

Topical issues of Ukrainian court sentences imposed on criminals with partial insanity

V. Ya. Marchak

The author examines different opinions of scientists and practitioners on determination of a criminal sentence imposed on persons who committed a crime in the state of partial insanity as well as expresses his opinion on solving of this problem in this article. The author provides statistical information concerning the increase of quantity of criminals with mental insanity and results of survey of judges of the western part of Ukraine on their attitude to the issue of determination of a sentence imposed on criminals with 'partial insanity'.

Key words: partial sanity, mental disorder, special psychology knowledge, integrated court psychological and psychiatric examination, court sentences, coercive actions of medical character.

The importance of the problem of criminal liability imposed on the people with psychiatric disorders, is primarily determined by means of designating and executing the sentences for such individuals. Any person having committed a crime, including those who were in the state of partial sanity, should be adequately punished by the court. The punishment depends upon the nature and degree of the social danger of the committed crime and its possible consequences.

According to the statistic data, presented by the Ministry of Health Care of Ukraine and by the State Court Administration of Ukraine, the number of individuals with mental disorders has been permanently growing since the year 2007 (about 1.2 million of citizens require psychiatric assistance in our country at present. Among them, 72 % are the individuals with restricted mental disorders, 9% are those mentally retarded). Such an increase has a significant impact upon the criminological situation in the country. For instance, certain psychiatric anomalies have been discovered among 36% of criminals, indicted for murders and other violent actions.

The problem of partial sanity has been investigated by Ukrainian and foreign experts for about more than 100 years. Such scientists, as Y. Antonian, S. Borodin, A. Zaitsev, N. Ivanov, M. Kostitskiy, V. Len, D. Lunts, R. Mikheev, G. Nazarenko, V. Pervomaiskiy, S. Polubinskaya, T. Prikhodko, F. Trakhterov, N. Tsepin and many others, have written a wide range of scientific works dealing with the problem of courts' using partial insanity.

Most of arguing, arising among the lawyers, takes place because of different interpretations of article 20 of the Criminal Code of Ukraine. This article regulates the issues of criminal responsibility imposed on the individuals with mental disorders, including partial sanity. The analyses of the article proves that legal consequences of partial sanity are limited by two basic statements the court takes it into account when delivering the sentence, and has a right to take coercive actions of medical character. However, legislation does not mention how the court should take into consideration partial sanity as well as the mechanism of delivering sentences to partially insane individuals. The law does not determine whether this circumstance extenuates or aggravates the guilt and responsibility of a criminal. Moreover, this circumstance belongs to neither extenuating, nor aggravating ones envisaged by articles 66,67 of the Criminal Code of Ukraine. Thus it is possible to draw a conclusion that criminals mental disorder might be interpreted in different ways, which would, undoubtedly, cause opposite legal consequences.

There exist numerous attitudes to punishing partially sane criminals.

R. Mikheev, for example, suggests considering psychiatric anomalies, when delivering a sentence, as an aggravating circumstance. This is possible in two cases:

1. if a criminal used his psycho-genetic disorders for committing a crime or for avoiding the punishment;
2. if a criminal avoided medical treatment and committed a crime again.

S. Burayera does not agree to such statements. She asserts the impossibility of such an approach to psychiatric anomaly, since it is not clear in which way the criminal is able to apply his psychic state or psychic disorder for committing a crime. He can not make himself into this state purposefully. These are, as a rule, the psychological processes, not depending on him. Besides, it is the individual's illness that makes his crime more aggravated. However, this approach does not meet the requirements of humanistic criminal theory. Furthermore, in order to acknowledge the psycho-genetic disorder as an aggravating circumstance, it is necessary to ascertain the connection between avoiding medical out if criminal's avoiding the treatment increased his social danger and the danger of the committed crime. To deliver a severe sentence to the criminal with mental disorder thus acknowledging it as an aggravating circumstance, can not be justified, as it does not respond to the principles of humanism.

Most scientists believe that if a court acknowledges a criminal as an individual with partial sanity, the sentence, delivered to a healthy individual. Some authors appeal to justice, thinking, thereby, that mentally ill individuals cannot stand responsible for the committed crimes as severely as the healthy criminals do. Others believe that limited sanity can lead to the punishment reduction, since legislation has obliged the court to take insanity into account while delivering the sentence. Still others suggest a selective approach to psychic anomalies.

