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СУЧАСНІ ПРОБЛЕМИ ПСИХІЧНОГО РОЗЛАДУ ЯК ОБОВ'ЯЗКОВОЇ ОЗНАКИ ОБМЕЖЕНОЇ ОСУДНОСТІ

Анотація. Інститут обмеженої осудності запроваджено до Кримінального кодексу України у 2001 році. Проте, незважаючи на суттєве розроблення цієї проблеми і вітчизняними, і зарубіжними вченими, є недостатньо вивченим питання стосовно визначення психічного стану як обов'язкової ознаки обмеженої осудності. Це ускладнює правозастосовну практику.

Мета – аналіз практики притягнення до кримінальної відповідальності осіб, які вчинили кримінальні правопорушення у стані обмеженої осудності, та розроблення нових підходів до оцінки психічного розладу як обов'язкової ознаки такого стану.

Матеріали та методи дослідження. Емпіричною базою дослідження є статистика Генеральної прокуратури України та Єдиний державний реєстр судових рішень щодо вироків за 2014–2020 роки. У дослідженні використано сукупність загальнонаукових і спеціальних методів наукового пізнання, зокрема порівняльно-правовий, системно-структурний, статистичний, системний аналіз правових явищ.

Результати. Вивчення 1422 висновків судово-психіатричних експертиз, за результатами яких 1406 осіб визнано обмежено осудними, свідчить, що цією категорією найчастіше вчиняються кримінальні правопорушення проти власності (41%), у сфері обігу наркотичних засобів, психотропних речовин, їх аналогів або прекурсорів та інші кримінальні правопорушення проти здоров'я населення (20,7%), проти громадської безпеки (15,5%).

Висновки. Узагальнені результати судової практики свідчать про те, що вчинення кримінального правопорушення особою, яка через наявний у неї психічний розлад не була здатна повною мірою усвідомлювати своє діяння та керувати ним, обумовлюють необхідність у чіткому встановленні переліку психічних розладів для визнання особи «обмежено осудною».

Ключові поняття: кримінальне правопорушення, обмежена осудність, психічний розлад, примусові заходи медичного характеру.

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CONTEMPORARY PROBLEMS OF MENTAL DERANGEMENT AS A COMPULSORY FEATURE OF LIMITED SANITY

Abstract. The practice of criminal prosecution of persons who commit criminal offences in the state of limited sanity has been analyzed (with the purpose of further development of new approaches to characteristic of mental derangement as limited sanity's compulsory feature). It has been deduced that summarized results of judicial practice make abundantly clear that committing a criminal offence by a person who due to his (her) mental derangement was not able to fully understand his (her) actions and (or) control them necessitates to make the clear list of mental derangements allow to consider such person as having limited sanity.

Key concepts: criminal offence, limited sanity, mental derangement, compulsory measures of medical care.

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Introduction

Events which are taking place in the East of Ukraine as well as tense social economical situation caused by SARS COVID-2019 pandemic and other life circumstances make their influence upon quantity of stress situations which determine people's emotional tensions and mental derangements emergence.

Post-traumatic stress disorder is diagnosed very occasionally in psychiatric examination practice (mostly in cases of criminal offence commitment) and is considered as medical criteria of limited sanity or insanity [1; 2; 3].

Sanity is the compulsory feature of subject of criminal offence (according to criminal law theory) because it allows to make the juridical characteristic of person's mental condition, to understand whether certain person was aware of his (her) actions during criminal offence commitment and

was able to control such actions. Meanwhile criminal offender's mental derangement if found overwhelmingly influences over his (her) responsibility and could either exclude it completely or stipulate (simultaneously with sentencing) an imposition of compulsory measures of medical care.

That's why definition of mental condition of persons committed criminal offences and their special treatment (if any mental derangement is diagnosed) is so important. Such derangement and criminal offence committed is a double-egged sword which caused a lot of discussion between psychiatrists and lawyers. If sensible middle is found, it is possible to develop special rules of behavior with people who commit crimes having mental derangements.

The aim of this article is to analyze practice of criminal prosecution of persons who commit criminal offences in the state of limited sanity (with

further development of new approaches to characteristic of mental derangement as such state's compulsory feature).

