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PERSONALITATEA INFRACTORULUI

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Personalitatea infractorului este un concept criminologic complex, studiat de mai multe științe, care înglobează în sine noțiunea psiho-socială și noțiunea juridico-penală a infractorului. Aceasta fiind și un punct esențial de pornire a cercetării cauzei ca urmare a săvârșirii unei fapte ilegale, deoarece fără personalitate nu există infracțiune. În cadrul literaturii de specialitate criminologice atât autohtonă cât și în cea străină, opiniile și definițiile asupra personalității infractorului sunt foarte diferite. Fiecare autor își are propria sa viziune cu referire la definirea conceptuală a personalității infractorului, unii o generalizează într-o definiție, alții o exemplifică în diverse situații cazuistice ale practicii judiciare și o definesc printr-o noțiune complexă. Astfel, în prezenta cercetare ne propunem ca obiectiv realizarea unei analize detaliate a noțiunii generale de personalitate a infractorului, pasibil de a săvârși fapte ilegale.

Cuvinte-cheie: subiect de drept, răspundere penală, bărbat, femeie, categorii de infractori.

THE PERSONALITY OF THE OFFENDER

The personality of the criminal is a complex criminological concept, studied by several sciences, which includes the psycho-social notion and the legal-criminal notion of the criminal. This being an essential starting point for the investigation of the case as a result of the commission of an illegal act, because without personality - there is no crime. In both local and foreign criminological literature, the opinions and definitions of the personality of the criminal are very different. Each author has his own vision with reference to the conceptual definition of the personality of the criminal, some generalize it in a definition, others exemplify it in various casuistic situations of judicial practice and define it through a complex notion. Thus, in this research we aim to carry out a detailed analysis of the general notion of the personality of the criminal, liable to commit illegal acts.

Keywords: subject of law, criminal responsibility, man, woman, categories of criminals.

LA PERSONNALITÉ DU DÉLINQUANT

La personnalité du criminel est un concept criminologique complexe, étudié par plusieurs sciences, qui comprend la notion psycho-sociale et la notion juridico-criminelle du criminel. Ceci étant un point de départ essentiel pour l'enquête sur l'affaire à la suite de la commission d'un acte illégal, car sans personnalité – il n'y a pas de crime. Dans la littérature criminologique tant locale qu'étrangère, les opinions et les définitions de la personnalité du criminel sont très différentes. Chaque auteur a sa propre vision en référence à la définition conceptuelle de la personnalité du criminel, certains la généralisent

dans une définition, d'autres l'exemplifient dans diverses situations casuistiques de la pratique judiciaire et la définissent à travers une notion complexe. Ainsi, dans cette recherche nous visons à effectuer une analyse détaillée de la notion générale de la personnalité du criminel, susceptible de commettre des actes illégaux.

Mots-clés: *sujet de droit, responsabilité pénale, homme, femme, catégories de criminels.*

ЛИЧНОСТЬ ПРЕСТУПНИКА

Личность преступника – сложное криминологическое понятие, изучаемое рядом наук, включающее в себя психосоциальное и уголовно-правовое понятие преступника. Это является необходимым исходным пунктом для расследования дела о совершении противоправного деяния, ибо без личности нет преступления. Как в отечественной, так и в зарубежной криминологической литературе мнения и определения личности преступника существенно отличаются. Каждый автор имеет свое видение относительно понятийного определения личности преступника, одни обобщают его в дефиниции, другие приводят примеры в различных казуистических ситуациях судебной практики и определяют через комплексный анализ. Таким образом, в данном исследовании мы стремимся провести детальный анализ общего представления о личности преступника, виновного в совершении противоправных деяний.

