

досвіду та впровадження в національне законодавство. А зміни до статті КК РФ (ст. 116 «Побої») [3], на нашу точку зору, є порушення прав людини і громадянина, що суперечить положенням нині діючої ч. 1 ст. 2 КК РФ і призведе до непоправних помилок на практиці.

Література

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THE CRIMINAL-LEGAL IMPORTANCE OF REFLEXES AND AUTOMATISMS

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 causational 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.

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.

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 exclude 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.

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ОСОБЛИВОСТІ КРИМІНАЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ЗЛОЧИНИ, ВЧИНЕНІ ГРУПОЮ ОСІБ

За даними Генеральної прокуратури України у 2016 році було обліковано 565182 кримінальних правопорушень, з числа яких 14533 злочинів вчинених групою осіб. Слід зауважити те, що відсоток вчинення правопорушень даними особами змушує науковців приділити увагу до питанням попередження таких інцидентів. Лише детальне вивчення кримінальної відповідальності за злочини, вчинені групою осіб, зможе зменшити чисельність таких діянь.

Загальновідомо, що законодавець надає формам співучасті різного кримінально-правового значення. Так, у переліку обставин, які обтяжують покарання, серед останніх у п. 2 ч. 1 ст. 67 КК України зазначена, зокрема, і така обставина, як вчинення злочину групою осіб за попередньою змовою ч. 2, 3 ст. 28 КК України, із цих положень кримінального закону видно, що у ст. 67 КК України передбачено de-facto дві обставини, які обтяжують покарання: «вчинення злочину групою осіб за попередньою змовою» та «вчинення злочину організованою групою». Окрім цього, аналіз диспозицій статей особливої частини КК України дозволяє зробити висновок, що ці обставини передбачені, як ознаки багатьох кваліфікованих/особливо кваліфікованих складів злочину.

Теоретиків і практиків бентежить, що у ч. 1 ст. 28, де розкривається поняття групи осіб, йдеться про виконавців злочину, а в ч. 2, тобто стосовно дій групи осіб за попередньою змовою, види співучасників не названі. Це й наводить на думку, як зазначає Н. Ярмиш, що законодавець не обмежує «групу осіб за попередньою змовою» тільки співвиконавством, а має на увазі й співучасть із розподілом ролей [1, с. 206-210].

Щоб деталізувати зміст групи осіб, також можна навести твердження,