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ВРАХУВАННЯ ХАРАКТЕРИСТИК ОСОБИ ПРИ РЕАЛІЗАЦІЇ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ (ЗА КРИМІНАЛЬНИМ ЗАКОНОДАВСТВОМ КРАЇН ЦЕНТРАЛЬНОЇ АЗІЇ)

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ACCOUNTING OF THE PERSONAL CHARACTERISTICS A REALIZATION OF CRIMINAL RESPONSIBILITY (BY THE CRIMINAL LAW OF THE COUNTRIES IN CENTRAL ASIA)

The state has the right to impose criminal liability on the person and assign penalties in cases of a crime. It has precisely such a right, not an obligation, as the meaning of certain regulations of criminal law, criminal responsibility begins not in all cases of crime: the law allows law enforcers on behalf of the government to release the person from criminal liability, penalties, apply to the person measures not involving with punishment, and so on, if there is good reason [1]. These reasons (for «maneuvering” of enforcer in case of committing a crime), are often associated with the characteristics of the offender, including personal. Because, firstly, the Criminal Code recognizes that it is a person who is the subject of public behavior and diverse social activities, including criminal; secondly, the tools of criminal law aimed at personal benefits of the person who committed the crime – life, health, freedom, honor, etc., in other words the realization of criminal liability «is personal suffering or deprivation, sensitive to the punished person” [2]. Consequently, the responsibility according to the criminal law, in contrast to other forms of responsibility, is personal [3].

In general, the symptoms affect the person in making the criminal-law decisions (implementation of criminal liability) in the following way (going behind limitation set forth).

1. Some criminally relevant characteristics of the person are included in the basis of criminal responsibility. So, the foundation of criminal responsibility in the countries of Central Asia is related to the *corpus delicti*, an essential feature of which is a legal (permanent and universal) characteristic of the committer of a crime. For example, such a position is contained in Article 4 of the Criminal Code of the Republic of Kazakhstan (hereinafter the Criminal Code of RK) [4], Article 4 of the Criminal Code of the Kyrgyz Republic (hereinafter the Criminal Code KR) [5], Article 4 of the Criminal Code of Turkmenistan (hereinafter the Criminal Code of Turkmenistan) [6], Article 11 of the Criminal Code of the Tajikistan Republic (hereinafter the Criminal Code of TR) [7]. Thus, they indirectly recognize the structure based on the criminal responsibility of individuals and their respective characteristics. In this matter, in our opinion, a more successful identification in the structure based on the criminal responsibility exist in the Criminal Code of the Republic of Uzbekistan (hereinafter referred to the Criminal Code of RU)[8]: in accordance with Article 16 of the Criminal Code criminal responsibility is a law consequence of committing a socially dangerous act, expressed in condemnation, the application of penalties or other measures of legal influence by the court, namely, to a person guilty of a crime.

In any case, the recognition of the individual in the structure of the basis of criminal responsibility are reflected in the other articles of the Criminal Code (Article 15 of the Criminal Code of RK, Article 17 of the Criminal Code of RU, the Criminal Code st.23-24, st.21-22 Criminal Code of TR, Article 18 of the Criminal Code of KR), in which mandatory characteristics of a person whose presence is a prerequisite for the realization of criminal liability are established. They have as a prerequisite the implementation of criminal liability recognize the number of characteristics of a person: personal, age and responsibility. In our opinion, the above allocation of the mandatory conditions of criminal responsibility is due to the fact that: it is a kind of crime of human activity [9], in this regard, the implementation of criminal responsibility is expressed in the infliction of personal suffering [10]; criminal liability is possible on reaching a certain age of a person based on his development as a personality [11]; the ability to be aware of your actions and guide your actions [12] directly affect the recognition of socially dangerous behavior as criminally punishable act in a particular case.

2. A number of socio-demographic characteristics of the personality are the basis of differentiation and individualization of criminal responsibility, both at the lawmaking level and at the level of law enforcement individualization. In this regard, opinion of some authors concerning the above demographic characteristics to the bases of differentiation of criminal responsibility acquires interest [13].

