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LEGAL SIGNS OF SANITY

The article investigates the concept, content and legal characteristics of sanity in the science of criminal law of Ukraine. Criminal sanity characterizes interrelation between a person and crime, guilt and criminal responsibility. After all, sanity is a prerequisite for criminal responsibility, its necessary condition. Sanity as a factual description of mental state of a person during commission of a crime enshrined by law is an obligatory legal prerequisite for criminal responsibility related to a perpetrator. However, according to axiomatic principle of the criminal law only criminally sane person can estimate correctly actual evidence of committing a crime, comprehend its socially dangerous character, and also to control ones actions (inactions), which is the necessary condition of guilt.
Key words: sanity, signs of sanity, signs of legal sanity.

Criminal sanity characterizes interrelation between a person and crime, guilt and criminal responsibility. The institution of sanity is the initial link in a system "sanity - guilt - responsibility" and the starting point of the principle of subjective formation enshrined by criminal law. After all, the essence of this principle is sane - guilty - responsible.

Criminal sanity is a prerequisite for criminal responsibility, its indispensable condition. Sanity as an actual characteristic of a mental state of a person during commission of a crime enshrined by law is a legal prerequisite for criminal responsibility relating to a perpetrator. Sanity displayed by law as a component of a crime and a general feature of a perpetrator has essential characteristics of a crime, the absence of which means lack of essential elements of offence.

Scientific works of the following theorist were used in formulating theoretical positions: Yu. M. Antonian, Yu. S. Bohomiahkov, S. V. Borodin, V. M. Burdin, A. A. Vasiliev, V. A. Klymenko, V. M. Kutsan, V. V. Len, N. S. Leikina, V. Ya. Marchak, R. I. Mikheieva, V. B. Pervomaiskyi, T. M. Prykhodko, M. S. Tagantsev, V. S. Trahterova and other scientists. Issues which were raised in the paper are solved ambiguously in scientific literature and therefore we try to consider different points of view on these issues, and offer our own vision.

According to Part 1 Article 18 of the Criminal Code of Ukraine an offender is a physical person who committed a crime at age from which according to current criminal law criminal responsibility may start. These signs are recognized as general legal characteristics of a perpetrator. They belong to essential characteristics of any legally defined crime and absence of one of them means absence of corpus delicti in actions of a person.

According to R.I. Mikheiev, one of the signs of sanity, which should be enshrined in the concept of sanity, is an indication of its connection with guilt and criminal responsibility, the essence of which is that sanity is a prerequisite of guilt of a person and criminal responsibility[1]. As noted by some authors, sanity is one of the common characteristics of a perpetrator and yet a legal prerequisite of guilt and criminal responsibility[2].

Therefore, legal sign of sanity emanates from the previous two: socio-medical and psychological. It means the ability of a person who committed a crime to hold responsibility for actions and to be subjected to criminal responsibility. Finally, sanity is ability of a person to understand and perceive the sense of condemnation. Only a capable person is exposed to criminal-legal influence.

We agree with V. M. Kuts that the need for separation of legal criterion from others in the formula of sanity and its independent review are specified primarily due to the fact that without legal criterion setting

[1] Михеев, Р.И. (1983). *Проблемы вменяемости и невменяемости в советском уголовном праве*. Владивосток, 50.

[2] Строган, А.Ю. (2007). *Склад злочину як підстава кримінальної відповідальності*. Київ.: Атіка, 252; Яценко, С.С. (2005). *Науково-практичний коментар до Кримінального кодексу України*. Київ: А.С.К, 31.

of socio-medical and psychological becomes an end in itself devoid of legal meaning. But sanity is primarily a legal category, because it is a sign of a subject as a part of corpus delicti [1].

The feasibility of isolating independent legal criterion of sanity is confirmed by analysis of the current criminal law. According to Chapter 1, article 19 of the Criminal Code of Ukraine "a person which during commission of a socially dangerous act … was in a state of insanity is not subjected for criminal responsibility". Following the opinion of the legislator, we may say: "a person is not liable because insane person is not able to perceive the content of this responsibility and be responsible for an act, i.e. there is no legal criterion of sanity, and therefore sanity itself".

Acknowledgement of relative independence of the legal criterion in the structure of sanity does not indicate a return to so-called concept of appropriateness in the formula of sanity, according to which sanity is considered only as the ability to influence perception of punishment regardless of whether a person has realized his/her actions, managed it or not. Sanity is the ability of an adequate perception and reflection of reality at the time of committing a crime and understanding of possible consequences of having done so in the form of criminal responsibility that is a combination of three criteria: socio-medical, psychological and legal as a natural combination.