To achieve this aim a total of 1422 judgments of conviction of persons who commit criminal offences in the state of limited sanity from March 1st, 2014, till August 1st, 2020, contained in the Unified register of judicial decisions of Ukraine have been studied. Psychiatric examination findings according which the person due to his (her) mental derangement was not able to fully understand his (her) actions and (or) control them during criminal offence commitment were used as criteria for inclusion into research.

1. Disputable points of definition of limited sanity in Ukrainian legislation

Part 1 of Art. 20 "Limited sanity" of Criminal Code (hereinafter referred to as CC) of Ukraine stipulates that person found by the court as having limited sanity namely that due to his (her) mental derangement was not able to fully understand his (her) actions and (or) control them during criminal offence commitment is liable to criminal responsibility. On the basis of the foregoing we consider that limited sanity is a form of sanity, juridical characteristic of person's mental condition which means that such person's ability to fully understand his (her) actions and (or) control them during criminal offence commitment is essentially bounded due to mental derangement in existence.

A so-called limited sanity formula in the theory of criminal law consists of two criteria. The first is *legal*, defined by intellectual and conative features which characterized existence of such influence of mental derangement on person's ability to fully understand his (her) actions and (or) control them when this ability is essentially bounded. A person in question cannot appreciate objective reality adequately due to his (her) mental derangement and is not able "to match it" with his (her) viable possibilities, to digest the situation fully, to adopt logical decision, to fill his (her) needs by non-criminal methods (because of incapability to successful social adaptation), to understand majority of social norms and rules of behavior. The second is *medical* – "mental derangement in existence" – which points out on presence of certain mental activity disorder or mental illness which causes significant constraint to a person's ability to fully understand his (her) actions and (or) control them [4].

As to psychiatric examination practice, limited sanity criterion includes three interrelated components:

- 1) determination of syndromic level of mental disorder;

- 2) ascertainment of its degree;

- 3) proving of mental disorder's role in the origin of criminal behavior.

With regard to this substantiation of expert findings on limited sanity is the most complicated from all possible expert reports which specifies its non-application in expert practice [5].

Criminal procedural legislation of Ukraine obligates to commission psychiatric examination when doubts in suspect's or defendant's sanity occur; such examination is assigned to specialists in the field of psychiatry – expert (or experts), but solely the court has the power to recognize any person as having limited sanity [6; 7]. Examinee's inconsequent behavior during different interview which is to periodical denial from previous testimonies (followed by accompanied acknowledge-ment), variation of information given allows to formulate several hypothesizes during syntheses of evidence. In some cases this depicts defensive behavior, dissimulating of paraphilic attraction implemented in wrongdoings of legally capable persons or persons with mental disorders (which does not obstruct their ability to testify); on other occasions existence of mental derangements that infringe ability to conceive both internal and external sides of significant circumstances raises suspicions of presence pseudologic phenomenon which is capable to restrict replication of circumstances of the case [8].

As a result it is possible to ascertain that limited sanity is solely a juridical category. A person could be recognized as having limited sanity only by court decision although this should be preceded by psychiatric examination or comprehensive psychological-psychiatric examination, and court takes the results into account. From juridical point of view limited sanity is defined by social danger (driven by person's psychical condition) and gravity of the criminal offence, whereas from expert point of view limited sanity specifies level of severity of mental derangement and influence of the latter on organization and realization of criminal behavior in certain situation. That's why answering a question on the ability of a subject to realize the actual nature and public danger of the action (inaction) or to direct them, psychiatrists based on medical and legal (psychological) criteria of sanity / insanity rely on data obtained from a pathopsychological examination [9].

2. Analysis of courts sentences on people considered as having limited sanity in Unified register of judicial decisions of Ukraine from 2014 till 2020

Application of limited sanity status is envisaged mostly by certain mental disease processes, but other non-disease processes (e.g. some preclinical conditions, acute stress responses, psychogeneses

etc.) – so-called interface states and anomalies of mental development which fall short of mental illness – could also influence the ability to fully understand his (her) actions and (or) control them [10; 11]. But it is hard to swallow such affirmation. For example, an analysis of judgments of conviction on persons committed criminal offences in the condition of limited sanity from March 1st, 2014, till August 1st, 2020, shows that only about 15% of them had any mental problems (were registered as psychiatrists' patients or had a disability due to mental illness).