In particular, these socio-demographic features of the person as his minor age, sex, pregnancy, the presence of under age children, advanced age, the presence or absence of citizenship, etc., significantly influence the establishment and application of various types (sizes) of criminal-law measures of exposure. For example, the

above signs of identity are the bases for the prohibition of certain forms of punishment: community service (part 3. Article 43 of the Criminal Code, Article 43 of the Criminal Code of the Kyrgyz Republic), seizure (part 3 of Article 45 of the Criminal Code of KR) the death penalty (Part 2 of Article 47 of the Criminal Code, Article 59 of the Criminal Code of TR), life imprisonment (Article 51 of the Criminal Code of RU, Article 58 (1) of the Criminal Code RT, article 50 of the Criminal Code of KR), correctional labor (Article 52 Criminal Code of RT, article 50 of the Criminal Code of Turkmenistan, Article 46-2 of the Criminal Code of KR), restriction of liberty (Article 54 of the Criminal Code of RT, Article 46-3 of the Criminal Code of KR) and others.

We should note that for this purpose the legislator is not always possible to successfully use of those or that personal characteristics. For example, on the basis of the Criminal Code disablement is prohibition on the imposition of punishment in the form of correctional labor is the current physiological condition of the person, his incapacity. At the same time, the legislator does not specify in which case this type of disability punishment shall not be imposed: during a temporary or long-term disability, what should be the degree of disability? Moreover, applying in the criminal law the construction of disability as the basis of the ban, the legislator makes the issue of the delimitation of disability and incapacity. So, it is getting urgent, if remedial work should not be assigned to disabled persons, does it mean that this kind of punishment should also not be administered with disabilities who are unable to work? In this regard we believe that such a legislative solution has under itself no social conditionality and jeopardizes the implementation of the principle of inevitability of punishment.

3. The existence of different personal, mental and other disorders at the time of the crime are the basis of his application of compulsory medical measures, which constitute a particular form of criminal law (Article 91 of the Criminal Code of RK, Article 91 of the Criminal Code of RU, Article 96 of the Criminal Code of RT, Article 94 of the Criminal Code of Turkmenistan, Article 90 of the Criminal Code of KR).

For adjusting the various disorders of the personality as the basis of the application of compulsory medical measures, in our opinion, the aforementioned criminal laws have a number of disadvantages. For example, Article 90 of the Criminal Code subdivides medical measures into compulsory medical measures and medical measures. The first one is a measure of a medical nature according to its content. Moreover, the decision to use both the first and the second is to be made by the law enforcer.

In this matter, another problem, in our view, is the use of vague psychological terms by the legislator. Thus, the aforementioned criminal laws are used as the basis of the application of compulsory medical measures «mental derangement» (Criminal Code of KR), instead of the conventional term «mental disorder» sicken of some form of disease (of the Criminal Code of Tajikistan, Uzbekistan, Turkmenistan, Kyrgyz Republic), while in most cases people do not get sick with various disorders, but such disorders «occur or be suffered from». In this regard, Criminal Code of differ, as it uses a more precise definition of various states.

It should be noted that the determination of the legal nature of compulsory medical measures, the approach of the Criminal Code is notable, according to which, the latter are designated not as measures of criminal law, but as other measures of legal influence. In our opinion, considering the significant impact of such characteristics of personality (associated with the presence of disorder) on the criminal-legal assessment of the offense, down to the exclusion of criminal liability, it is necessary to revise the state's attitude to the compulsory measures of medical content.

4. Common features of the personality already convicted person, significantly affect the process of sentencing. Thus, according to the general principles of sentencing (Article 51 of the Criminal Code of RK, Article 56 of the Criminal Code of Turkmenistan, article 54 of the Criminal Code of RU, Article 60 of the Criminal Code of TR, Article 53 of the Criminal Code of RU), the court in determining the type and amount of punishment must take into account the personality of guilty. In Kazakhstan, this requirement is implemented in the following way: for each criminal case surname, name and patronymic of the defendant, the date and place of birth, residence, place of employment, occupation, education, marital status are investigated. Law enforcer may take into account other information about the identity of the defendant, relevant to the case, which interpretation may be vague in practice. So, other information about the identity of the defendant, relevant to the case, include such information, which, along with other data, can be taken into account by the court in sentencing, the election of the penal colony recognition of repetition of offences and the resolution of other issues[14].

