequences. Even the supporters of the viewpoint, according to which the corpus delicti of issuing a manifestly unjust judicial act is applicable only in case of acts resolving the case on the merits, take note of the decision N УКПИ10-11 of the Supreme Court of the Russian Federation, dated 18 February 2011, stating that a *decision on arrest can also bring to the qualification of the deed with the above corpus delicti*[15].

A judicial act is considered unjust when it is made by gross violation of requirements of the norms of substantive or procedural law. Moreover, they can be in any part of a judicial act.

In other words, as a consequence of injustice, inconsistency arises between the court decision and the factual circumstances of the case, stable legal regulations, approaches, and theoretical analyses.

Nevertheless, it should be noted that not all, even gross violations of substantive or procedural norms should be qualified as issuing a manifestly unjust judgment, verdict, or other act. If these violations did not result in the acquittal of a guilty person, the conviction of an innocent person or other similar consequences, there is no corpus delicti. Acts issued by courts of appeal or cassation are considered unjust if by them the first instance court acts are groundlessly

[14] See, for example, Kudryavtsev V.L. Legal and procedural problems of determining the subject of a crime stipulated by art. 305 of CC RF "Issuing of a manifestly unjust judgment, decision or other judicial act"

[15] See, for example, Kudryavtsev V.L. Legal and procedural problems of determining the subject of a crime stipulated by art. 305 of CC RF "Issuing of a manifestly unjust judgment, decision or other judicial act"

left unchanged or vice versa, they are unreasonably changed, as a consequence making the judicial act unjust[16].

In accordance with decision N 23-П of RF Constitutional Court, dated 18 October 2011, in the terms of the corpus delicti in question, only a judicial act, *the illegality or groundlessness of which has been recognized under order determined by criminal procedure*, can be considered an unjust act[17].

This means that if a judicial act has entered into legal force, is not appealed, or is left unchanged after appealing, it cannot be considered a manifestly unjust judicial act. In our opinion, such an approach is justified. Otherwise, this corpus delicti will become an instrument in the hands of the law-enforcement bodies to apply pressure on all those judges whose acts do not satisfy.

Although in RA the interpretation of this article does not mention that an act, that is considered manifestly unjust, should be annulled by a higher instance, by some cases RA domestic courts have also come to the conclusion given by RF Constitutional Court. In particular, by case N YC/0067/11/21, by thedecision taken on 1 July 2001, RA Yerevan City First Instance Court of General Jurisdiction recorded the following: *"Thus, the Court, taking into consideration the above, comes to the conclusion that in each case when the court issues a judicial act which by evaluation of this or that procedural party is illegal, groundless, impermissible and even absurd, but* ***there is no specific assessment of a relevant authority, in this case – of a higher instance, yet and/or reasonable motives, reasons regarding the possible illegality of the act, it cannot be treated as an apparent crime. The opposite approach is very dangerous and may have its negative impact in the sense of restriction of independence of the court (the judges), as each judicial act, which is by estimation of a party illegal, can serve as a basis for starting a criminal procedure towards a body having guarantees of inviolability".***

In another decision N YC/0253/11/21 taken on 18 June 2021, the same court recorded the following: "And, for the part of the demand stated in the conclusive part of the appeal, by which it was requested to acknowledge the conformity of the decision made by judge K.P. by the civil case N YC/24011/02/20 on 18 August 2020 with the requirements of RA Civil Procedure and RA Law "On Bankruptcy", the Court does not relate to, because, as it has already been mentioned above, ***the competency of checking the legality of the judicial act issued by a court belongs to superior court instances***".

In the indicated situation, a logical question can arise in regard to those acts, which are not subject to appeal and, therefore, cannot be annulled. Such are, for instance, decisions of the Court of Cassation and the Constitutional Court. Some authors simply consider that in the case of the mentioned acts, the deed cannot be qualified as issuing of a manifestly unjust judicial act[18]. Al-

[16] See Arakelyan Sergey, Gabuzyan Ara, Khachikyan Harutyun, Ghazinyan Gagik, Maghakyan Norik, Margaryan Anna, Simonyan Tigran, Kocharyan Vigen, Criminal Law of the Republic of Armenia (special part) 2012, Yer., Yerevan Univ. Public..