This result is proved by other data. If, for example, 523 911 criminal offences were registered in 2017, and charge sheets were given in 198 477, whereas at the beginning of that year 1 673 328 persons in Ukraine were registered as having different mental and behavior derangements (including 694 928 due to alcohol and drugs use, 3,9% of the country's population) [12], it can be said that approximately 12% of those who had mental derangements could possibly commit criminal offences.

It should be also pointed out that 75% of persons who committed criminal offences and were considered by psychiatric examination reports as having limited sanity had criminal background.

Persistent criminals' mental derangements occurrence was also pointed out by V. Batorygar-eyevea; she noted that 52,9% of persistent criminals who have been examined by relevant experts were considered as having psychical anomalies which didn't exclude sanity. Psychiatric examination results show that persistent criminals' mental and behavior derangements due to psychoactive substances (alcohol and drugs) use are in the first place. Among persistent criminals with mental anomalies examined by psychiatrists percentage ratio of considered as having any anomalies counted at F1 block in ICD-10 make up 59,6%; more 22,2% are considered as having any anomalies counted at F6 block in ICD-10 [13].

According to the International Statistical Classification of Diseases and Related Health Problems 10th Revision (ICD-10), approved by the World Health Organization in 2007, mental and behavioral disorders are listed in chapter F (F00 – F99 blocks) and include F00 – F09 “Organic, including symptomatic, mental disorders” (F00 “Dementia in Alzheimer disease”, F01 “Vascular dementia”, F02 “Dementia in other diseases classified elsewhere”, F06 “Other mental disorders due to brain damage and dysfunction and to physical disease” etc.), F10 – F19 “Mental and behavioral disorders due to psychoactive substance use” (F10 “Mental and behavioral disorders due to use of alcohol”, F11 “Mental and behavioral disorders due to use of opioids”, F12 “Mental and

behavioral disorders due to use of cannabinoids”, F13 “Mental and behavioral disorders due to use of sedatives or hypnotics” etc.), F20 – F29 “Schizophrenia, schizotypal and delusional disorders” among others.

Studying of 1422 psychiatric examination reports concerning persons committed criminal offences allows ascertaining that among those 1406 considered as having limited sanity 185 were registered as psychiatrists' patients with a diagnoses of mental deficiency, 222 – schizophrenia, 296 – imbecility, 74 – dementia combined with emotional-volitional instability, 148 – oligophrenia with psychopathic-like behavior, 148 – organic personality disorder, 185 – abnormal personality, 111 – epilepsy, 37 – exhibitionism and post-traumatic stress disorder.

Analyzing the results obtained it is possible to conclude that persons considered as having limited sanity could be appertained to any mental or behavioral derangement, but F06 is the most wide-spread. Other mental derangements (being a result of brain damage, or dysfunction, or somatic disease) are F20 “Schizophrenia”, F65 “Disorders of sexual preference”, F70 – F79 “Mental retardation”, and F80 “Specific developmental disorders of speech and language”.

As to certain types of criminal offences committed by persons who were considered by psychiatric examination reports as having limited sanity, the most common of them are criminal offences against property (584 judgments of conviction, or 41%, and 30% of them are on charges of theft stipulated by Art. 185 of CC of Ukraine). Running second are criminal offences in the field of circulation of narcotic drugs, psychotropic substances, their analogues or precursors and other criminal offences against public health (298 judgments of conviction, or 20,7%, and 15,5% of them are on charges of illicit manufacture, making, acquisition, storage, transportation or shipment of narcotic drugs, psychotropic substances or their analogues without the purpose of sale stipulated by Art. 309 of CC of Ukraine). In third place are criminal offences against public safety (221 judgments of conviction, or 15,5%, and 6,3% of them are on charges of knowingly false information about the threat to public safety, destruction or damage to property stipulated by Art. 259 of CC of Ukraine).

As for other criminal offences, none was considered by psychiatric examination reports as having limited sanity in cases of intentional murder (Art. 115 of CC of Ukraine); at the same time every third person charged with intentional grave bodily injury (Art. 121 of CC of Ukraine) was considered by psychiatric examination reports as having limited sanity.

