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Reflexes and automatisms as features of insanity in criminal doctrine: guilty or not?

The problem of defining sanity or insanity of a person has been very topical for the all times of existents criminal relations. That is why, nowadays, a lot of scientists are trying to find a consensus in defining the main features of insanity of the offence. In the domestic science more and more scientists raise such controversial questions which, according to their thoughts, have some features of insanity. We are talking about such processes like “reflexes” and “automatisms”, both of which are quite to be fully researched as physiological phenomena and all this information can

help us to show all the aspects of this processes.

Such researches a little bit broaden horizons in investigations according to availability or absence of the features of the elements of criminal law, or to the influence of some factors on providing conscious and volitional control in their behavior. That is why actions as a part of objective side of the offence in most of cases are considered not just as an exteriority of active or passive expression of human behavior, but also as a way to show the conscious and volitional nature of the act in criminal law. In other words, if the behavior of a

person was out of conscious and volitional control, in most cases it is said about the absence of the deed in criminal definition of this word. Such interpretation of this feature of the objective side of the offence shows us the influence of the different factors on the intellectual and volitional activities of individuals. Also, such definition gives an opportunity to the scientists to say about the absence of this objective feature in case if the behavior of the person was caused by the action of reflexes or automatisms. [1, p. 47; 2, p. 102; 3, p. 47–48].

The researches of physiologists and psychologists can prove that one of the main reasons of involuntary acts, which is out of the conscious and volitional control of an individual is the mechanism of the act of reflex. Involuntary acts of an individual occur by the influence of some signal, which is getting out from the peripheral nervous system. Such acts can be both innate either acquired. Physiological foundation of involuntary acts is a mechanism of unconditioned reflexes, but on the other hand, acquired involuntary acts base on the mechanism of conditioned reflex [4, p. 113–114].

Reflex is the simplest form of behavior which is, by the way, is a reaction of the body to a stimulus together with the nervous system. Reflex is directly connected with a stimulus which is by the review of causal is the direct reason of first one. A part of innate unconditioned reflexes dies in the process of maturing of the nervous system of an individual, appearing only in certain pathologies, others accompany the person all her life. That is why, any person it doesn't have any sense whether it would be an adult or a child, any person would react with blinking, when the wind blow directly in the face of an individual. Because of innate reflex, the sensitive surface of on eye is protected from potentially dangerous items. Reflex is an automatic response to a stimulus that occurs without prior

assessment of cognitive stimulus and does not include a conscious choice of behavior [5, p. 44;].

If we appeal to reflexes more thoroughly, we can conclude that by the physiology, reflexive behavior is significantly differ in its internal regulatory mechanisms from the behavior of a mentally sick person, but by the basis of criminal law none of these behaviors cannot be defined as such, which is held under conscious and volitional control of an individual. Such manifestations of inner psychological regulations of a behavior of mentally sick person which can have sense for psychologists can have no criminal and law sense which give grounds to state that act, committed by such an individual who got no volitional control. Psychological analysis of reflective activity gives us grounds to prove that such activity usually happens out of conscious and volitional control of an individual. In most cases of the mechanism of committing reflective act, individual can't not just control actions but also conscious them. Because according to a psychology, reflex is one of the reasons of involuntary acts, which occur out of conscious and willing control of a person, and from the positions of criminal law, such individual can't be considered as a sane person in relations to such acts.

Therefore, if we admit that reflex is a reason because of which an individual loses ability to carry out conscious and voluntary control to the actions of a person, it can be included to the reasons of insanity. But in the same moment the majority of domestic scientists admit that impulsive and instinctive behavior and also acts which were caused by automatisms have another biological nature comparing to reflective behavior, which doesn't let us to refer such acts as types of involuntary behavior. We have to admit that reflective behavior has much difference from the behavior which is under conscious control, which can't be characterized with purposeful

character. Also, one of the meaningful points of criminal law is that both a behavior which is under actual influence, either a behavior which is under purposeful conscious and voluntary control has the same meaning. It is common that according to the second type of behavior we can say about establishing such type of involuntary form of guilt as criminal negligence. Unlike the reflective actions, which are naturally uncontrolled actions as a reaction of an individual on some stimulus, the behavior of an individual who is potentially under conscious and volitional control, with some attention could realize and control it at the moment of committing a crime.

Also, we need to look though some international experience, such as establishment of the automatism in the American legal system. There are a lot of works of scientists according this topic and due to all this researches, there were a reform in the definition of reflexes and automatisms beyond the legislators according to criminal science. For instance, the Law Commission's Criminal Code Bill (1989) provides an interesting definition of "automatism", one which, if it were ever to be adopted, would change the present law. Clause 33(1) states that "a person is no guilty of an offence if":

(a) He acts in a state of automatism, that is, his act is a reflex, spasm or convulsion; or occurs while he is in a condition (whether of sleep, unconsciousness, impaired consciousness or otherwise) depriving him of effective control of his act; and

(b) The act or condition is the result neither of anything done or omitted with the fault required for the offence nor of voluntary intoxication.

