

The Subjective Aspect Of Crimes Related To Violations Of Labor Protection Rules

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Abstract: The article analyzes the subjective aspect of crimes related to violations of labor protection rules, focusing on the forms of guilt. It argues that such crimes can only be committed through negligence, expressed either as criminal self-assurance (recklessness) or carelessness. Particular attention is given to distinguishing self-assurance from indirect intent, as well as to the practical predominance of reckless behavior in workplace accidents. The paper also identifies the special subjects of liability under Article 257 of the Criminal Code of Uzbekistan, including employers, managers, chief specialists, and labor protection service staff.

Keywords: - labor protection, criminal liability, subjective aspect, negligence, recklessness, carelessness, indirect intent, Criminal Code, special subject.

Introduction: There are contradictions among scholars regarding the subjective aspect of crimes related to violations of labor protection rules. Some authors argue that the subjective element of this crime can be characterized by a double form of guilt: violations of labor protection rules can be committed both intentionally and negligently, but the attitude toward the consequences is expressed only in the form of negligence [1].

Another group of authors believes that it is a mistake to equate violations of labor protection rules with an intentional act. They argue that this crime, from a legal perspective, can only be committed through two forms of negligence: carelessness (criminal recklessness) and self-assurance (criminal negligence) [2].

According to Kvasnikov, the subjective aspect of this crime is determined by the subject's negligent attitude toward the possibility of socially dangerous consequences arising from the violation of these requirements [3].

M.Kh. Rustambaev, on the other hand, notes that this crime is committed through either intentional or negligent forms of guilt [4].

In our opinion, regardless of whether the labor protection rules were violated consciously or unconsciously, the form of guilt for this crime can only be negligence.

To analyze why this crime is not committed intentionally, we must address one of the most subtle and complex issues in criminal law theory: distinguishing between criminal self-assurance (recklessness) and indirect intent (*dolus eventualis*). These two are very close because their intellectual element—the foresight of the possibility of socially dangerous consequences—is similar, which often creates difficulties in legal practice. Unlike carelessness, in both self-assurance and indirect intent, the risk is “live” in the person's mind. The only difference lies in their volitional attitude.

In indirect intent, although the person does not desire the consequences, they consciously allow them to occur or are indifferent to them (the “what happens, happens” principle). Their will is not aimed at preventing the consequences. They prefer to continue the dangerous act and consent to the possible tragic outcome.

In “criminal self-assurance”, on the other hand, although the person foresees the consequences, they actively oppose their occurrence and sincerely, yet groundlessly, hope to prevent them. Their will is directed at preventing the consequences. Their tragedy lies in their overestimation of the opposing (obstructing) circumstances in the situation, such as their own skill, the caution of other people, or external conditions. Their hope is in vain because they have

analyzed the situation superficially and misjudged the risk.

For example, an employee is working at a height without a safety harness. If the foreman thinks, "I know he might fall, but meeting the plan is more important to me, so be it, this is indirect intent. If the foreman thinks, "Yes, there is a risk of falling, but this worker is very agile and experienced, he won't fall, I'm confident about that," this is criminal self-assurance.

Thus, the boundary between these two lies in the person's will: in the first case, they are indifferent to the consequences; in the second, they are groundlessly hopeful of preventing them. It is precisely this—the re-evaluation of opposing factors and the failure to make sufficient intellectual effort to realize the flippancy of their calculations—that serves as the main criterion distinguishing the person's action from an intentionally committed crime.

Crimes related to violations of labor protection rules can be committed in any form of negligence—both criminal self-assurance (recklessness) and criminal carelessness.

Criminal self-assurance in a crime of violating labor protection requirements consists of the fact that the offender, while violating the rules, foresees the abstract possibility of causing serious harm to a person's health or their death (the intellectual element of self-assurance), but groundlessly hopes to prevent these consequences, placing excessive confidence in themselves (the volitional element). That is, the person knows and imagines that dangerous consequences may occur and generally understands how the causal link works. However, they think to themselves, "This won't happen to me" because they believe that certain factors in the real situation (e.g., the caution of other workers, automatic protective mechanisms of the equipment, or random luck) will save them from a tragedy.