According to the resolution of the Plenum of the Supreme Court of Ukraine No. 7 dated from May 3rd, 2005 “On practice of application of compulsory measures of medical care and compulsory treatment by courts” compulsory measures of medical care should be applied only based on valid conclusion (made by experts-psychiatrists) that certain person has the mental illness or other mental derangement which precondition his (her) insanity or limited sanity and generate a need of such measures’ application, while compulsory treatment of persons committed criminal offences and suffer from illness which caused danger for other people (Art. 96 of CC of Ukraine) – on conclusion of forensic medical examination.

Ukrainian courts follow these provisions, but in almost 1000 cases ambulatory psychiatric care was forcibly applied to convicted persons at the place of residence, in 222 more cases – at the correctional facilities. In about 200 judgments of conviction provisions of the resolution of the plenum of the Supreme Court of Ukraine were neglected.

Now it can be seen that medical criterion of limited sanity (“mental derangement”) used by lawmaker does not allow to formulate types of illnesses and equally does not allow to reflect all kinds of possible psychical pathology in a clear way.

3. Certain aspects of development of Ukrainian legislation

Mental derangements are psychical activity disorders acknowledged according to current (valid in Ukraine) International Statistical Classification of Diseases, Injuries and Causes of death. Disorders could be severe (e.g. psychical activity disorders – eclipse of consciousness, defect of perception, thinking, will, emotions, intellect, or memory – that deprive person of ability to perceive adequately social realm, own mental state and behavior) [14]. Such definition indicates not the medical criteria of limited sanity, but insanity of person committed socially dangerous action considered as criminal offence by criminal legislation.

In view of the foregoing it seems advisable (with the purpose to characterize medical criteria of limited sanity) to make statutory mental derangement which is not severe and specify it, from our point of view, as psychical activity disorder when person is not able to fully understand social realm, his (her) own mental condition and behavior and was not able to control the latter due to his (her) mental illness.

Compulsory measures of medical care are among the principal elements in the system of prevention criminal offences committed by mentally ill persons. It is impossible to reclaim the convicted person without such type of state coercion and consequently to achieve the aim of criminal

punishment, to prevent such person from committing new criminal offence.

In most judgments of conviction courts follow provisions of Art. 94 “Types of compulsory measures of medical care” of CC of Ukraine which stipulates that providing ambulatory psychological care could be applied by the court to a person which has mental derangements and committed socially dangerous action if such person according to his (her) mental conditions is not required hospitalization to mental health care institution. But court when applying compulsory measures of medical care does not specify their term. So it is possible that the term of application of compulsory measures of medical care could exceed the term of criminal punishment (especially in cases of hospitalization). Such situation is promoted by absence of psychiatric criteria of variation or cessation of compulsory measures of medical care applied to persons with limited sanity, as far as the latter condition of the person in particular is relevant not to the establishing of presence or absence of the subject of criminal offence, but to the possibility of imposition of punishment to a person which committed criminal offence and application of compulsory measures of medical care to him (her).

Results obtained are of a great practical importance insofar as according to psychiatric examination reports and considering person as having limited sanity during criminal offence committing it is necessary to make clear the list of mental derangements revealing his (her) condition and also to provide the regulation for terms of application of compulsory measures of medical care. All of these demand a response in a form of creating joint working groups of lawyers and psychiatrists, developing mental derangements classification, especially by dividing such derangements into severe and non-severe.

Conclusions

A study of 1422 judgments of conviction of persons who commit criminal offences in the state of limited sanity shows that these people most frequently commit criminal offences against property (41%), in the field of circulation of narcotic drugs, psychotropic substances, their analogues or precursors and other criminal offences against public health (20,7%), against public safety (15,5%). Absence of clearly defined list of mental derangements that should stipulate person’s limited sanity according to psychiatric examination reports only makes situation more complicated. With regard to uncertainty of terms of application of compulsory measures of medical care (as well as unsettled treatment duration) it is necessary to stipulate in the relevant regulatory acts the classification of mental derangements which allows defining medical criteria of limited sanity more precisely.

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