Ключевые слова: *субъект права, уголовная ответственность, мужчина, женщина, категории преступников.*

Introduction

Criminological science includes a well-designed and well-designed study on the personality of criminals, while criminal science only defines the criminal very little. In this sense, article 21 of the Penal Code of the Republic of Moldova comes with a rather vague characteristic, but it highlights very well the main features that the criminal must meet when he commits the criminal act. Thus, „responsible natural persons who, at the time of committing the crime, have reached the age of 16” [1, art.21] are liable to criminal liability. From here we deduce that the person who committed the crime is only a reference point in terms of identifying the criminal, these identification elements being intended for all natural persons who are on the territory of the Republic of Moldova. Finally, according to specialized literature, the criminal is regarded as the person who has culpably committed any of the acts that the law punishes as a consummated or attempted crime, or who participated in the commission of such an act as an author, instigator, or accomplice.

The personality of the criminal differs

from the person who respects the law by the presence or absence of social danger. In this sense, it is found that the main criterion that reflects the social danger of the criminal is the commission of the crime. So, from a legal point of view, the criminal is the person who, with guilt, commits an act sanctioned by the criminal law. From a criminological point of view, the concept of a criminal has a complex meaning due to the bio-psychosocial conditions that lead people to break the law [8, p.40-41].

All individuals who commit crimes differ from each other according to demographic, legal, psychological, etc. peculiarities, on the one hand, and on the other hand, they are similar for the same reasons, thus forming stable groups. That is why there is a need to systematize criminals according to certain criteria.

The importance and purpose of developing this scientific approach arise from the author's intention to carry out a succinct, per-general review of some theses from the specialized literature defining the personality of the criminal.

Materials used and methods applied. In the process of developing the scientific article, we were guided by several and various research methods that made it possible to properly investigate the respective subject, among which we can list: the analysis method, the synthesis method, the deduction method, the historical method, as well as the comparative method of several benchmarks from the specialized literature that illustrate the conceptual definition of the offender's personality.

The theoretical-legal basis of the scientific approach includes the defining material from the local and Romanian specialized literature, as well as the legal framework that, directly or indirectly, addresses the essence and content of the subject under research.

The results obtained

A lot of classifications of criminals can be found in the specialized literature. The classification criterion varies according to the conception of the genesis of crime. Thus, the criterion can be used: anthropological, psychological, sociological, etc. Among the first classifications, we list that of Cesare Lombroso, who studies the physiological and psychological characters of criminals, showing the points of similarity and difference between them. Thus, C. Lombroso classifies criminals into born criminals, morally insane, epileptic criminals, passionate criminals, insane criminals, occasional criminals, habitual criminals, latent criminals [7, p.158].

The Russian professor A. Alekseev proposes the following classification of criminals who are prone to commit organized crime [6, p.106-109]:

1. *the consistent (steady) criminal type* – is characterized by the highest degree of criminal „contamination”, by a stable and extensive anti-sociability of the personality. Committing crimes for them is a common style of conduct, often being an original profession. In the „ave-

rage personality” interaction, the main role belongs to the views and antisocial skills that were born and consolidated as a result of the distorted personality formation and the subsequent criminal „career”.

The commission of the crime is also possible when the situation prevents the achievement of the criminal result. Within this type, criminals with a predominant aggressive-violent motivation (sexual maniacs, homicidal maniacs) or hoarding (thieves, swindlers, etc.) are highlighted, as well as those individuals whose motivation for hoarding is combined with violence (hired killers, members of gangs, criminal communities). A specific branch of the consistent criminal type is the so-called antisocial criminals, who are individuals characterized by a steady anti-sociability and commit crimes countless times by their moral degradation and social devaluation of personality qualities. They have primitive interests, or they don't have them, a reduced intellect, they are characterized by a lack of will, the sense of a lack of perspective in life. Most of the antisocial criminals do not have a permanent place to live, they do not maintain relations with their relatives, they are vagabonds, and live in poverty. Their criminal behavior is characterized by impulsivity, the primitive nature of their actions, and unqualified ways of committing and concealing the crimes. At the same time, they can commit particularly serious crimes, under insignificant pretexts. Their negative moral-psychological traits are frequently aggravated by chronic alcoholism, drug addiction, and psychopathological deviations.

