

ON PERSONALITY MANIFESTATION IN THE SYSTEM OF CRIMINAL PUNISHMENT INDIVIDUALIZATION CRITERIA

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Abstract. In the offered article the identity of the guilty person and the manifestation in crime, behavior prior to, in time and after its commission is investigated. It is emphasized that if the basis of assignment of punishment is commission of crime, then the identity of the convict acts as the main and central criterion of its individualization. Authors pay attention that in a number of the European states (Austria, Switzerland, Germany, etc.) to accounting of the circumstances characterizing the personality guilty of crime when electing a measure of punishment attaches more essential significance in comparison with CC of the Russian Federation. A conclusion it is that further improvement of legislative regulation and practice of punishment implementation and especially other measures of criminal liability assumes increase in a role of the data characterizing the identity of the guilty person in the system of individualization criteria which penetrate, give specifics and originality to all these criteria.

Keywords: responsibility; criminal penalty; assignment of punishment; criteria; identity of the guilty person; crime; punishment individualization criteria; degree of public danger of crime; the mitigating circumstances; the aggravating circumstances.

Introduction. Punishment individualization is one of essential requirements of the modern criminal legislation. Its importance, since the beginning of the XIX century, gradually increased in connection with refusal of the "bloody" legislation of the Middle Ages with inherent in it the punishment which is not knowing any exceptions, blood feud and cruelty of practice of punishment which was represented, mainly, by the death penalty.

Essence of individualization of punishment as its maximum specification for the benefit of achievement of the goals of punishment, assumes accounting of individual properties of crime and the identity of the guilty person.

Prerequisites internally inherent in individualization are, on the one hand, crime, circumstances of its commission which by definition cannot but have these or those specific features having essential value for definition of limits of punishment, and with another - specific features of the addressee. As sentence is imposed to the particular person found by court guilty of commission of crime, its individualization cannot ignore social, social and psychological and individual properties of the identity of the guilty person, significant for the correct application of the criminal law. Only at such approach it is possible to provide purpose of a fair, reasonable and expedient measure of punishment, and on this basis achievement is more whole than it.

Materials and methods. As materials for work provisions of articles 60, 61, 63, 64, 66, 68 and 89 Criminal Code of the Russian Federation providing the general beginnings of assignment of punishment and its individualization by court, features of accounting of the identity of the guilty person at purpose of more lenient punishment served than it is provided for this crime, assignment of punishment for unfinished crime, at a recurrence of crimes and also its specifics concerning minors, articles 62, 63, 64 CC of Republic of Belarus, Art. 53, 54 of CC of Poland, §46 of CC Germany, Art. 52, 53, 54 of CC of the Republics Kazakhstan and also data of jurisprudence in the Russian Federation about assignment of punishment.

The reliability of the received results is provided on the basis of the analysis of the considerable and necessary mass of legislative rules, jurisprudence materials and also use of modern methods of a research of the legal phenomena: logical, historical and legal, comparative jurisprudence, system and structural, etc.

Results and discussion. Individualization understood as a certain activity of court represents difficult and externally contradictory process; on the one hand, it is based on account at assignment of punishment of properties of crime as objective reality, and on the other - it is appointed to a certain person. On closer examination, however, the contradiction in it is not found. In crime, as well as in many other acts of behavior, the identity of the figure, which is guilty of his commission, in particular, the requirements, interests, the purposes, motives, contents, orientation and degree of stability of antisocial orientation, etc. rather in detail proves.

The importance of accounting of the identity of the guilty person at individualization of punishment is caused by the fact that its justice assumes account by court not only its standard properties anyway provided in the criminal legislation but also all those features which characterize individual, but significant properties of the identity of the guilty person, first of all those from them which were shown in crime. Besides, the problem of achievement of the goals of correction of the convict and prevention of commission of new crimes can be solved only at purpose of the individualized and expedient measure of punishment.

As the identity of the person represents his many-sided measurement as a social being, that is his versatile characteristic from the public party therefore also its properties are various by the nature, contents and value in its general assessment. Individual properties of the personality guilty of commission of crime, being imposed on other punishment individualization criteria (individual degree of public danger of crime, a circumstance and a condition of its commission, the circumstances commuting and aggravating a penalty, influence of the imposed sentence on correction of the convict and living conditions of his family) reflect their specifics in fuller measure.