Criminal responsibility is a kind of law and also social responsibility; it is a part of the category of "social responsibility" as its subsystem. Social responsibility is considered from two perspectives: responsibility for past behavior (retrospective) and responsibility for future behavior (perspective). Substantiating that "part that comes in whole, should have the main features characteristic of a whole" scholars recognize existence of two types of criminal responsibility: positive (prospective) and negative (retrospective)[2].

Regarding positive responsibility there is no consensus among scientists, because some deny its existence, the other vice versa are supporters of this concept. The author does not dwell on thorough research of this type of criminal responsibility, as it is not the subject of this research.

However, criminal responsibility as the main tool of state-legal response to the criminal manifestations is a kind of public (legal) responsibility, as a reaction of a state on a committed criminal offense in the past. Therefore, in our investigation, we are talking about real negative criminal responsibility.

In a traditional sense negative (retrospective) responsibility is a responsibility of a person for a crime committed in the past, as a legal consequence of the latter, a special legal institution within which a state responses to a crime. This understanding of criminal responsibility was raised by the Constitutional Court of Ukraine, calling this kind of legal responsibility a special element in a mechanism of legal response of a state concerning a person who committed an offense, a form state law-enforcement that usually applied to the person who made a crime through a court decision[3].

Because of the complexity and diversity of criminal responsibility concept it is natural that there are different concepts and approaches to its definition. That is why it is not worth to oppose these concepts, but with the purpose of clarifying the essence of negative criminal responsibility the synthesis of above expressed positions is correct and appropriate.

In theory, there are many opinions and views, but we will focus on the most common and will try to analyze them.

The most common is definition of criminal responsibility as a duty of a person which committed a crime to experience state coercion. By this, negative (retrospective) criminal responsibility is a duty of a person who committed a crime to answer for his/her actions on the basis of criminal law, give an account to a state for violations of criminal law proscription and to go through state coercion, e.g. personal limits (losses) of property or other character, provided as a punishment. Thus, P .S. Matyshevskyi following this position determines criminal responsibility as a legally determined duty of a person, as a legal obligation of a person who committed a crime, to experience the impact of state influence (obey) and to be punished[4].

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[1] Куц, В.М. (2013). *Проблеми кримінальної відповідальності*. Київ: Національна академія прокуратури України, 126-127.

[2] Чистяков, А.А. (2002) *Уголовная ответственность и механизм формирования ее основания.* Москва: ЮНИТИ-ДАНА, 54.

[3] *Справа за конституційним поданням Міністерства внутрішніх справ України щодо офіційного тлумачення положень частини третьої статті 80 Конституції України (справа про депутатську недоторканність)* № 9-рп/99, КСУ 1999.

[4] Матишевський, П.С. (2001). *Кримінальне право України: загальна частина.* Київ: А.С.К., 86.

There is following critics of this approach: firstly, it is doubtful that such an obligation in its general form is applied to people who have committed a crime. If it really existed, then legal responsibility would be assumed for not fulfilling it. But it is intended only for refusing to undergo some measures of state coercion. As the full form of such responsibility is not established, then it is pointless to speak about an obligation. Second, even if an obligation to bear responsibility really existed, it is hardly to equate it with responsibility itself. Identification of criminal responsibility with a specific obligation ignores the fact that by itself an obligation to answer for violations of criminal law is not a reaction of a state to crime. In order to fulfill this duty (from the possibility to became a reality), the activities of authorized state bodies that initially reveal a perpetrator, qualify committed act as a crime, and then in a procedural form apply appropriate sanction of criminal law norm to a perpetrator. The obligation to respond is not identical to responsibility; it is only an obligatory prerequisite.

Unimplemented criminal responsibility is not responsibility but the irresponsibility of a person who committed a crime, if there is an evidence of responsibility. If the suspect (accused) in committing a crime hides from the competent authorities of a state, it is inappropriate to say that this person is criminally responsible. Only the act of applying the Article of the Criminal Code of Ukraine (passing and entry into force of the sentence) as a legal fact transforms an obligation to answer for violations of criminal law in form of criminal responsibility. Thus, criminal responsibility is not a duty to incur coercion for a crime committed and related coercion of a state, but actual application of conviction and coercion regulated by criminal law to a perpetrator of a crime [1].

According to the next approach, negative criminal responsibility is identified with punishment for a crime. Thus, N. V. Chernyshova determines criminal responsibility as responsibility for socially dangerous, guilty and prescribed by the Criminal Code action which is committed by offender, to whom penalties determined by a sentence of a court are applied and who is serves a sentence and undergoes certain restrictions[2].