The inclusion of "sleep" as one of the causes of automatism involves a reversal of the Court of Appeal decision in Burgess that that a sleepwalker is legally "insane" and a tacit approval of the Supreme Court of Canada's decision in Parks.

(a) He is physically incapable of acting in the way required; and

(b) His being so incapable is the result neither of anything done or omitted with the fault required for the offence nor of voluntary intoxication.

Psychologists ascribe to involuntary actions not only acts which were caused by reflexes, but also automatisms. According to the points of physiology, automatism is an ability of organs, some cells or tissues to rhythmic activity beyond the obvious bond with external stimuli [6, p. 21]. Atomization of functions is considerable and essential feature of many mental processes like thinking, perception, speaking, memory and others. And violation of it can paralyze the normal course of mental processes.

Automatism hones and facilitates different types of activities by the line of mental and physical processes serving senior forms of conscious activity. Mechanisms of psychic automation deprive consciousness of continuous monitoring and of unnecessary control for each piece of the behavior of an individual [6, p. 129–130].

In some cases according to the particular situation, automatisms can be treated as a behavior of an individual which is happening both beyond actual either potential conscious and volitional control. If we analyze the mechanism of formation of automatism, we can see that in fact, such mechanism is quite similar to reflexes's one.

To give some more points of insanity we need to look deeply to the consequences of automatisms. Automatism actions are generally accepted as a category of involuntary act for purposes of abrogating criminal culpability. A difficulty common to automatism cases is that the individual appears to be acting in a deliberate way, even performing complex tasks. While some inapposite comments regarding automatism and unconsciousness as direct synonyms exist, the better view is that both are types of involuntary acts,



but not identical or entirely overlapping [9, p. 86–92].

This is because automatistic behavior can occur in individuals who are conscious, as meaning being awake and aware (which in common parlance would signify consciousness), but their actions are otherwise involuntary for criminal law purposes. To explain this, the reference earlier to the internal component of actus reus is relevant. When one is acting automatistically, he is engaged in action in the literal sense. The mental concepts of will, choice, and control are instrumental here. Only by including a mental element in the voluntary act element can cases be explained in which the actus reus is negated when defendants' actions involve some type of a conscious state, such as somnambulism, convulsion, epileptic seizure, or reflex. Hence, commentators have sensibly demonstrated that any assumption of a dichotomous division between conscious and unconscious states is flawed since there are multitudinous degrees of consciousness for purposes of determining whether one is exercising will and control. When one acts reflexively, he may be consciously aware of his body movements but without having the ability to control them. For example, when a doctor uses a rubber instrument to sharply tap a patient's patellar tendon as his lower leg is loosely hanging, the patient may consciously observe—but cannot control—the knee jerk in a reflexive action. The muscular reflex results from the autonomic nervous system rather than a movement triggered by mental will. The point is that the phenomenology of control (the feeling of controlling one's actions) is lacking.

Automatism has thus been more appropriately defined as the “performance of acts by an individual

without his awareness or conscious volition.” Perhaps, then, the better view is that automatism does not require complete unconsciousness but rather a sufficiently impaired consciousness. There has been doctrinal confusion in other common law countries about whether to differentiate, for criminal culpability purposes, based on the source of the automatism at issue. Automatism may result from physical conditions such as epilepsy, organic brain disease, concussion, hypoglycemia, or from a mental condition such as an acute emotional disturbance. 86 Common law countries outside the U.S. have distinguished between sources by what has been termed sane automatism from insane automatism. American courts have generally not adopted the sane versus insane automatism categorization per se, though there is some recognition that automatism may have internal (mental, or emotional) origins, or may be externally caused. As one court noted, automatism “does not necessarily arise from a mental disease or defect but always contain a mental component in the form of loss of cognitive functioning.” However, American courts at times seem confused by the mental component to the voluntary act element [8, p. 144–160].

Therefore, according to above-mentioned, the psychologically grounded mechanism of activity of reflexes and automatisms can prove that this factors influence on intellectual and volitional activity of an individual and exlude in some cases its ability to ensure conscious and voluntary control of his behavior. So, we have all the grounds to prove that these factors should be referred to the causes of insanity.

Список використаних джерел

1. Кузнецова Н. Ф. Преступление и преступность / Н. Ф. Кузнецова. – М.: Изд-во МГУ, 1969. – 232 с.