[17] See http://www.consultant.ru/document/cons_doc_LAW_120709/

[18] See, for example, Kudryavtsev V.L. Legal and procedural problems of determining the subject of a crime stipulated by art. 305 of CC RF "Issuing of a manifestly unjust judgment, decision or other judicial act"

though the stated approach is unfair at first glance, it is more acceptable than waiving the condition of annulment of the judicial act. Only courts administer justice in the RA. This requirement is constitutional and absolute. No exceptions can be made to it by law. Public participants of criminal proceedings or the Supreme Judicial Council, when initiating criminal proceedings or depriving a judge of inviolability, are not entitled to make or express positions in regard to the legality or justice of the judicial act issued by the judge.

Both the international and regional criteria of a judge's independency determine that a judge cannot be of his/her decision, judicial error, or different interpretation. This is determined by the Common Charter of Judges, article 7-1, by African Principles and Guidelines for Fair Trial and Legal Aid (article 4-2), paragraph 66 of the Recommendation on Independency of a Judge of the Council of Europe, paragraph 21 of Magna Karta of Judges, paragraph 25 of Kiev Recommendations[19].

RA Judicial Code constitutional law also, following the international regulations, determines by article 142 that *when administering justice or other law-provided authorities as a court, interpretation of the law, assessment of facts and proofs cannot automatically lead to disciplinary responsibility.* Hence, if the interpretation of the law, the assessment of facts and proofs by itself cannot lead to disciplinary responsibility, then they cannot lead to the application of criminal-legal intervention measures either.

At the same time, though we find that for the presence of the corpus delicti in question, as a rule, it is necessary that the fact of issuing the judicial act unjustly, with gross violation is confirmed by a superior instance (i.e. the fact of annulment of the judicial act), the possible situations when as a result of mutual arrangement a judicial act with obvious violation is issued in several instances of judicial system is also left open (for example, a first instance court, starting from group interests, acquits a person by evidently wrong application of law, whereas the superior instances leave it unchanged with the same interest).

In other words, in the given example, it is complicated to imagine the issues of revealing the discussed crime, starting a legal process and/or subjecting it to responsibility.

Besides, there can be situations when the judge, having certain material or other interest, from a legal point of view issues a sound and legally reasoned judicial act, in favour of a participant of the proceedings or one of the parties, which is left unchanged as a result of appealing to superior instances. In such conditions, there will be no features of the interpreted corpus delicti in the judge's behavior, as though there is a motive (the fact that the act was issued starting from money or group interests), the absence of indication of a violation of the norms of substantive or procedural law by the superior instances, and as a consequence, the non-annulment (non-alteration) of the judicial act excludes the legal possibility of considering the specific judicial act as manifestly unjust. We find that in such situations when an issued judicial act is formally lawful, the judge's deed must be considered in the scopes of another corpus delicti (other corpora delicti).

[19] See https://undocs.org/A/75/172

The discussed corpus delicti is formal: the crime is considered completed from the moment of publication of the judicial act[20]. Thereupon there are no serious contradictions between the approaches. The corpus delicti is formal as in the criminal codes of all the states which stipulate this corpus delicti only the deed in is mentioned without determining consequences[21]. Therefore, the approaches to the moment of the end of the crime are not contradictory either. A crime is considered completed from the moment of publication of the manifestly unjust act by the judge[22].

The subjective side of the corpus delicti is characterized by direct intent: the criminal is conscious that he/she issues an unjust judicial act and wants to do it. The fact, that the subjective side of this offense is characterized only by direct intent, is proved by several circumstances. In the opinion of many authors, this is evidenced by the use of the term "manifestly" in the disposition of the article, which shows the awareness of the injustice of the issued judgment or other judicial act by the person issuing it[23].

