

ABOUT MANIFESTATION OF THE PERSONALITY IN THE SYSTEM OF CRITERIA OF INDIVIDUALIZATION OF CRIMINAL PUNISHMENT

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Abstract. The proposed paper examines the identity of the perpetrator and its manifestations in crime, behavior before, during and after its commission. It is emphasized that if the reason for sentencing is the commission of a crime, then the main and central criterion of its individualization is the identity of the convicted person. The authors draw attention to the fact that in a number of European countries (Austria, Switzerland, Germany, and others), the circumstances characterizing the identity of the perpetrator, when choosing the punishment measure, are given more significant importance than in the Criminal Code of the Russian Federation. It substantiates the conclusion that further improvement of legislative regulation and the practice of applying punishment and especially other measures of criminal responsibility implies an increase in the role of data characterizing the identity of the perpetrator in the system of criteria for their individualization, which permeate, give specificity and originality to all these criteria.

Key words: responsibility; criminal penalty; sentencing; criteria; identity of the perpetrator; crime; criteria for punishment individualization; degree of public danger of crime; extenuating circumstances; aggravating circumstances.

Introduction. Punishment individualization is one of the pressing requirements of modern criminal law. Its significance, beginning from the beginning of the 19th century, has been gradually increasing due to the rejection of the "bloody" legislation of the Middle Ages, with its inherent retribution, knowing no exceptions, blood feud and cruelty of the punishment practice, which was embodied mainly in the death penalty.

The essence of the punishment individualization, as its maximum specification in the interests of achieving the goals of punishment, involves taking into account the individual properties of the crime and the identity of the perpetrator.

The prerequisites inherent in the individualization include, on the one hand, the crime, the circumstances of its commission, which, by definition, cannot but have certain individual features that are essential for determining the limits of punishment, and on the other hand, the individual features of its addressee. Since the punishment is imposed on a specific person found guilty of a crime, its individualization cannot ignore the social, socio-psychological and individual features of the perpetrator's personality that are significant for the correct application of criminal law. Only with such an approach is it possible to ensure the appointment of a fair, reasonable and expedient measure of punishment, and to achieve its goals on this basis.

Materials and methods. The materials used for the paper included the provisions of Articles 60, 61, 63, 64, 66, 68 and 89 of the Criminal Code of the Russian Federation, providing for the general principles of sentencing and its individualization by the court, especially the identity of the perpetrator when imposing a softer punishment than stipulated for the crime, punishment for an unfinished crime, for the recurrence of crimes, as well as its specific nature in relation to minors, Articles 62, 63, 64 of the Criminal Code of the Republic of Belarus, Articles 53, 54 of the Criminal Code of Poland, §46 of the Criminal Code of the Federal Republic of Germany, Articles 52, 53, 54 of the Criminal Code of the Republic of Kazakhstan, as well as judicial practice data on punishment imposition in the Russian Federation. The reliability of the results obtained is ensured on the basis of the analysis of significant and necessary array of legislation, materials of judicial practice, as well as the use of modern methods of research of legal phenomena: logical, historical and legal, comparative law, system-structural, etc.

Results and discussion. The individualization understood as a specific activity of the court, is a complex and seemingly contradictory process, on the one hand, it is based on taking into account the properties of a crime as an objective reality when assigning punishment, and on the other hand, it is assigned to a specific person. However, there is no contradiction in it on closer examination. In a crime, as in many other acts of behavior, the personality of the activist, that is, the perpetrator, is shown quite objectively, in particular, in his/her needs, interests, goals, motives, content, direction and degree of antisocial orientation, etc. The importance of taking into account the identity of the perpetrator in the punishment individualization is due to the fact that its justice involves that the court takes into account not only its typical properties, one way or another stipulated by the criminal law, but also all those features that characterize the individual, some significant personality traits of the perpetrator, which have appeared in the crime.

