

Criminal legal characteristic of grave crime against personality and circumstances determining the usage of special psychological knowledge at their investigation

Abstract: It is considered criminal legal characteristic of grave crimes against personality and circumstances determining of usage of special psychological knowledge at their investigation.

There are analyzed results of sociological research, it given suggestions on changing and supplementing of criminal procedural legislation.

Keywords: crime against personality; special psychological knowledge; grounds for assignment of psychological expert examination; psychological situations.

According to Article 15 of Criminal Code of Azerbaijan Republic, less serious crimes shall be deliberate and careless actions for committing of which the maximal punishment, provided by the present Code, shall not exceed seven years of imprisonment.

Serious crime shall be deliberate and careless actions for committing of which maximal punishment provided by the present Code shall not exceed twelve years of imprisonment and especially serious crime shall be deliberate actions for committing of which punishment provided by the present Code, shall be imprisonment for the term of twelve years or more strict punishment [8, p. 67].

Section 8 of the Criminal Code “Crimes against individual” consists of the Chapter 18 “Crimes against life and health” (Articles 120-143), Chapter 19

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“Crimes against freedom and dignity of individual” (Articles 144-148), Chapter 20 “Crimes against sexual inviolability and sexual freedom of the individual” (Articles 149-153), Chapter 21 “Crimes against constitutional rights and freedoms of the person and citizen” (Articles 154-169) and Chapter 22 “Crimes against minors and family relation” (Articles 170-176).

Main part of the crimes against individual are less serious, serious and especially serious, but in our point of view, nature and level of social danger of deed are not main factors determining usage of special psychological knowledge at investigation of crimes.

It seems that circumstances determining application of special psychological knowledge at investigation of crimes should be reasons and grounds stipulated in law. For the present, usage of special psychological knowledge in criminal proceedings is limited with provisions of Article 140.0.4 of the CCP of Azerbaijan Republic, obliging to resort to assistance of experts-psychologists in order to establish an age of victim, suspected or accused while absent the documents indicated his/her age [9, p. 162] and Article 432.5 of the CCP that obliges of an investigator to provide a participation of psychologist at conducting of investigatory actions with participation of minor not reached 16 years age and having signs of mental deficiency [9, p. 447].

In all the rest cases the usage of special psychological knowledge in all its forms left at disposal of the bodies carrying out criminal process.

Essentially, provisions of Article 432.5 of the CCP are also the optional as an issue about presence of mental deficiency leave to an investigator’s discretion. The CCP of Azerbaijan Republic does contain the notions of reasons and grounds of assignment of expert examination. Article 264 of the CCP “Principles of governing expert opinion” says that “...an expert opinion shall be obtained in order to determine facts of significance to the prosecution which require specialist knowledge of science, technology or the arts or of investigative methods” [9, p. 284].

But the grounds of conducting expert examination are not the grounds for its assignment what is, in our point of view, negative factor as for production of investigation as and for achievement of the aims of criminal proceedings.

Investigators very often assign the forensic psychological expert examinations being unknown their possibilities or voluntarily or not solving in person matters, which require special knowledge, that contradicts law, remains incomplete a subject of proving.

There is no also common idea in special literature concerning reasons and grounds of assignment of forensic psychological expert examinations.

So, E.N. Kholopova considers that psychological circumstances, which stipulated in the norms of material law and having independent legal significance, are the grounds to assign forensic psychological expert examinations [10, p. 204].

M.M. Kochenov in his works pointed out that forensic psychological expert examination is appointed, when there are required special psychological knowledge for clarification of significant for case circumstances. Later, he concretized his judgements, being determined as main tasks of forensic psychological expert examination the following:

- establishing of ability of mentally healthy accused, witnesses and victims to perceive significant for a case circumstances and to give rights testimonies about them;

- establishing of ability of mentally healthy victims on cases concerning sexual offences adequacy to understand nature and significance of committed with him/her actions and to offer resistance to guilty person;

- establishing of ability of mentally retarded accused minors to be aware the meaning of their actions and determination of ability to manage with their actions;