Article 25 of the new criminal code determines the types of direct and indirect intention. According to the article "The crime is considered committed with direct intention if the person is conscious of those factual circumstances of his/her deed, which are features of corpus delicti, and the performance of this deed is his/her purpose/goal or the means to achieve his/her goal. The crime is considered committed with indirect intention if the person is conscious of those factual circumstances of his/her deed which are features of corpus delicti, and although the commitment of this deed and commitment of the given crime is not his/her goal, he/she commits it". From this expression/wording, it follows indirectly that the differential line between the direct and indirect intentions is the attitude of the offender to the consequences of the deed. In his dissertation, Kartashov notes that in the case of formal corpora delicti, when the occurrence of the consequence is not obligatory, the subjective aspect of the crime can only be characterized by direct intent[24]. The basis for this conclusion is the judgment that it is not possible to foresee the possibility of dangerous consequences for the public, not to want these consequences, but knowingly cause them, if the occurrence of such consequences is not necessary to consider the act completed and qualify it as a crime[25].

If an unjust judgment of another judicial act is a result of an error, then in

[20] See Arakelyan Sergey, Gabuzyan Ara, Khachikyan Harutyun, Ghazinyan Gagik, Maghakyan Norik, Margaryan Anna, Simonyan Tigran, Kocharyan Vigen, Criminal Law of the Republic of Armenia (special part) 2012, Yer., Yerevan Univ. Public..

[21] See Kartashov Alexandr Yuryevich Criminal Responsibility for Issuing Manifestly Unfair Judgment, Decision or Other Judicial Act – criminal law and criminology, criminal-executional law, Dissertation, Stavropol – 2004, Course on Criminal Law, Special part. V. 5 / edited by G.N. Borzenkov, V.S. Komissarov. – M. 2002. – P. 196; Criminal Law, Special part. V. 2 /edited by L.D.Gaukhman, S.V.Maksimov – M 1999.

[22] See in the same place.

[23] See Kartashov Alexandr Yuryevich Criminal Responsibility for Issuing Manifestly Unfair Judgment, Decision or Other Judicial Act – criminal law and criminology, criminal-executional law, Dissertation, Stavropol – 2004

[24] See Kartashov Alexandr Yuryevich Criminal Responsibility for Issuing Manifestly Unfair Judgment, Decision or Other Judicial Act – criminal law and criminology, criminal-executional law, Dissertation, Stavropol – 2004

[25] See in the same place.

case of the presence of respective features the deed/act can be qualified as official negligence[26]. A judicial error is the wrongful application of substantive or procedural norms as a result of bona fide delusion/ignorance. In many cases, such errors are made as the judge cannot estimate correctly the level of satisfaction of evidence/proofs compiled on this or that threshold of proving. Besides, in many cases, the inferior instances hope that even if they make a mistake in estimation/evaluation of this or that circumstance that will not lead to annulation of the judicial act. The judicial error differs from acts characterized in Article 482 of the Criminal Code, as the latter are made consciously. The judge understands clearly /is clearly aware that he/she administers illegal/unlawful and unjust act, and wants it.

In terms of evaluating the subjective aspect of the act, the use of the term "manifestly" in the definition of the crime is also important. The word "manifest", according to Eduard Agayan's Modern Armenian Explanatory Dictionary[27], is interpreted as *evident,* and according to the Explanatory Dictionary of Modern Armenian Language published by the Language University after Hrachya Acharyan[28] – as *apparent, ostensive, evident, explicit, known, unhidden.*

A logical question can arise – for whom should the unjustness of the judicial act be obvious? All authors studied by us consider in their works obviousness as an element substantiating the intent of the act made by the judge, and so interpreted the term "manifestly" as obviousness for the judge who has made the act. This approach is acceptable, nevertheless, the inclusion of such wording in the corpus delicti generally becomes redundant. The presence of motives and the wording of corpus delicti by itself witness the fact that the act is manifested with direct intent from a subjective aspect, therefore, the offender is clearly aware that he/she issues an unjust judicial act.