G. Nazarenko believes that sentence reduction towards partially insane persons is impossible in case they have committed crimes purposefully, because the reasons for committing these crimes lie in their antisocial views and not in psychiatric disorders. a guide different approach should be applied to mentally disabled individuals who have committed a crime out of carelessness, as psychic disorders slow down the speed of their reaction, make the perception of surroundings more complicated, thus making up for unattiveness and unpredictability, safety and self-confidence. All these are a typical sign of carelessly committed crimes.

According to D. Sitkovskiy, person's mental disorder must not necessarily have an impact on the mechanism of his criminal behavior. In other words, it can not be natural that is why, if the court takes it into consideration, this should be done in terms of criminal's individual characteristics, and not in terms of his partial insanity.

It does without saying, that any mental disorder may, be presented as an extenuating circumstance. It happens so, because, when committing a crime, an individual suffering some mental illness, cannot completely realize the situation he found himself in. the principles of justice and humanism oblige the court treat such people with charity. They are less capable of overcoming various difficulties and, as result, suffer more than normal convicts. If the court acknowledges an individual mentally disabled, this mental disorder may be considered as an extenuating circumstance. Sometimes, the court may ignore partial insanity, and it will not have any influence upon the sentence.

The author of the article has conducted a questionnaire among 240 judges of local courts and 60 judges of Appeal Courts in the western Ukraine: Ivano-Frankivsk, Lviv, Ternopil, Chernivtsi and Khmelnytskyi oblast. This questioning was supposed to determine their attitude to the problem of partial sanity and its practical application in courts.

The general length of respondents' service in the field of law comprises: up to 5 years – 3%; 5 and more years – 96,9%; among them: judges with the length of service up to 5 years – 12%; over 5 years – 88%.

Less than a half of all the respondents (43%) have the experience of acknowledging a convict as partially insane, which supposes the presence of Some mental disorder, hindering to realize his own actions while committing a crime; 1,5 of the respondents could not answer the question; 55.3% have no experience of this kind at all.

To the questions "Does the Article 20 of the Criminal Code of Ukraine "Partial Sanity" make up for individualization of criminal punishment?" 72.3% of the respondents gave an affirmative answer; 12% do not think so.

Besides, 10.7% of the questioned judges believe that a person, having committed a crime in the state of partial sanity should be sentenced more severely, 7.6% of the respondents can not answer the questions, and 81.5% do not agree to the fact that partially insane convicts should receive a sever punishment.

The author of the article supports those judges (53.8%) who believe that courts should extenuate the sentences to the individuals with partial sanity; 10.7% are not able to answer the questions, and 35.3% think that courts should not extenuate the sentence to such convicts.

Besides, 49.2% of the respondents believe that legislation has to enlarge the list of extenuating circumstances, envisaged by the article 66 of the Criminal Code Ukraine "community a crime in the question and 40% of the judges are against extenuating the sentence for such individuals.

If the legislation introduced the extenuating circumstance, it would promote significant of the institution of "partial sanity" and of special psychological knowledge on the whole.

Because it is possible to determine various kinds of mental disorder only with its help.

The result of the questionnaire held among the judges concerning their attitude to criminal-judicial category – partial sanity; show a steady tendency to wards sentence extenuation for the criminals with mental disorders. And this tendency after all meets the requirements of the judicial principle of humanism.

Thus, courts should bear in mind that individuals features caused by psychic disorder belong to his most important characteristics and must be adequately proved. The state of partial sanity is to be reflected and assessed in the motivating part of courts sentence.

Ignoring the peculiarities of mentally disabled individual during the criminal case consideration and indictment, might provoke a court error and can serve as the bases for sentence cancelation.

The court should ascertain the degree of psychic disorder that influenced individuals decision to commit a crime. According to the present-day legislation, the court has a good opportunity to take into consideration any circumstance having importance for complete and all-sided, investigation of a criminal case. If the mental disorder was so significant as not to let the criminal realize his behavior, or if it restricted his consciousness, it is important that that the court should consider it as an extenuating circumstance.

The notion of partial sanity embraces a wide multi-aspect problem field, which combines very different elements. This problem field needs some further research and investigation.

So, it is possible to claim, that the problem of mental disorders of a convicted person is far from being investigated sufficiently! There is still not any scientific concept which would contain the basic aspects of partial sanity.

Which proves the significant insufficiency of the scientific research and its uneasiness for practical application.

Марчак Виталий Ярославович, доктор юридических наук, доцент,
судья судебной палаты в уголовных делах
Апелляционного суда Черновицкой области
58000, м. Чернівці, вул. Емінеску, 4, Апеляційний суд Чернівецької області,
тел./роб. +38-372-55-75-43, тел./моб. +38-095-748-27-47,
e-mail: marchak@cva.court.gov.ua