For example, an experienced excavator driver knows that according to safety rules, trench walls must be shored. To some extent, he understands that violating this rule could lead to the collapse of the walls and the death of a worker inside (intellectual element). However, relying on the density of the soil, his many years of experience, and his belief that he can finish the job quickly, he decides to work without shoring the walls. He is overly confident, thinking, "The soil here is strong, I'll work carefully, nothing will happen" (volitional element). If the wall collapses and a tragedy occurs, his guilt will manifest in the form of criminal self-assurance.

This analysis shows that criminal self-assurance is not a complete denial of the risk but rather a misjudgment of

it and an overestimation of one's own abilities.

An analysis of court judgments indicates that most crimes related to violations of labor protection rules are a direct result of criminal self-assurance (recklessness). In this case, the objectively existing dangerous situation merely creates the groundwork for the tragedy. The direct cause of the accident is the feeling of criminal self-assurance that occurs in the subjective world of the responsible person. This manifests in the person's baseless and flippant hope that a criminal consequence will not occur. In this context, the person's hope is not based on empty fantasies. They try to justify their "everything will be fine" belief by relying on real-life factors. They believe that their many years of experience, the equipment currently working, the workers' qualifications, or a combination of other circumstances will prevent the tragedy. In their mind, these factors act as a "shield" against the risk. Theoretically, these factors may indeed seem capable of preventing harm.

The person superficially analyzes the situation and, by overemphasizing risk-reducing factors, neglects the aspects that increase the risk. Their belief, "I have experience" denies the possibility that "experience can also fail". It is precisely this—the refusal to make the intellectual effort to realize the hollowness of their conclusion—that elevates their action from a simple mistake to the level of criminal negligence and serves as the basis for liability.

In the form of carelessness, a crime related to the violation of labor protection rules is considered to have been committed when a person obligated to ensure compliance with these rules does not foresee the possibility that their violation could lead to serious or grave bodily harm to a person or their death, but should have and could have foreseen it.

For example, an energy specialist responsible for the power grid is apathetic about their duties and misses the quarterly inspection of the insulation of electric cables. It does not even cross his mind that a cable might be old and damaged somewhere. A few months later, during a rainstorm, electricity from the wet, damaged cable passes to a metal fence, and a worker who touches it is electrocuted and dies.

In this situation, the energy specialist did not foresee the tragedy (intellectual element). However, according to his job description, he was required to conduct an inspection and could have found this defect (objective criterion). His qualification and experience allowed him to do so (subjective criterion). Because his carelessness caused a grave consequence, he is held criminally liable.

Features	Self-assurance (Recklessness)	Carelessness (Negligence)
Intellectual Element	The person foresees the dangerous consequence.	The person does not foresee the dangerous consequence.
Volitional Element	Although they foresee the consequences, they groundlessly believe they “won’t happen”	They do not foresee the consequences but should have and could have foreseen them.
Psychic Attitude	Overconfidence, believing they are in control of the situation.	Apathy, indifference, lack of due diligence.
Example	A construction manager does not require workers to wear harnesses, thinking, “The workers will be careful, nothing will happen” → a worker falls.	An electrician fails to notice a damaged cable → a worker is electrocuted.
Main Difference	They know the consequence but believe “it won’t happen”	They do not know the consequence but should have known.

When addressing the subject of a crime involving the violation of labor protection requirements, it is a person obligated to comply with labor protection rules.

Thus, we can say that the subject of the crime under Article 257 of the Criminal Code is special, as only a person with a duty to comply with labor protection rules can be the subject of the crime.

Therefore, according to the Criminal Code of the Republic of Uzbekistan, a sane person who has reached the age of sixteen before committing the crime and has a duty to comply with labor protection rules can be held criminally liable under Article 257.

Even if a person possesses the general characteristics of a subject of a crime, the absence of the special characteristics of the subject for this crime excludes criminal liability under Article 257. In some cases, this means the complete absence of a crime, while in others, criminal liability arises on different grounds.