2. *the criminal-situational type* – is formed in a contradictory environment, which influences both positively and negatively. As a result, their personality is doubled, consisting of positive and negative qualities, the latter dominating. The interaction between the personality and the concrete life situation is expressed

by combining the considerable defects of the personality with the attractive, provocative, or other criminogenic roles of the external circumstances that lead to the subject's choice of criminal behavior among several possible variants of behavior. Actions contrary to the situation or the creation of a favorable situation to commit the crime are not characteristic. The decisive role in the genesis of criminal behavior belongs to the interaction between the negative traits of the personality and the negative characteristics of the situation. Within this type of criminal, it is possible to differentiate subtypes based on motivation and other indicators.

3. the situational type. According to the main parameters of criminology, the respective type is the opposite of the persistent criminal type. It is characterized by insignificant moral defects. The characteristic features are the social infantilism of the personality, and the lack of volitional, emotional, and intellectual resources necessary to successfully deal with complicated situations. In the genesis of criminal behavior, the decisive role belongs to the criminogenic situation, which, as a rule, is completely imposed from the outside and does not result from the previous behavior or the way of life of the subject. In the absence of the criminogenic impact of the situation, the person's reduced anti-sociality may manifest itself through illicit acts that are not criminal or may gradually disappear. The respective type can be differentiated into subtypes based on behavioral reasons and other traits.

4. the casual type. Those criminals are fewer in number, compared to those of the previous types, and according to personality qualities, they practically do not differ from law-abiding citizens. At the same time, they are also characterized by some negative traits that do not refer so much to their personality as to its manifestations in concrete situations:

lack of prudence, carelessness, superficiality, enormous (excessive) impulsiveness, etc. They violate the legal-criminal prohibitions by generally being positive, and the crime is not a style of conduct, it is not an inevitable result of the criminogenic interaction between personality and situation, but constitutes a regrettable episode, a result of the unfavorable competition of objective circumstances and subjective. „Sensitive”, and „confused” people are referred to as this type, i.e., those who lose their temper in the face of an unexpected, „stressed” situation. According to the estimation of some researchers, 50-60% of the criminals who committed criminal acts out of imprudence refer to the analyzed category [2, p.12].

Other variants of typologies and classifications of criminals can be found in the relevant literature. Thus, the authors from Romania [10, p.73] mention that *several classifications have been formulated from a legal-normative point of view:*

1) according to the degree of awareness and control of criminal behavior, they can be normal criminals or indiscriminate criminals.

2) according to the age of the offender, they can be juvenile offenders or major offenders.

Thus, in 2019, 664 crimes were committed by minors or with their participation, which represents 2.1% of all registered crimes. Compared to 2018, there is a 3.5% reduction in crimes committed by minors, especially crimes against property. There are about 113 crimes committed by minors per 100,000 children under the age of 18, compared to 165 crimes in 2015 when the highest level of juvenile crime rate in the last 5 years was recorded. Minors are most frequently involved in thefts – 63%, followed by robberies – 6.1% and hooliganism – 4.3% [8, p.144]. According to the statistical data of the National Administration of Penitentiaries, on 01.04.2020 the total number of minors serving a prison sentence was 41, of

which: 40 were male and 1 female; 14 minors are serving prison sentences for serious crimes; 19 minors for particularly serious crimes and 8 for less serious crimes; of which only 22 minors are serving a prison sentence for the first time [9, p.181-187].

The criminological characteristic of the criminal's personality, especially the acquisitive criminal, operating with the basic features of the criminal's personality, are those of a socio-demographic nature, studies, family situation, social situation, and type of activity, motivation of criminal behavior, value orientation, legal psychology of the offender.

The criminal's personality is formed in the family, school, circle of friends, workplace, etc. The process of antisocial orientation is not formed suddenly, but over a long period, when negative receptive information accumulates, forming antisocial concepts and habits [4, p.178]. Overall, the overwhelming majority of acquisitive criminals have primary and secondary education, except for fraud crimes where people with high school and higher education represent 50% of all criminals [3, p.392].

