

Status of insanity in criminal law

This article is devoted to the issue of insanity in domestic and foreign criminal law. The purpose of the writing of the article is: to cover problems related to the characteristic of the criminal-law institute of insanity in domestic and foreign legislation.

The urgency of the topic is that nowadays, the issue of insanity in domestic and foreign criminal law is extremely relevant, due to increasing of people with mental illness, which without a doubt leads to an increase of crimes. The topic has various approaches of researching this problem and many ways of implementation of this legal institution in national legislation.

Matters of insanity have been repeatedly raised by such scholars as: V.M. Burdin, A.A. Vasiliev, V.V. Len, V. Ya. Marcac, N.A. Miroshnichenko, R.I. Mikheev, T.Yu. Oreshkina, O.V. Zaitsev, V.V. Stashis, V.Ya. Tatsyi, L. M. Filshtein, S.S. Yatsenko and many others.

According to WHO researches, mental disorders will be included in the first five diseases that lead to disability by 2020. Such serious mental illness as schizophrenia, manic-depressive psychosis, epilepsy and neurotic disorders have become common. The nature of most acts that are committed by persons with mental disorders are aggressive and violent and are directed against human life and health. Thus, the number of insane persons who committed assassinations and attempted murder is 8-10% (annually), among those who committed rape - 2-3%, hooliganism - 1.2%. problem with the transfer and extradition of persons for international criminal responsibility [1].

Talking about the issue of insanity within the framework of the scientific concepts of criminal law three schools can be distinguished: classical, anthropological and sociological. Among the representatives of the classical school are I. Kant, G. Hegel and A. Feuerbach, whose works formulated the basic principles. G. Hegel raised the question of the insanity of children and insane. In accordance with his words, criminal must clearly understand the illegality of his act and its consequences at the moment of committing the crime. In the 70s of the XIX century anthropological school of criminal law appeared. The founder of this school is Ch. Lombroso, who believed that the causes of the crime were laid in the biological nature of man. Representatives of the anthropological school recognized the impossibility of punishing the insane and required to take measures for the isolation of these individuals at the legislative level [6].

Sociological school appeared in the early 80's of the XIX century. It perceived the concepts of the classics for guilt, dignity and punishment. Sociologists argued that the fight against crime can only be performed only against the factors and the roots of crimes, and these factors must be search in the environment that surrounds the perpetrator and in his individual psychology [4].

At the legislative level, an article about insanity was first laid out in the Criminal Code of France in 1810. Art. 64 of the Criminal Code proclaimed: "There is no crime or misconduct, if at the time of the commission of the action the accused was in a state of insanity.

The concept of insanity has not actually changed from the Criminal Code of the USSR in 1960. At the present time, the legislator highlighted the issue of insanity in Part 1 of Article 19 of the Criminal Code of Ukraine. A person who, at the time of a socially dangerous act, as prescribed by this Code, was in the state of insanity, i.e. was not aware of or could not control his/her actions (omissions) in consequence of a chronic mental disease, or a temporary mental disorder, or feeble-mindedness, or any other morbid mental condition, shall not be criminally liable. Such person may be subjected to compulsory medical measures upon the decision of a court [7].

From this excerpt, it can be concluded that there is no crime, because of the inability to realize actions (action or inaction), socially dangerous consequences and the objectively existing connection between them. The diseases that are included into determination of insanity contain: schizophrenia, manic-depressive psychosis, brain trauma or mental retardation. Thus, an insane person cannot be held liable for his actions. If it establishes the insanity of a person who has committed a socially dangerous act, the case is referred to the court to raise the issue of using of compulsory measures of a medical nature [8].

In the Part 2 of Art. 19 of the Criminal Code, the legal criterion of insanity is determined by two features: intellectual (the inability of a person to realize his actions) and the will (the inability of a person to manage his actions). An intellectual sign of the legal criterion of insanity implies that a person is not capable of realizing the actual aspect of an act, that is, he does not understand the actual content of his behavior, and therefore cannot understand the social danger of his actions. Volitional criterion of insanity testifies that a person cannot control its actions (inaction) because of destruction of mental health [3].

According to V.V. Len in addition to the traditional - medical-biological and psychological, one can also distinguish an additional criterion - "criminal-legal (legal)", which, should assume the very fact of a committing of socially dangerous act. [5].