N. Khiltunov identifies the following individuals as potential subjects of this crime [5]:

Persons who, due to their official position or a specific order, are directly responsible for ensuring compliance with labor protection rules and standards in a particular work area.

Leaders and their deputies, chief engineers, and chief specialists of enterprises and organizations.

If these individuals fail to take measures to eliminate a known violation of labor protection rules, issue instructions contrary to these rules, or, while directly supervising specific types of work, fail to ensure compliance, they are also recognized as subjects of the crime.

Recognizing leaders and their deputies as subjects of this crime is crucial. What happens if an organization has a leader but no employees are specifically assigned the responsibility of ensuring compliance with labor

protection rules? According to N. Khiltunov, in this case, the leader must undoubtedly take on the responsibility, regardless of whether or not they formally undertook the duty to ensure compliance with the rules [6].

I.M. Tyazhkova argues that such a broad definition of persons responsible for violating labor protection requirements constitutes an expanded interpretation of the norm, excessively broadening the scope of the criminal offense. The subject of this crime can only be a person legally obligated to ensure safe working conditions or to oversee compliance with occupational safety. The absence of a legally assigned duty in the field of labor protection should exclude liability under this article. A legal obligation to ensure safe working conditions arises only when a relevant law or subordinate legal act exists [7].

Kvasnikov notes that in qualifying a crime related to a violation of labor protection rules, law enforcement agencies must first determine whether the employer personally violated the rules or if they were violated by a person responsible for creating normal working conditions. If a responsible person committed the violation, it is also necessary to consider whether they had the actual opportunity to ensure compliance with these requirements, as well as whether they possessed special training, qualifications, and relevant work experience. Accounting for these factors allows for a correct qualification of the criminal act.

Kvasnikov's emphasis on determining whether the responsible person has special training, qualifications, and work experience in labor protection is well-founded. For example, according to Part 4 of Article 362 of the Labor Code of the Republic of Uzbekistan, an employer is obligated to suspend from work persons who have not undergone training, received instructions, and had their knowledge tested in the prescribed manner for labor protection. Therefore,

legislation establishes that an employer must not only prevent such individuals from working as labor protection specialists but also from engaging in work activities at all.

For a labor protection specialist, an employee authorized to perform labor protection functions, or a physical person providing services in the field of labor protection (including an individual entrepreneur), Kvasnikov identifies the following characteristics of the subject of this type of crime:

- 1) Existence of qualifications in labor protection rules.
- 2) Duly assigned responsibilities for complying with labor protection rules.
- 3) Existence of a real opportunity to comply with labor protection rules.
- 4) The personal violation of labor protection rules by the employee.

The absence of at least one of these characteristics excludes criminal liability for the violation of labor protection rules [8].

Kvasnikov also states that to hold an employer criminally liable as the subject of the crime outlined in Article 257 of the Criminal Code, at least one of the following characteristics is sufficient:

Improper organization of labor protection rules, including the failure to appoint a person responsible for compliance with labor protection requirements.

Improper assignment of responsibilities for complying with labor protection rules.

Personal violation of specific labor protection rules while having a real opportunity to ensure compliance.

Failure to provide another responsible person with the opportunity to comply with labor protection rules.

Replacing labor relations with civil-legal relations.

Kvasnikov concludes that the subject of a crime of violating labor protection rules can be any person—the employer, persons holding leadership positions, officials, an employee, or a specialist providing services in the field of labor protection hired by the employer under a civil-legal contract [9].

In our opinion, since Article 257 of the Criminal Code is

a blanket norm and the criminal-legal protection of labor protection rules is defined by the Labor Code of the Republic of Uzbekistan and other legal acts, the qualification of this crime must be carried out by taking into account the provisions of the Labor Code or other legal acts.

The Labor Code, in turn, regulates issues related to the employer's responsibility for "ensuring" labor protection rules but does not precisely define the scope of subjects of labor protection.