Butoi T., studying different categories of criminals from the point of view of psychological peculiarities, established certain common characteristics, which are found in most of those who frequently break the law: emotional-action instability, school maladjustment, high sensitivity, behavioral duplicity, intellectual immaturity, affective immaturity, frustration, inferiority complex, egocentrism, aggressiveness, affective indifference, etc.

Emotional-actional instability is an essential feature of the personality of the adult or minor offender, a side where the traumatization of the personality is better highlighted on the level of the cognitive component. Emotional instability is part of the emotional dysregulation of criminals, being characterized by: a lack of emotional autonomy, insufficient development of emotional self-control, weak develop-

ment of higher emotions and feelings, especially moral ones, etc. All this leads to the lack of a capacity for self-evaluation and adequate evaluation, to the lack of objectivity toward oneself and others.

School and social maladjustment generate antisocial attitudes, resulting from negative environmental influences, followed by the rooting of negative habits and habits, which can be updated on various unfavorable occasions, leading to atypical, deviant reactions and crime.

High sensitivity to certain stimuli in the environment, which stimulate atypical behavioral reactions, because it lacks inhibition as a social process. Pursuing personal interests, regardless of the consequences, leads to the excessive mobilization of physical and mental resources.

Behavioral duplicity – the criminal disguises himself not only during the time he commits the criminal act but all the time. The criminal plays the role of the correct, honest man, he is aware of the socially destructive character of the criminal act. The necessity of hiding, of the „double life”, forms the criminal skills that isolate him a lot from society, from the normal aspect of life.

Intellectual immaturity consists of the criminal's inability to foresee the long-term consequences of his antisocial action, a reduced ability to establish a rational cost-benefit ratio in the design and execution of a criminal act, the commission of the crime being carried out under the conditions of minimal prudence towards the threshold of tolerance of conduct.

Affective immaturity leads to mental rigidity, disproportionate reactions, predominating the principle of pleasure about that of reality, to infantile behaviors (crying fits or lack of compassion for someone's pain, crises, etc.) for obtaining immediate, minor advantages, sometimes totally insignificant. Affective im-

maturity associated with intellectual immaturity predisposes the criminal to antisocial manifestations and behaviors with particularly serious consequences. This consists of the criminal's inability to foresee the long-term consequences of his antisocial action. It is assumed that the offender confines himself strictly to the present, giving little importance to the future. The author concludes that the criminal is focused on the present and does not differentiate the delinquent from the non-delinquent [5, p.622].

Frustration occurs when the offender is deprived of some rights, rewards, or satisfactions. It is felt on an affective-cognitive level as a state of crisis, which disorganizes, for the moment, the cortical activity of coordinating actions, overexciting the sub-cortex.

The inferiority complex often incites compensatory behaviors and in the case of criminals – inferior, antisocial behaviors.

Egocentrism represents the individual's tendency to relate everything to himself, when he does not achieve his proposed goals, he becomes envious and susceptible, domineering and even despotic, he maximizes his qualities and successes, and when he makes a mistake, instead of reconsidering his position, he attacks with virulence.

So, the organized crime offender has the following *main features*:

- a) permanent criminal activity (criminal activity);
- b) the identical type of criminal activity (specialization);
- c) certain knowledge, skills, and abilities (qualification);
- d) crimes – the basic source of income;
- e) integration into the criminal environment.

The number of criminals in a group can vary from a few units to several hundred. Most criminals who are part of the addressed category are aged between 20 and 45 years, although

there are cases of criminals from the given category with younger or older ages.

Statistical data show that organized crime is one of the most profitable crimes. On the other hand, success stories assume the reflection of „achievements” through clothing and accessories that are not necessarily conservative, but rather in line with socio-cultural values that promote tastes for „quality” products. All this becomes visible in the form of a neat physical appearance (of the criminal) which promotes, along with other factors, the image of the promised success.