Speaking about definition of limited sanity, it is set in the Art. 20 Criminal Code of Ukraine a person found partially insane by a court, i.e. a person who, at the time of the criminal offense, was not completely aware of and could not fully control his/her acts (omissions) because of his/her mental disorder, shall be criminally liable. The partial insanity shall be consulted by the court in the infliction of punishment and may warrant compulsory medical measures [7].

The institute of Partial insanity exists in many criminal laws of the world. Partial sanity is provided for in the Criminal Codes of Austria, Hungary, Denmark, Italy, Poland, Finland, Germany, France, Switzerland and Japan and other countries. Speaking about foreign experience, in some states, the causes of insanity are not exclusively dependent on mental illness. Thus, According to the Article 42 of the Criminal Code of Norway, the cause of insanity may be any unconscious state of the person, in Art. 10 Criminal Code - the loss of consciousness. The Criminal Code of

the People's Republic of China actually provides special case of limited sanity of the blind and deaf people [2].

In the countries of the Anglo-Saxon legal family insanity is regulated by McNaughton's rules. The Scottish woodturner Daniel M'Naghten suffered from the paranoid delusion that he was being persecuted by the Tories. Consequently, he attempted to kill the Prime Minister Peel, but by mistake shot his private secretary Edward Drummond who died five days later. M'Naghten was found 'not guilty' of murder, on the ground of insanity, and spent the rest of his life, 21 years, in lunatic asylums.

Considering the foreign experience of using Compulsory medical measures, we can see, for example, that in the Criminal Code of the Republic of Moldova, compulsory measures of a medical nature are covered by the generic notions - "security measures", in the Criminal Code of the Russian Federation - "other measures of criminal law", in the Criminal Code of the Republic of Belarus - "compulsory measures of safety and treatment" [2].

Status of compulsory measures of a medical nature are situated in Art. 92 of the Criminal Code of Ukraine. Compulsory medical measures shall mean an outpatient psychiatric assistance, placement of a person, who committed a socially dangerous act that involves elements of any act described in the Special Part of the Code, in a special treatment institution for the purpose of his/her compulsory treatment, and also prevention of this person from committing any socially dangerous acts [9].

Thus, the issue of insanity remains one of the actual issues of modern criminal law, due to the large number of approaches to this issue and its discussion. The study and improvement of the problems of insanity alleviates the appearance of subjective mistakes in the consideration of a crime that is committed by an insane person and greatly simplifies the procedure for the recognition of an insane person for the court.

So, as we see, insanity is an ever-evolving institution of law. In different time intervals, there were many approaches to understanding its essence. For today it has received the embodiment in legislation of the countries of different legal systems of the world. But nevertheless, despite the large number of scientific works on this topic, the question of studying insanity remains open for further development.

References

- Берш А. Я. Примусові заходи медичного характеру: правова природа та види : дис. ...канд. юр. наук: 12.00.11/ Берш Анастася Яковлівна; [наук. Керівник Н.А. Мірошніченко]; ДВНЗ «Національний університет «Одеська юридична академія»». – Одеса , 2017. – 188 с.
- Бурдін В. М. Осудність та неосудність: порівняльно-правові аспекти // Вісник національної академії прокуратури України. – 2009. - № 3.с.-54-59.
- Внукова Ю.А. Неосудність та обмежена осудність як кримінально-правові категорії // Вісник академії адвокатури України. - 2014. -№ 1.с.140.
- Завязкіна Н.В. Формування поняття «обмежена осудність» в історичному контексті // Проблеми сучасної психології.-2015. -№ 30.с.212-215.

- Зайцев О.В. Проблеми неосудності в дисертаційних дослідженнях з кримінального права України 2001-2011 років // Проблеми правознавства та правоохоронної діяльності. – 2012. -№ 2.с. 116.
- Зайцев О.В., Маслова О.О. Вивчення проблеми неосудності кримінально-правовими школами // Вісник Луганського державного університету внутрішніх справ імені Е.О. Дідоренка.- 2013. №1.с. 135-137.
- Кримінальний кодекс України від 6 квітня 2001 р.-№16.-ст.203.
- Марчак В. Кримінально-правове та психологічне значення і проблеми розмежування неосудності від неосудності та обмеженої осудності // Вісник Київського національного університету імені Тараса Шевченка.- 2007. № 77-78. с.30-32.
- Мельник А. В. До проблеми правового регулювання психіатричної допомоги // Медичне право України: правовий статус пацієнтів в Україні та його законодавче забезпечення (генезис, розвиток, проблеми і перспективи вдосконалення). Матеріали II Всеукраїнської науково-практичної конференції 17—18.04.2008, м. Львів.