According to Article 12 of the Law of the Republic of Uzbekistan "On Labor Protection" No. 410 dated September 22, 2016, every organization with fifty or more employees engaged in production activities must establish a labor protection service or a position for a labor protection specialist with appropriate training to ensure and control compliance with labor protection requirements. An organization with fifty or more vehicles must also establish a road safety service or a position for a road safety specialist.

In organizations with fewer than fifty employees, the decision to establish a labor protection service or a position for a labor protection specialist is made by the employer, considering the specific nature of the organization's activities.

The labor protection service and road safety service are independent structural units of the organization and report directly to the head of the organization.

Labor protection specialists have the right to monitor compliance with labor protection rules and standards by all employees, issue mandatory instructions to heads of structural units to eliminate identified violations, and submit recommendations to the head of the organization to hold persons who violate the requirements of normative and technical legal acts accountable. The functions of the labor protection service can also be performed by professional participants in the labor protection services market based on a contract.

According to Annex 2 of the Regulation on the Procedure for the Creation and Organization of the Activities of Labor Protection Services in Organizations, the recommended structure of an organization's labor protection service should be as follows:

№	Average number of employees of the organization	By professional risk classes			
		1st grade	from 2nd grade to 10th grade	from grade 10 to grade 15	from grade 15 to grade 20 inclusive
1.	The number of employees is less than 50 people	Assigned to one of the organization's leaders			The position of occupational safety specialist is being introduced
2.	Number of	Assigned to one of the	The position of		An occupational safety

	employees from 51 to 100 people inclusive	organization's leaders		occupational safety specialist is being introduced	department is being created
3.	Number of employees from 101 to 500 people inclusive	Assigned to one of the organization's leaders	The position of occupational safety specialist is being introduced	An occupational safety sector is being created	The Occupational Safety and Health Administration is being created
4.	Number of employees 501 or more people	The position of occupational safety specialist is being introduced	An occupational safety sector is being created	The Occupational Safety and Health Administration is being created	The Occupational Safety Service is being created, consisting of occupational safety departments and sectors.

According to Section 2, Paragraph 5 of the Regulation on the Procedure for Retraining and Advanced Training in Labor Protection, approved by Resolution No. 246 of the Cabinet of Ministers on April 27, 2017, advanced training in labor protection is mandatory for:

Heads and specialists of labor protection services of organizations, and labor protection specialists.

Employees of professional participants in the labor protection services market who are directly engaged in these services, as well as heads of technically qualified and approved testing laboratories used by professional participants in the labor protection services market.

Leaders and specialists responsible for ensuring labor protection, identified by employers in agreement with the labor protection service and trade unions (or other representative bodies of employees) in organizations. The list of such positions must include engineering and technical personnel of organizations, including chief engineers, chief power engineers, chief mechanics, heads of workshops, as well as foremen in productions with harmful and dangerous working conditions.

State labor technical inspectors and labor condition experts, and technical inspectors of the Labor Inspection of trade unions.

Based on the analysis of these norms, we can conclude that, according to the content of Article 257 of the Criminal Code, the subject of this crime is a physical person—the employer or a physical person authorized by the employer to ensure compliance with labor protection rules, as well as leaders of enterprises and organizations, their deputies, engineering and technical personnel, including chief engineers, chief power engineers, chief mechanics, heads of workshops, and foremen in productions with harmful and dangerous working conditions. In practice, the

duties of such persons are defined by their job descriptions.

Conclusion

In conclusion, a crime of violating labor protection rules can only be committed through negligence. Although some scholars argue that this socially dangerous act can be committed intentionally, the author rejects this view.

Liability for this crime falls not on any person but on a special subject, that is, a person who is legally and duly assigned the duty to comply with labor protection rules. These include:

Leaders and their deputies of enterprises and organizations.

Chief specialists such as chief engineers, chief power engineers, and chief mechanics.

Heads of workshops, foremen, and other engineering and technical personnel.

Specialists of the labor protection service (mandatory in organizations with more than 50 employees).

The employer themselves (if they have not appointed a responsible person or have personally violated the rules).

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