- establishing of availability or absence to accused person at time of commission of illegal actions the state of physiological affect or other emotional states that are able to impact significantly on his/her conscience and activity;

- establishing whether accused person was in period prior to commission of crime and (or) in moment of commission of crime in emotional state, significantly

impacting n ability to perceive adequacy of phenomena of reality, content of concrete situation and in ability to regulate voluntarily his/her behaviour;

- establishing of an opportunity of appearance to a subject of different mental states or determination of individual psychological particularities, which make impossible or difficult to execution of professional functions;

- establishing of presence or absence to a person in period prior death mental state that predisposed to suicide;

- establishing to a subject of concrete individual mental features, emotional and volitional particularities, features of character that are able to impact significantly on content and directness of actions in certain situation, in particular to contribute to the commission of illegal actions [7, p. 106-108].

Assertions of M.M. Kochenov cited in details as, in our point of view, they have methodological significance.

On opinion of S.S. Aliyev, V.V. Nagayev and other authors, the reasons of appointment of psychological expert examination of emotional reactions and states might be information: about stress situation, in which a subject acted; data on psychological particularities of a person etc. [1, p. 109-110; 5, p. 66; 6, p. 111-112]

According to R.G. Ashkenazi, reasons to produce expert examinations of individual psychological particularities of character and other features of a person are information about inadequate assessment by a subject of social significancy and essence of committed by him/her actions, and also disproportion of real environment to the ways of actions in conflict situation [2, p. 69-70].

On opinion of A.S. Barinov, reasons for an appointment of forensic psychological expert examinations are doubts of investigator in ability of witness, victim, suspected and accused person rightly to perceive, remember and reproduce the events, and the grounds for that are concrete facts that give reasons for similar doubts [3, p. 16-17].

A.V. Kudryavtseva distinguishes material (criminal and legal), epistemological (special) and procedural grounds for appointment and conducting of expert examination. Under material grounds of appointment and conducting of

expert examination are understood by her the indication of the norm of material law in necessity of usage of special knowledge and she considers that material ground predetermines of the base of epistemological as needs in special knowledge in order to establish actual circumstances [4, p. 11-12].

Under the ground of an appointment of forensic psychological expert examination is understood by us the situation, when in order to establish the circumstances of a subject of proving there are necessary special psychological knowledge, and under the reason – availability of information that give grounds to investigator (inquiry officer, prosecutor, judge) for doubts in mental processes of perception, memorization, reproduction, thought and others of concrete participant of criminal proceedings.

In our view, the grounds for appointment of forensic psychological expert examinations should be stipulated in law of criminal procedure, which significantly limit subjective beginnings in proving, and in number of cases it allows to exclude them completely.

The core of our suggestions is the following. According to Article 139 of the CCP of Azerbaijan Republic, during criminal prosecution the following facts which need to be proven: the facts and circumstances of the criminal act; the connection of the suspect or accused with the criminal act; the criminal elements of the committed offence provided by criminal law; the guilt of the person in committing the act provided for in criminal law; the circumstances which mitigate or aggravate the punishment for which criminal law provides; circumstances, on which participant of criminal proceedings or another participant in the proceedings request their requirements [9, p. 161-162].

If there is no one of listed circumstances established then one may assert about incompleteness and superficiality of investigation conducted. But, it is impossible resolution of most part of questions of proving on case (motives, motivation, affect, penitential, attitude to committed) without special psychological knowledge, which absence cannot be filled with other instruments of establishing of the truth on case.

Appointment and conducting of forensic expert examinations is presented to be obligatory on the cases about murders, causing of dangerous for life body injuries and other serious crimes and also on cases about crimes committed by minors.

Above we made some reasons to appointment of psychological expert examination that suggested by scientists. It seems that it will be difficult for some investigators to determine extreme emotional distress situations, in which subject acted or to determine a disproportion of the conditions of situation to the ways of actions in conflict situation. It concerns also of establishing of weak type of central nervous system, inertness of mental processes, logic breach at reproduction of information concerning committed actions and other circumstances.