Currently, the criminal law uses the term «personality of the perpetrator,» which it adopted from the Soviet criminal law. In a literal sense it involves all sorts of personal characteristics of the person who was brought in a verdict of guilty. Such representation is due to the use in this criminal-law construction of the word «guilty».

In our view, the use of the criminal-law category in some cases, does not justify itself. For example, in some countries, particularly in the Republic of Tajikistan (article 20 of the Constitution) and the Republic of Kazakhstan (Article 77 of the Constitution), the Kyrgyz Republic (article 26 of the Constitution), applying criminal law, the judge must believe that a person is presumed innocent of committing a crime until his guilt is established by final judgment. In this context, the use of the structure «guilty» (instead of the concept of the defendant, for example) by the legislator in general principles of sentencing cause raised eyebrows. In fact, these general principles govern issues related only to sentence as one stage of realization the criminal liability. However, in sentencing (first instance), according to the Constitutions of these countries, a person who has committed a crime, is still considered to be definitively guilty.

In addition, the concept of «person» is not entirely unambiguous, fairly broad concept (used in the various disciplines of non-identical content). The use of such vague term in the governing criminal-law norms can lead to negative judicial discretion [15]. In this regard, for the sake of clarity and specificity in the process of sentencing (in the investigation of limits of the person), it would be better to use

in the general principles of sentencing the structure «personal characteristics of the defendant», which in the future would have to be disclosed in the relevant regulatory decisions of the higher courts .

5. Such characteristic of personality as its orientation significantly influences (sometimes constitute grounds) to address the issue of exemption from criminal liability and punishment. In the Criminal Code of aforementioned countries such cases, when the action is committed by a person remains penal action, however, due to orientation of the person after committing the crime, a person may be exempted from criminal liability and punishment. These manifestations of orientation in cases of crimes small and moderate crimes are: the subsequent good conduct of the offender at the time of the trial, making it public not dangerous (Part 2. Article 70 of the Criminal Code of RK), the loss of public danger of the person due to changes in the situation (Article 73 of the Criminal Code of Turkmenistan, Article 74 of the Criminal Code of TR). The special rule for exemption from criminal liability in connection with the loss of public danger of the person is contained in Article 65 of the Criminal Code of RU and Article 65 of the Criminal Code of KR. Also conduct of a person after the commission of the offenses covered by the concept of «active repentance» is established as grounds for exemption from criminal liability in all criminal law.

Without limiting the aforementioned manifestations of personality, the Criminal Code establishes and other personal grounds for exemption from criminal liability. Thus, demographic characteristics of a person: minority, pregnancy, a having young children for women, parenting alone young children for men, women of the age of fifty-eight and over, men of the age of sixty-three and over are additional grounds for exemption in the case of committing heinous crimes by such groups of people (Part 2 of Article 68 of the Criminal Code of RK). In general, taking into account the individual perpetrator is mandatory and in other cases, for example, by exemption from criminal liability when the case is time-barred [16].

In turn, almost all the grounds for exemption from punishment, directly or indirectly related to the manifestations of the individuality of the perpetrator. Thus, in many norms of the Criminal Code conditions for exemption from punishment are: the behavior of the person during the whole period of serving the sentence (Article 73 of the Criminal Code of RK), the ability of the person to improve without serving of the whole sentence imposed (Article 72 of the Criminal Code of RK, Article 69 of the Criminal Code of KR) blameless behavior and conscientious attitude to work or training while serving their sentence, which gives reason to believe that the person is no longer dangerous for the society (Article 68 of the KR, Article 70 of the Criminal Code of RU), when a person proves by exemplary conduct his or her improvement (Article 76 of the Criminal Code of TR), disability and retirement age (Part 3 of Article 77 of the Criminal Code of Turkmenistan) and others. In all criminal laws sick condition is a factor of liberation from penalty : the onset of mental disease or another serious illness; the base for deferment of serving the sentence are also associated with socio-demographic characteristics of the person or persons socially significant diseases (pregnancy, presence of children, and the status of a single parent, drug addiction, etc.).

It should be noted, these humane standards of relevant criminal laws, in our opinion, are not always correctly use some personal characteristics in the design of criminal law. For example, in the Article 77 of the Criminal Code of Turkmenistan the achievement of a person of retirement age is not entirely correct used and regarded as a part of the cases related to the onset of severe disease after committing the crime.