The circumstances characterizing the identity of the guilty person characterize in an exhaustive way extent of its social deformation and social and pedagogical neglect and therefore considerably can predetermine effectiveness of corrective and preventive impact on it. It is characteristic that in the p. 3 of Art. 60 of the Criminal Code of the Russian Federation as criterion of assignment of punishment and its individualization the court is offered to consider, along with the identity of the guilty person in general, the softening and aggravating circumstances characterizing his personality, influence of the imposed sentence on its correction. And a conclusion of court about a possibility of correction of the convict is possible only at comprehensive accounting of his behavior both to, and after commission of crime, social and psychological and specific features of his personality.

The correct assessment of the personality guilty of commission of crime, the qualified the account at assignment of punishment is some kind of "key" to election of both a fair, and expedient measure of punishment. Only the individualized punishment measure can answer such qualities.

Features of the addressee cause specifics of forms and limits of individualization of punishment which can be assimilated to medicine when to patients various medicines depending on the nature of a disease are appointed. The correct establishment of the diagnosis is a necessary prerequisite of its treatment. Therefore also punishment individualization taking into account first of all identity of the guilty person acts as a necessary condition of achievement of the goals of correction of the convict and private (special) prevention. L.L. Kruglikov correctly specifies that as the purposes of punishment are correction of the guilty person and special prevention therefore it is not possible to choose means proportional to them without full and deep accounting of data on the personality at the time of commission of crime, to or after it. [1] S.A. Veliyev and A.V. Savenkov consider that the court has to investigate carefully "both biological and social features of the identity of the guilty person". They believe that studying of the personality when considering the case plays a special role for assignment of punishment. [2]

It should be noted that in the criminal legislation of some European states more essential significance, in comparison with the Criminal Code of the Russian Federation is attached, to personal criteria of assignment of punishment. CC Germany, in § 46 whom to court influence which is expected from punishment on future life of the person in society is offered to consider, first of all, in this regard is characteristic. Courts have to take into account, along with extent of violation of duties, way of commission and guilty consequences of act, the moving motives and the purposes of the person, the views which came to light from commission of criminal action by it and the will show in its commission, the previous life, his behavior after act commission. [3]

As the general instructions it is provided in Art. 63 of CC of Switzerland: "The judge determines the amount of punishment in proportion to fault of the person; it considers incentive motives, the previous life and the personal relations of the defendant". [4] And in § 32 CC Austria the general beginnings at assignment of punishment admit accounting of the aggravating and mitigating circumstances, influences of punishment on future life of the person society and also establishment in what measure act is explained by "deviating or indifferent" behavior of the person. [5] Let's emphasize, the given personal signs are recognized these Codes not as the separate some circumstances characterizing the personality, and the general criteria of assignment of punishment and its individualization.

And in special literature search in the direction of separation, a so-called link "guilt - punishment" on the basis of expansion of the sphere of individualization of criminal liability [6], in statement as a main objective of punishment of correction and resocialization of the convict [7], increase in the criminal legislation of a role of measures of correction and safety is undertaken [8].

From our point of view, further improvement of legislative regulation and practice of punishment implementation and especially other criminal and legal measures assumes increase in the data characterizing the identity of the guilty person in the system of criteria of their individualization which penetrate these criteria, give them specifics and originality. In particular, a number of signs of the identity of the guilty person are recognized the legislator as the circumstances commuting and aggravating a penalty.

N.F. Kuznetsova noted that a number of the softening and aggravating circumstances promote specification of degree of public danger of criminal action as reflect these or those signs. Some aggravating and mitigating circumstances are considered at punishment individualization independently as they do not define public danger of criminal action. And a part of these circumstances in a certain measure is connected with socially - the psychological characteristic of the personality. And, at last, some of them play an independent role at punishment individualization. [9] According to the, therefore, the softening and aggravating circumstances characterizing the identity of the guilty person have to be considered at punishment individualization independently, that is along with his personality in general.