Therefore, in our point of view, it should be reduced subjective beginnings at resolution of a matter about appointment of forensic psychological expert examination, and reasons and grounds for appointment of forensic psychological expert examination should wider be reflected in the law, be expanded the list of circumstances (Art. 140 of the CCP) that established in basis of certain evidences. So, according to Article 140.0.2 of the CCP, capacity or incapacity of suspected or accused person, when committing an offence which constitutes a public threat, is able or not, as a result of chronic mental illness, temporary mental disorder, debility or other mental disorder, to comprehend or control the factual nature of his/her act (act or failure to act) and the public threat it poses: the opinion of psychiatric experts.

Also, according to Article 140.0.3 of the CCP, whether a witness or the victim is unable, as a result of chronic mental illness, temporary mental disorder, debility or other mental disorder, to comprehend and describe facts which need to be established for the purposes of the criminal case: the opinion of psychiatric experts [9, p. 162].

Article 140.0.2 of the CCP in essence, is saying about insanity of the subject of criminal proceedings, but some its provisions and also provisions of Article 140.0.3 of the CCP have some problems for interpretation.

It is relatively clear with matter concerning sanity of suspected or accused. According to Article 21 of the Criminal Code, the person, who at the time of committing publicly dangerous act (action or inaction), was in a condition of diminished responsibility, and could not realize actual nature and public danger of the acts (actions or inaction) or supervise over them in order to chronic mental disease, timed infringement of mental activity, dementia or other mental disease shall not be subjected to the criminal liability [8, p. 13].

However, mental and psychological features of a person might be interested for investigation not only in order to prosecute but also e.g. in aspect of proving. In particular, in some situations it might be occurred necessity to determine the abilities of sanity, but illness suspected, accused, victim or witness to perceive, memorize and reproduce those or other circumstances, which should be established in course of criminal prosecution, and this is a matter of psychologists.

In addition, it seems that insanity excludes criminal responsibility, but not ability in proper time to perceive, memorize or reproduce circumstances that have significance on criminal prosecution.

In all cases, for positive or negative resolution of this issue there should be necessary special psychological knowledge, application of which will be corresponded to requirements of admissibility of evidence (see Art. 125 of the CCP) and notion of the testimonies (see Art. 126 of the CCP).

We were questioned on thirty judges, investigators, inquiry officers and lawyers on the matters of assignment of forensic psychological expert examination during pre-trial production (at investigation) and assessment of the reports of expert-psychologists.

So, all 100 % questioned had named forensic psychological expert examination among the forms of using of special psychological knowledge, but the level of usage its opportunities was assessed in different ways. In addition, all questioned one of the reasons of non-using of opportunities of forensic psychological expert examination had pointed an ignorance its competence, 25 judges, 27 investigators, on 30 prosecutors, inquiry officers and lawyers – complex

nature of its assignment, which actually is ignorance of the competence, 100% judges, investigators, prosecutors and inquiry officers and 70% (21) lawyers expressed about unnecessary of it; 5 judges, 7 investigator, 10 prosecutors, 21 inquiry officers and 4 lawyers – about low evidential significance of it.

Speaking on the grounds of assignment of forensic psychological expert examinations, as variants of responses, the respondents had said doubts in individual mental particularities of process' participant (100%), inadequate behaviour of accused and victim at time of crime's commission and after crime committed (100%), contradictions between testimonies (5-5-2-1-4), non-obviousness of intention (30-30-30-28-30), indistinctness of motives and aims o crime (22-12-15-11-30), passive behaviour of a victim (6-14-12-9-27), statement on application of mental impact in respect of process' participant (3-2-2-2-30), data about inadequacy of processes of perception, memorizing and reproducing, non-standard nature of situation (4-1-2-1-15), data about availability of stress situation (5-6-7-5-14) and others.

The analysis' results of criminal cases showed that all indicated circumstances had a place in process of investigation that had confirmed availability of the problem with assignment of forensic psychological expert examination.

In conclusion, it seems necessary to supplement valid criminal procedural legislation concerning the grounds of assignment of forensic psychological expert examination if appropriate reasons and evidence's admissibility are available.

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