2. Грищук В. К. Кримінальне право України. Загальна частина: [навч. посіб. для студентів] / В. К. Грищук. – К.: Вид. дім «Ін Юре», 2006. – 568 с.
3. Тер-Акопов А. А. Преступление и проблемы нефизической причинности в уголовном праве / А.А. Тер-Акопов. – М.: «ЮРКНИГА», 2003. – 480 с.
4. FENWICK P. (1990) Automatism, medicine and the law. Psychol Med 20 (Suppl. 17), 1–27.
5. Энциклопедический словарь медицинских терминов: [в 3-х т.] / гл. ред. Б. В. Петровский. – М.: Советская энциклопедия, 1983. – Т. 2. – 448 с.
6. Психология: [підручник] / Ю. Л. Трофімов, В. В. Рибалка, П. А. Гончарук та ін.; за ред. Ю. Л. Трофімова. – 5-те вид., стереотип. – К.: Либідь, 2005. – 560 с.
7. FITZWALTER BUTLER TR (1962) The Criminal Appeal Reports, volume 46, part 1, H.L.1 pp. 7–8. Sweet and Maxwell, London.
8. FENWICK P, FENWICK E (1985) Epilepsy and the Law. Royal Society of Medicine International Congress and Symposium Series, No. 81. Royal Society of Medicine, London.
9. YAFFE G (2013) Neurologic disorder and criminal responsibility. Handb Clin Neurol 118, 345-56.

Катеринчук К. В., Спірін В. Г. Рефлекси та автоматизми як складові ознаки неосудності в кримінально-правовій доктрині: винуватий чи ні?

У статті висвітлена проблема кваліфікації невинуватості людей, обвинувачених у скоєнні злочину в умовах мимовільних процесів, таких як рефлекси і автоматизми. Більш того, ми розглянемо міжнародний досвід і порівняємо визначення цих процесів в різних законодавчих сім'ях. Крім того, в законодавчому регулюванні таких випадків існує проблематика, тому нам потрібно глибше вивчити цю тему. Питання осудності, або неосудності особи ніколи не втрачали своєї актуальності протягом усього існування кримінальних правовідносин. Саме через це, багато науковців на сьогодні намагаються дійти до консенсусу в питанні визначення ключових ознак неосудності суб'єктів кримінального права. У вітчизняній науці все більше вчених піднімають контроверсійні питання, які на їх думку мають все для того, щоб стати визначальними ознаками неосудності. Саме про такі явища як «рефлекси» та «автоматизми» і піде мова, адже на даний момент ці фізіологічні явища вже досить досліджені вченими та ці дані дещо відкривають нам очі на фізіологію цих дій. Все більше вчених люблять дані твердження, які вже досить давно є загальною практикою в країнах Європи та Сполучених Штатах Америки, де через так звану «гнучкість» законодавства, внесення певних новел до практичних норм кваліфікації злочину є досить буденною, на відміну від нашого законодавства, де не зважаючи на процеси гуманізації та ліберлізації системи кримінально-правових відносин, кримінальне право України все ще обтяжене кримінальним кодексом Української РСР 1960 року. Ще більшої актуальності даної проблематики є те, що визнання автоматизмів та рефлексів одними зі складових ознак неосудності можуть дати підстави стверджувати факт, що злочини будуть набувати більш персоніфікованого характеру, задля більшої об'єктивності та мінімізації похибок при розгляді кримінального провадження. З іншого боку, відсутність цих норм гальмує розвиток кримінального законодавства України як демократичні країни, адже далі будуть змальовані певні підстави, які дають стверджувати, що особа не може керувати своїми діями, розраховувати про настання певних наслідків та бажати їх, тому дане питання і не перестає бути актуальним протягом довгого часу.

Ключові слова: невинуватість, рефлекси, автоматизми, правопорушення, «actus reus», внутрішня складова.

Катеринчук К. В., Спирин В. Г. Рефлексы и автоматизмы как особенности невиновности в криминальном праве: виновен или нет?

В статье выделена проблема квалификации невиновности людей, обвиняемых в совершении преступления в условиях непроизвольных процессов, таких как рефлексы и автоматизмы. Более того, мы рассмотрим международный опыт и сравним определения этих процессов в разных законодательных семьях. Кроме того, в законодательном регулировании таких случаев существует проблематика, поэтому нам нужно глубже изучить эту тему.

Ключевые слова: невиновность, рефлексы, автоматизм, правонарушение, «actus reus», внутренняя составляющая.

Katerynychuk K., Spirin V. Reflexes and automatisms as features of insanity in criminal doctrine: guilty or not?

The article defines the problem of the qualifications of insanity of people who were accused in committing a crime in condition of involuntary processes such as reflexes and automatisms. Moreover we will look through international experience and compare the definitions of that processes in different legislative families. Also, it there is a problem in legislative regulation of such cases, so we need to look deeper on this topic.

Key words: insanity, reflexes, automatisms, offence, «actus reus», the internal component.