The average level of education. Likewise, organized crime requires communication and persuasion skills acquired in the form of formal education above the minimum level. For these reasons, most criminals are high school or vocational school graduates, although this criterion is not generally valid. In many cases, life experience and, implicitly, experience within organized crime networks have contributed substantially to the formation and development of the necessary skills.

Frequently exhibits violent behavior. This type of behavior is encountered more often in the case of traffickers who apply verbal and physical aggression as a method of control, but also as a coercive method (real or anticipated) to obtain obedience regarding the imposed prohibitions and the expected behaviors.

High level of organization. Although during the recruitment phase, it may create the impression that it accepts the person's right to change his mind and adapt to the situation, in reality, the criminal follows a predetermined plan, with exact dates and routes, unforeseen events being most often anticipated or combated by using manipulation techniques.

The pronounced division of criminal activity represents another important feature of the analyzed type of crime. It presupposes the existence of a strict distribution of the actions that make up criminal activity, a

complex structure of constitutive functions being delimited. Each member of the criminal group has a well-defined role in this structure, the execution of which he specializes. Consequently, criminal activity knows a pronounced division within the groups that practice the production or offering of illicit services and products. Such organization of criminal groups allows a considerable increase in efficiency and protects, to a large extent, the group from possible exposure. Indeed, the significant segmentation of criminal actions creates insurmountable difficulties in the evidentiary activity of law enforcement bodies, given that, often, the members of the same criminal group neither know each other nor have an accurate idea of the organization of the group as a whole. They only know the contacts and what they have to do.

The strict hierarchy of the criminal group. Many organized crime groups are characterized by a strict hierarchical organization. It consists of the establishment of strongly vertical management relations, in which the order of the superior is of absolute authority. According to the scheme used by organized crime groups, the head of the group only comes into direct contact with the persons in the immediately subordinate hierarchical position, and the latter, in turn, issues orders for the members on the next position, etc. The orders issued within the management system have an imperative and irrevocable character, the sanctions for their non-execution being extremely harsh. A very special role is played in the management mechanism by the head (or heads) of the criminal group, who has absolute power. Moreover, he (they) constitute the central element of the criminal group, giving it stability, cohesion, action, and intelligence and ensuring the group's persistence even in cases where it is seriously affected by rivalries or by the actions of law enforcement agencies. The decisive importance of leaders in the regene-

ration and persistence of groups that practice organized crime must be emphasized. Because the leaders only come into direct contact with a very small number of members of the criminal group, and most of them do not even know him, and because they do not directly participate in the execution of the criminal actions, debunking them and proving their guilt is very difficult, thwarting most often the efforts of the police bodies to annihilate the criminal group, which reconstitutes itself every time its leaders remain at large. Due to the difficulties in unmasking the heads and the fact that they continue their criminal activity even when some segments of the criminal network are amputated, the impression that organized crime is invincible has unfortunately taken root in the social representation, which encourages criminals and, on the contrary, discourages society and public authorities in their efforts to curb and diminish this macabre phenomenon.

Returning to the criminological portrait of the criminal prone to commit organized crimes and generalizing those discussed above, the following can be said: mostly these are single men or women, young and middle-aged, who live in cities, have secondary education, have no achieved some success in the line of professional activity, in a series of cases they have no permanent sources of income, unsuccessful in their personal life, lack of criminal history, subjectively and inadequately evaluate their abilities and themselves. In recent years, a series of unfavorable trends have emerged, consisting in the increase in the share of criminals (both men and women) who are characterized by high social status, higher education, occupying various positions in state management institutions, including employees of law enforcement bodies and other force structures.

Conclusions

Regarding the offender's personalities, we can say that they are mostly single men or

women, young and middle-aged, who live in cities, have secondary education, and have not achieved any success in the line of professional activity, in a series of cases they have no permanent sources of income, failure in their personal life, lack of criminal antecedents, subjectively and inadequately evaluate their abilities and themselves. In recent years, the increase in the share of criminals (both men and women) is characterized by high social status, higher education, and holding various positions in state management institutions, including employees of law enforcement bodies and other force structures.

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