In addition, the task of achieving the goals of correcting a convicted person and preventing the commission of new crimes can be solved only when an individualized and expedient punishment is imposed. Since the person's personality represents his/her many-sided dimension as a social being, that is, his/her diverse feature from the public side, his/her properties are diverse in nature, content and meaning in its overall assessment. The individual properties of the perpetrator of a crime, superimposed on other criteria for punishment individualization (individual degree of public danger of a crime, circumstances and conditions of its commission, circumstances mitigating and aggravating the punishment, effect of the punishment on the correction of a convicted person and the living conditions of his/her family), reflect their specifics. The circumstances characterizing the identity of the perpetrator, exhaustively characterize the degree of his/her social deformation and socio-pedagogical neglect, and therefore can largely determine the effectiveness of correctional and preventive effects on him/her. It is characteristic that Part 3 of Article 60 of the Criminal Code of the Russian Federation states that the court is required to take into account, along with the personality

of the perpetrator as a whole, the mitigating and aggravating circumstances characterizing his/her personality, the effect of punishment imposed on his/her correction as a criterion for sentencing and its individualization. And the court's conclusion about the possibility of correction of the convicted person is possible only with full consideration of his/her behavior, both before and after the commission of a crime, the socio-psychological and individual features of his/her personality. The correct assessment of the identity of the perpetrator of a crime, its qualified consideration in sentencing is a kind of "key" to the selection of both fair and expedient punishment. Only a punishment individualized measure can respond to such qualities. The features of the addressee determine the specific nature of the forms and limits of punishment individualization, which can be likened to a drug, when the patients are prescribed various medications, depending on the nature of their disease. Proper diagnosis is a prerequisite for their treatment. Therefore, the punishment individualization, taking into account primarily the identity of the perpetrator, is a necessary condition for achieving the goals of correction of the convicted person and private (special) prevention. L.L. Kruglikov correctly points out that since the punishment is aimed at correction of the guilty person and special prevention, it is therefore not possible to choose a means that is proportionate to them without fully and thoroughly taking into account personal data at the time of committing a crime, before or after it. [1] S.A. Veliyev and A.V. Savenkov believe that the court should carefully investigate "both the biological and social features of the perpetrator". They believe that the study of the person in the proceedings plays a special role in sentencing. [2]

It should be noted that more significant importance is attached to personal sentencing criteria in the criminal legislation of some European states, compared to the Criminal Code of the Russian Federation. In this regard, it is indicative the Criminal Code of Germany, in §46 of which the court is required, first of all, to take into account the impact that is expected from the punishment on the future life of a person in the society. The courts shall take into account, along with the degree of duty violation, the method of committing and the consequences of a crime, the motives and goals of a person, the way of thinking that has emerged from the commission of a criminal act, and the will manifested in its commission, previous life, his/her behavior after committing a crime. [3]

As a general prescription, Article 63 of the Criminal Code of Switzerland stipulates as follows: "The judge determines the scope of punishment in proportion to the person's fault, takes into account the motives, previous life and personal relations of the accused". [4] And in §32 of the Criminal Code of Austria, the general principles for imposing punishment are to take into account the aggravating and mitigating circumstances, the impact of punishment on the future life of a person in society, as well as to establish the extent to which the act is explained by the "deviant or indifferent" behavior of the person. [5] We emphasize that the personality traits cited in these Codes are not recognized as individual circumstances characterizing the individual, but as general criteria for the sentencing and its individualization. And in the special literature, searches are being made in the direction of separation, the so-called "guilt - punishment" link based on expanding the scope of individualization of criminal responsibility [6], stated as the main purpose of punishment correction and re-socialization of the convicted person [7], enhancing the role of correction and security measures in criminal law [8]. In our opinion, further improvement of legislative regulation and the practice of applying punishment and especially other measures of criminal responsibility implies an increase in the role of data characterizing the identity of the perpetrator in the system of criteria for their individualization, which permeate, give specificity and originality to all these criteria. In particular, a number of personal features of the perpetrator are recognized by the legislator as mitigating and aggravating circumstances.

N.F. Kuznetsova noted that a number of mitigating and aggravating circumstances contributed to clarifying the degree of public danger of a criminal act, since they reflect certain signs of it. Some aggravating and mitigating circumstances are taken into account independently at punishment individualization, since they do not determine the public danger of a criminal act. And some of these circumstances are to a certain extent related to the socio - psychological features of the individual. And finally, some of them play an independent role in the punishment individualization. [9] In her opinion, therefore, mitigating and aggravating circumstances characterizing the identity of the perpetrator should be taken into account when the punishment is individualized independently, that is, along with his/her personality as a whole.