Influence of personality and its components observed not only in respect of the implementation of criminal liability, they can influence the construction of the criminal law. For example, it was noted that the orientation of the person in the form of its social danger influence the construction of the sanctions, because «the sanction of the criminal-law norm from the substantive side is the «reflection and evaluation of the standards through type(s) and the size of the punishment of public danger of the concrete manifestations of antisocial behavior: ... public danger of the person, committing it» [17].

As is well known, the implementation of the criminal liability provided not only by the criminal law, but also by the criminally-executive law and by the criminal procedure laws. Consequently, they established a mandatory registration of certain personality characteristics, mainly socio-demographic characteristics. For example, within the framework of the PEC they are important in dealing with various issues of order and mode of serving the sentence; under the Code of Criminal Procedure – in matters of investigative jurisdiction and jurisdiction (in Kazakhstan malfeasance anti-corruption investigators to the investigative jurisdiction of the service, in other cases, the crimes committed by minors jurisdiction of specialized inter-district juvenile courts, etc.). We note in particular that the general law foundations for clarifying various diseases of the personality in criminal procedure are established by the norms of the Criminal Procedure Code.

From the foregoing, it follows that different personality characteristics have a significant impact on the implementation of criminal liability. Their criminal relevance set depending on the particular situation of the crime. The aforementioned criminal relevant characteristics of personality may appear in a person who has committed the crime and to be associated with them, influencing the nature and degree of public danger of the offense and the person (criminal-law characteristics) and also not manifested. Non-manifested personal characteristics in the crime are the criminal significant, social, demographic, physiological and other characteristics of the person.

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Denysov S., Suyundykova N. Accounting of the personal characteristics a realization of criminal responsibility (by the criminal law of the countries in Central Asia)

On the example of legislation in Central Asia, the article examines the general characteristics of the offender, taking into account the process of realization of criminal liability. It is stated that the term «person» is ambiguous, rather broad concept, in this connection; attention is focused on the socio-demographic characteristics of the person, his orientation, disorders of persons at the time of the crime (the different personality, mental and other disorders).

The authors reveal the contents of the personal characteristics, and come to the conclusion that it is different personality characteristics have a significant impact on the realization of criminal liability.

Key words: *personality, the criminal legislation of the countries of Central Asia, the realization of criminal responsibility, sentencing.*

Денисов С.Ф., Суюндикова Н.М. Врахування характеристик особи при реалізації кримінальної відповідальності (за кримінальним законодавством країн Центральної Азії)

На прикладі законодавства країн Центральної Азії розглядається загальна характеристика особи, яка вчинила злочин, з урахуванням процесу реалізації кримінальної відповідальності. Констатується, що поняття «особа» є неоднозначним, вельми широким поняттям, у зв'язку з чим акцентується увага на необхідності його конкретизації на основі соціально-демографічних ознаках, її спрямованості, наявності різних особистісних, психічних та інших розладів особи на момент вчинення злочину.

Автори розкривають зміст особистісних характеристик і приходять до висновку, що саме різні всебічні характеристики особи істотно впливають на реалізацію кримінальної відповідальності.

Ключові слова: *особистість, кримінальне законодавство країн Центральної Азії, реалізація кримінальної відповідальності, призначення покарання.*

Денисов С.Ф., Суюндикова Н.М. Учет характеристик личности при реализации уголовной ответственности (по уголовным законам стран Центральной Азии)

На примере законодательства стран Центральной Азии, рассматривается общая характеристика лица, совершившего преступление, с учетом процесса реализации уголовной ответственности. Констатируется, что понятие «личность» является неоднозначным, довольно широким понятием, в связи с чем, акцентируется внимание на необходимости его конкретизации, основываясь на социально-демографических признаках личности, ее направленности, наличии различных личностных, психических и иных расстройств лица на момент совершения преступления.

Авторы раскрывают содержание личностных характеристик и приходят к выводу, что именно различные всесторонние характеристики личности оказывают существенное влияние на реализацию уголовной ответственности.

Ключевые слова: *личность, уголовное законодательство стран Центральной Азии, реализация уголовной ответственности, назначение наказания.*

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