However, such identification is inappropriate because these concepts differ from one another, including content. Penalty, derived from criminal responsibility, its main but not the only form of criminal responsibility; criminal responsibility is possible without penalty.

The third concept interprets criminal responsibility as real imposition of public condemnation and coercion prescribed by criminal law and concretized in a sentence of a court on a person who committed offensive actions; as effects that occur due to conviction and sentencing of a guilty person appointment of his punishment; as deterioration of legal status of a person which consists in deprivation or restriction of rights and freedoms; as condemnation of a criminal act and a person who committed it based on criminal law and expressed in verdict of a court, coupled with punishment or other measures of legal influence.

According to G.P. Zharovska and O.I. Yuschyk, criminal responsibility is forced suffering of a person who committed a crime of public condemnation and provided in Criminal Code of Ukraine restriction of personal, property or moral character, which are determined by a court verdict and are imposed on a perpetrator by agency specifically authorized by a state[3].

However, criminal responsibility is not only an obligation to experience conviction and coercion from a state (this obligation characterizes criminal responsibility, but for various reasons cannot be executed), but actual application of condemnation to a perpetrator of a crime and usually coercion regulated by criminal law.

Under the following concept criminal responsibility is a specific (security) criminal legal relationship arising at the moment of crime commission between a state and a person who committed a crime or through a combination of criminal, criminal-procedural and criminal-executive relations. That is why, criminal responsibility is acknowledged as a special criminal-legal institution within which a state responses to a crime, and which consists in application of a court sentence to a person who committed a crime and, as a rule, application of measures of legal influence. In other words, as a criminal responsibility is a form of implementation of criminal law enforcement relationship that always includes a public condemnation of a

[1] Куц, В.М. (2013). *Проблеми кримінальної відповідальності:* навч. посіб. Київ: Національна академія прокуратури України, 91-92.

[2] Чернишова, Н.В. (2003). *Кримінальне право України (Загальна частина)*. Київ: Атіка, 33.

[3] Жаровська, Г., Ющик, О. (2013). *Кримінальне право України (Загальна частина)*. Чернівці: Чернівецький нац. ун-т. 41.

crime and a person who committed it, which, as a general rule, is combined with implementation of state coercion in the form of application of criminal law influence to a such person [1].

Without denying close connection of criminal responsibility and criminal relationships, I.V. Krasnytskyi claims that they are not identical concepts. Krasnytskyi noted that criminal responsibility is only a form of implementation of criminal law relations, which arise between a state and an individual in connection with commission of socially dangerous act, which has corpus delicti. The basis of this statement is speculation that penal relations can be realized in a different form, for example in the form of exemption from criminal responsibility, and may not be implemented at all, for example in the case of removal of a crime act by criminal law they disappear. In addition, in some cases, for example in the case of commission of a socially dangerous act by a person who is not a subject of a crime, criminal legal relations arise, but the grounds for criminal responsibility, and the responsibility itself do not[2].

In this case it is necessary to agree with the statement V.M. Kuts, who notes that groundlessness of this approach is that criminal relations are an independent criminal legal category and its identification with others is unsuitable[3].

Unfortunately, there is no unanimity among scientists in understanding what retrospective criminal responsibility is, because everyone who analyzes this concept defines its relevant characteristics that most fully reflect the essence of this phenomenon.

Despite the fact that the Criminal Code of Ukraine often uses the term "criminal responsibility" (e.g., Article 2 entitled "Grounds of criminal responsibility"; Chapter II - "The law on criminal responsibility", section IX - «Exemption from criminal responsibility ") given concept is not disclosed there.

Considering the above, the author believes that current Criminal Code of Ukraine should legislate the definition of criminal responsibility because it will facilitate formation of a single professional understanding of this phenomenon and provide legal parity of legislative display of a crime and responsibility for its commission of penal regulation in the Criminal Code of Ukraine.

Conclusions. Criminal responsibility is a special penal branch within which a state is responding to a crime, which lies in the fact that a court in a sentence provides conviction of criminal with restriction or deprivation of certain benefits or without them, and an offender, realizing the essence of conviction, morally "experiences" it.

Legal basis of sanity is the ability of a person who committed a crime, to hold responsibility for an act that is to be subjected to criminal responsibility. Indeed, criminal relations which directed at correction of a person who committed a crime and prevention of new crimes, arises out of a norm of criminal law established by state in a result of a crime commission. Crime creates mutual rights and obligations of parties. A state, which is represented by organs of justice, has a right to expose a person who committed a crime and this person must be subject to criminal responsibility (to be responsible for an action). At the same time, a person who commits a crime may be subjected to criminal responsibility provided by law, and a state gets an obligation to use criminal responsibility in clearly defined legal limits.

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