According to G.P. Novoselov, the circumstances of the case, mitigating and aggravating the responsibility, are represented by another relatively specific form of reflecting the criteria in criminal law. [10] Indeed, if the identity of the perpetrator is a collective and general concept to some extent, and the nature and degree of public danger of a crime is a diversified, final feature of the crime as an anti-social phenomenon, then the mitigating and aggravating circumstances are the specific data characterizing the crime or (and) the perpetrator. S.F. Milyukov attempted to solve the problem of differentiated ratio of sentencing criteria, that is, depending on whether the circumstances are mitigating and aggravating. He notes that if the aggravating circumstances always relate (partially or entirely) to the identity of the perpetrator, then mitigating circumstances may lie outside the personality (pregnancy, poor health, minor or old age, etc.), but should be taken into account in accordance with the principle of humanism. [11] It would be possible to agree with the author, if he indicated that the aggravating circumstances characterizing the identity of the perpetrator always affect in one way or another the degree of public danger, but the mitigating circumstances either influence the degree of public danger of the perpetrator's personality or they have no relation to it (the degree of public danger), but are taken into account by the court for humanistic reasons (serious illness, etc.)

The literature also substantiated the opinion that the public danger of the identity of the perpetrator, established on the basis of the nature and degree of public danger of the crime committed, and the circumstances of the case, mitigating and aggravating the responsibility, should be recognized as the only and sufficient criterion for choosing the

punishment measure. Accordingly, the punishment measure that is most effective for correcting a convicted person can only be one that corresponds to the public danger of the identity of the perpetrator. [12] In principle, it would be possible to agree with this opinion. Indeed, not only the degree of public danger of a crime, but also its nature is largely determined by the personality features of the perpetrator, the intensity of his/her anti-social orientation, the system of his/her attitudes and preferences. Why, for example, is the perpetrator inclined to commit violent crimes, and not some other acts of the nature? The key to the "clue" to this question lies precisely in the personality. Of course, the individual degree of public danger of a crime, the mitigating and aggravating circumstances, are more directly related to the identity of the perpetrator. They most fully reflect the originality and uniqueness of the identity of the perpetrator. As we see it, it would be wrong to reduce all the circumstances characterizing the crime and the conditions for its commission only to its public danger. Of course, all the circumstances reflected in the crime, as well as in relation to the perpetrator, mainly determine the degree of public danger of his/her personality. At the same time, the court, when imposing punishment, should take into account such personal features that, having no relation to the public danger of the perpetrator, largely determine the possibility of achieving correction of the convicted person, and the goals of special crime prevention (illness, minor or old age, etc.)

Conclusions. In our opinion, it is possible to conclude that in a broad sense, all criteria for the punishment individualization specified in the law can be attributed to the circumstances directly and indirectly characterizing the identity of the perpetrator. In their narrow understanding, the circumstances characterizing the identity of the perpetrator should include the data that characterize the individual degree of public danger of the perpetrator's identity, that is, his/her features, which have appeared in the crime, in his/her relation to the criminal act after its commission, as well as the individual properties that do not determine the degree of his/her public danger. The circumstances characterizing the identity of the perpetrator, essentially determine the individual degree of public danger of the crime, the specific situation of its commission. Therefore, consideration of the personality, the establishment of his/her manifestations in the crime, his/her behavior before and after its commission are necessary conditions for the appointment of a fair, individualized and expedient punishment.

Summary. Thus, the circumstances characterizing the identity of the perpetrator are multidimensional and multifaceted. They can manifest themselves either in a crime or outside it, characterize the personality both during the commission of a criminal act, and before or after its commission, influence the degree of its public danger or not characterize it. The personal circumstances that determine the commission of a crime and are manifested in it (motives, goals, persistence of the anti-social orientation of the personality, etc.) are of great importance for the punishment individualization. The importance of taking into account the circumstances characterizing the identity of the perpetrator, with the punishment individualization, increases even more when the crime committed by him/her is not a natural manifestation of the person (committing an act in case of difficult life circumstances, due to accidental circumstances, on the ground of compassion, etc.) At the same time, taking into account those personal circumstances that do not directly affect the public danger of the crime and the identity of the perpetrator is of practical importance for the court to assess the possibility of correcting the convicted person and preventing the commission of new crimes. An adequate assessment of the identity of the perpetrator is possible only on the basis of a systematic understanding of all its properties, and not in isolation or opposing them to each other. At the same time, the law in some cases attaches the criminal law meaning to certain properties or personal features of the perpetrator (committing a crime for the first time, pregnancy of a woman, etc.)

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