According to G.P. Novoselov, the facts of the case softening and aggravating responsibility are represented by other rather concrete form of reflection of criteria in criminal law. [10] Really, if the identity of the guilty person collective, to some extent the general concept, and character and degree of public danger of crime - the versatile, final characteristic of crime as antisocial phenomenon, then the softening and aggravating circumstances are the concrete data characterizing crime or (and) the identity of the guilty person. S.F. Milyukov made an attempt to solve a problem of a ratio of criteria of assignment of punishment differentially, that is depending on whether circumstances are, softening and aggravating. He notes that if the aggravating circumstances always belong (partially or entirely) to the identity of the guilty person, then the mitigating circumstances can lie also outside the personality (pregnancy, ill health, minor or old age, etc.), but are subject to account according to the principle of humanity. [11] It would be possible to agree with the author if he specified that the aggravating circumstances characterizing the identity of the guilty person always anyway influence the degree of public danger, and circumstances here softening or exert impact on degree of public danger of the identity of the guilty person, or have to it (degrees of public danger) no relation, and are considered by court for reasons of a human order (a heavy disease, etc.)

The opinion according to which the public danger of the identity of the guilty person established on the basis of character and degree of public danger of the committed crime, and the facts of the case softening and aggravating responsibility has to be recognized as the only and sufficient criterion of the choice of a measure of punishment also was proved in literature. Respectively that which corresponds to public danger of the identity of the guilty person can only be a punishment measure, the most effective for correction of the convict. [12] In principle it would be possible to agree with this opinion. Really, not only degree of public danger of crime, but also their characters are considerably caused by features of the identity of the guilty person, intensity of its antisocial orientation, a frame of reference, preferences and installations. Why, for example, the guilty person is inclined to commit violent crimes, but not some others on the nature of act? The key to "solution" of this question is in his personality. Of course, more individual degree of public danger of crime, the softening and aggravating circumstances has a direct bearing on the identity of the guilty person. In them in the fullest measure originality and uniqueness of the personality guilty of crimes are reflected.

From our point of view, would be not true to reduce all circumstances characterizing crime, conditions of its commission only to its public danger. Of course, all circumstances which found reflection in crime and also concerning the guilty person to deeds mainly define degree of public danger of his personality. At the same time the court at assignment of punishment has to consider also such personal properties which without having relations to public danger of the guilty person considerably predetermine a possibility of achievement of correction of the convict and the purpose of special prevention of crimes (a disease, minor or old age, etc.)

Summary. It is possible to conclude, according to us, that in a broad sense all punishment individualization criteria specified in the law can be referred to circumstances, directly and indirectly characterizing the personality guilty of commission of crime. In their narrow understanding those data which characterize individual degree of public danger of the identity of the guilty person, that is its properties which were shown in crime, in the relation to criminal action after its commission and also other individual properties which are not causing degree of its public danger have to be carried to the circumstances characterizing the identity of the guilty person. The circumstances characterizing the identity of the guilty person essentially predetermine individual degree of public danger of crime, specifics of a situation of its commission. Therefore accounting of the personality, establishment of the manifestations in crime, behavior before its commission are necessary conditions of purpose of the fair, individualized and expedient measure of punishment.

Conclusion. Thus, the circumstances characterizing the identity of the guilty person have multidimensional and multidimensional character. They can be shown both in crime, and out of communication with it, to characterize his personality both during commission of criminal action, and to or after its commission, to exert impact on degree of its public danger or not to characterize it. For individualization of punishment the personal circumstances which caused commission of crime and shown in it have the predominating value (motives, the purposes, firmness of antisocial orientation of the personality, etc.). The importance of accounting of the circumstances characterizing the identity of the guilty person at punishment individualization increases even more when the crime committed by it does not act as natural manifestation of the personality (commission of act at confluence of difficult vital circumstances, owing to casual combination of circumstances, for motive of compassion, etc.) At the same time and accounting of those personal circumstances which directly do not influence public danger of crime and the identity of the guilty person has practical value for assessment by court of a possibility of correction of the convict and prevention of commission of new crimes. Adequate assessment of the personality guilty of crime is possible only on the basis of system judgment of all its properties, but not in a separation or their opposition each other. At the same time the law in some cases attaches criminal and legal significance to separate properties or signs of the identity of the guilty person (commission of crime for the first time, pregnancy of the woman, etc.)

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