As it has been already noted, the motive of the crime is a mandatory feature of the subjective aspect of the corpus delicti: the crime has a place only when it is committed with mercenary or other personal incentives. According to the new code, one more motive has been added to this group – a commitment to crime starting from group interests. Mercenary motives can be manifested in various ways. In particular, the offender convicting an innocent person wants to take possession of his/her property in the absence of the latter or makes an unjust judicial act in exchange for a bribe. If the deed is combined with receiving a bribe, then the deed should be qualified by a combination of crimes. Other personal motivations also can have various manifestations – jealousy, revenge, etc.[29] Group interests also can be manifested in various forms. Group interestedness can be manifested in the form of willingness to defend the interests of a

[26] See **Arakelyan Sergey, Gabuzyan Ara, Khachikyan Harutyun, Ghazinyan Gagik, Maghakyan Norik, Margaryan Anna, Simonyan Tigran, Kocharyan Vigen**, Criminal Law of the Republic of Armenia (special part) 2012, Yer., Yerevan Univ. Public..

[27] See http://www.nayiri.com/imagedDictionaryBrowser.jsp?dictionaryId=24&query=ulկhuujun

[28] See http://www.nayiri.com/imagedDictionaryBrowser.jsp?dictionaryId=29&dt=HY_HY&query=ulկhuujun

[29] See **Arakelyan Sergey, Gabuzyan Ara, Khachikyan Harutyun, Ghazinyan Gagik, Maghakyan Norik, Margaryan Anna, Simonyan Tigran, Kocharyan Vigen**, Criminal Law of the Republic of Armenia (special part) 2012, Yer., Yerevan Univ. Public..

party, a clan or other groups[30].

In some situations, the judges may consciously commit wrong application or partial neglect of substantive and especially procedural norms to make the process of the trial faster in conditions of imperfect legislation providing the reasonable terms of criminal case examination or to achieve procedural solutions that do not transgress the rights of the parties. In this case, the deed will not be qualified by Article 482 either, however, not because of a procedural error but on the grounds that the motives for committing the crime will be absent.

This is exactly the main reason that we, as many domestic and foreign authors, find that, unlike the approach adopted by the legislators of Russia, the Ukraine, Kazakhstan, and other post-Soviet countries, the presence of motives in the corpus delicti under discussion is mandatory. Otherwise, the borderline between a judicial error and the making of a manifestly unjust judicial act would be very ambiguous, and the qualification of an act by this article – is unjustified in many cases.

The subject of the crime is special, these are only the judges[31]. This means that intermediaries, arbitrators, and other decision-making authorities cannot be considered the subject of this corpus delicti, even if the acts issued by them have mandatory legal force for the parties[32]. In terms of corpus delicti, subject can be considered a person who appears as a judge or carries out actions arising from the position of a judge[33].

Finally, it is also necessary to record that the corpus delicti stipulated by Article 482 of the Criminal Code is a special norm for the corpus delicti of abuse of official powers. Therefore, each time, when a judge issues a manifestly unjust act, the deed should be qualified by Article 482 of the current criminal code.

In conclusion, it can be noted that establishing the issuing of a manifestly illegal judicial act as a crime was an important decision on the part of the legislator, nevertheless, the qualification of a deed with this corpus delicti will continue to be rare, very complicated from the aspect of differentiation and proving of a judicial error, until the mechanisms of subjecting to responsibility for a commitment of this act are clarified, precise features of differentiation from judicial errors are developed.

ԱՐՄԱՆ ՀՈՎՀԱՆՆԻՍՅԱՆ – *Ակնհայտ անարդար դատավճիռ, վճիռ կամ դատական այլ ակտ կայացնելու հանցակազմի հետ կապված որոշ հիմնախնդիրներ* – Հոդվածի շրջանակներում վերլուծելով ակնհայտ անարդար դատավճիռ, վճիռ կամ այլ դատական ակտ կայացնելու հանցակազմը՝ արձանագրվել է, որ շատ երկրներում «Արդարադատության շահերի դեմ ուղղված հանցագործությունները» վերտառությամբ գլխում այդպիսի հանցակազմ նա-

[30] See http://www.ysu.am/files/pashtoneakan.pdf

[31] See **Arakelyan Sergey, Gabuzyan Ara, Khachikyan Harutyun, Ghazinyan Gagik, Maghakyan Norik, Margaryan Anna, Simonyan Tigran, Kocharyan Vigen**, Criminal Law of the Republic of Armenia (special part) 2012, Yer., Yerevan Univ. Public..

[32] See **Kartashov Alexander Yuryevich** Criminal Responsibility for Issuing Manifestly Unfair Judgment, Decision or Other Judicial Act – criminal law and criminology, criminal-executional law, Dissertation, Stavropol – 2004

[33] See in the same place

խատեսված չէ, իսկ որտեղ նման հանցակազմ առկա է, ապա տրված ձևակերպումներն էապես տարբերվում են: Թեև որոշ հեղինակներ կարծում են, որ ՀՀ քրեական օրենսգրքի 482-րդ հոդվածը վերաբերում է բացառապես գործն ըստ էության լուծող դատական ակտերին, սակայն, հեղինակի գնահատմամբ, քննարկվող դատական ակտերի շրջանակում պետք է ներառվեն նաև մի շարք այլ՝ գործն ըստ էության չլուծող դատական ակտեր, օրինակ՝ խափանման միջոց ընտրելու մասին որոշումը: Հիշարժան է, որ հանցակազմի առարկա հանդիսացող դատական ակտի բեկանված (վերացված) լինելու իմպերատիվ պահանջը չի նախատեսվում, սակայն հոդվածի վերլուծությունն անհրաժեշտ է դարձնում այն՝ խուսափելու հնարավոր չարաշահումներից: Թեև որոշ երկրներում այս հանցագործությունը չի առանձնանում պարտադիր շարժառիթների նախատեսմամբ, այնուամենայնիվ, հեղինակը կարծում է, որ արարքի պատշաճ որակման համար դրանց ամրագրումն անհրաժեշտ է:

Բանալի բառեր – *ակնհայտ անարդար դատական ակտի կայացում, վճիռ, դատավճիռ, դատական այլ ակտ, գործն ըստ էության լուծող ակտեր, բեկանում, շահադիտական, անձնական այլ շահագրգռվածություն, խմբային շահեր*

АРМАН ОГАНЕСЯН – *Некоторые вопросы, связанные с правонарушением в виде вынесения заведомо неправосудного приговора, решения или иного судебного акта.* – В рамках настоящей статьи рассмотрены отдельные вопросы состава правонарушения в виде вынесения заведомо неправосудного приговора, постановления или иного судебного акта. При анализе преступления и вынесения заведомо неправосудного приговора, приговора или иного судебного акта отмечено, что во многих странах в разделе преступлений против интересов правосудия такого преступления нет. В странах, где он есть, формулировка преступления разнообразна. Хотя некоторые авторы считают, что судебные акты, указанные в статье 482 УК Республики Армения, должны разрешать дело по существу, на наш взгляд, в состав актов следует включить и некоторые другие акты, например постановление об избрании меры пресечения. Требование о пересмотре и отмене судебного акта вышестоящими инстанциями не является обязательным в РА, однако подробный анализ статьи делает это требование необходимым для предотвращения злоупотреблений. Хотя в некоторых странах мотивы не являются обязательным элементом данного преступления, мы считаем, что мотивы должны быть обязательными для правильной квалификации преступлений.

Ключевые слова: *вынесение заведомо несправедливого судебного акта; приговор; иной судебный акт; акты, разрешающие дело по существу; отмененные акты; корыстные, иные личные интересы; групповые интересы*