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DIFFERENTIAL AND TYPOLOGICAL PECULIARITIES OF PERSONS WHO COMMIT DELICTS THROUGH NEGLIGENCE

In the article the author considers a number of social and demographic, criminogenic and psychological characteristics that distinguish the negligent perpetrator personality. Based on the scientific research, criminal statistics and jurisprudence, the determination and precondition of certain types of delicts committed through negligence and their specified features have been analyzed. Sharing the views on the unity of external (social) and internal (individual-psychological) determinants as a causal complex of the individuals' behavior, in the article the particular attention is paid to factors peculiar solely to the offender's personality.

The author has proved that for combating crime practice, especially for the purpose of individual prevention and investigation of negligent delicts, it is very important to conduct this study, since the main object of preventive efforts is the person him/herself. The paper presents some basic scientific provisions concerning the ways and directions for fighting against crime while taking into account the psychology of a negligent offender personality.

Keywords: personality of the perpetrator, delict by negligence, determinants of delicts, differential and psychological analysis of personality, typological approach.

According to the statistics of the Unified Register of Pre-Trial Investigations of the General Prosecutor's Office of Ukraine, in 2013, the number of murders committed by negligence amounted to 214 criminal delicts, or 4 % of the total number of registered murders. On the contrary, in 2014, there were 184 cases (2 % of the total), in 2015 – 164 (2,1 %), in 2016 – 174 (3 %). At the same time, this indicator is somewhat different for the total number of criminal delicts in which individuals have been notified of suspicion, and in

2013 there were 177 (10,2 %) of the total number of people who have been notified of suspicion of intentional murder. In 2014, there were 145 offenses registered (8,4 %), in 2015 – 132 (9 %), in 2016 – 134 (9,7 %) cases.

The abovementioned figures suggest that over the period of 2013–2014 there was a decrease in both the total number of registered murders committed through negligence and the number of persons who have been notified of suspicion of committing the specified type of delicts. However, starting from 2015, a fairly steady trend towards their gradual growth has emerged, which, in our opinion, predicates a need to thorough study of this issue and indicates a further complication of the social situation in the country. At the same time, it is the perpetrator's personality that serves as the basic determinant of this type of offense, and facilitates the consolidation of all elements of the criminal behavior mechanism. Being under the influence of negative social relations, it integrates a complex of relevant moral and psychological features, views, orientations, intellectual and volitional characteristics. Considering the offender personality and his/her offense solely by reference to specific life situations, the researcher is not able to obtain reliable information about the subjective and objective causes of the murder committed by negligence.

The aim of the study is to outline the differential and typological peculiarities of a neglect offender's personality owing to the lack of persistent views among scholars and practitioners regarding approaches in distinguishing these features as structural components of the perpetrator's personality. The essence of the issue is the establishment of specific psycho-physiological, individual and socio-psychological, as well as some of the underlying internal personal factors that mediate the assassination committed by a person through negligence.

Studying a neglect perpetrator's personality in the context of psychology, criminology enables to determine his/her ontogenesis, reveal the reasons, objectives for illegal behavior and establish the ground for its forecasting and timely juridical and psychological regulation. At the same time, the typological peculiarities of a negligent perpetrator make it possible to isolate and identify a set of features that characterize this type of offender and play a role in determining his/her criminal behavior, since the early diagnosis of

these features contributes to an adequate forecast and the development of a probable unlawful conduct model.

In the historical, theoretical and methodological aspects of the typology of the perpetrator in general and negligent in particular, a considerable attention to these issues is paid by a number of scholars, i.e. Yu. Antonyan, V. Bekhterev, P. Dagel, A. Dolgova, M. Enikeyev, E. Ferry, R. Garrofalo, V. Golubiev, S. Korsakov, Yu. Kudryakov, Ch. Lombroso, O. Sakharov, Y. Samovich, A. Sasikov, M. Shumsky, A. Zhmurov and others. However, the problem of negligent crime was not specifically the subject of their research, and some scholars studied it fragmentary.

By studying human activity, it ought to be noted that it is mainly reflected in the form of behavior, which, in turn, is formed from a series of conscious and unconscious actions and actions that are under the control of consciousness. That is, human behavior acts as a link that connects the human mind with the social environment. The attitude towards the surrounding society as a whole is displayed in the person's behavior. Therefore, understanding the mechanism of negligent illegal behavior is possible through its analysis at the general social and individual levels.

For a long time, such scholars as B. Ananiev, O. Leontiev, B. Lomov, K. Platonov, S. Rubinstein while investigating the problem of the correlation of biological and social in the individual, have tried to answer the question: when exactly, at what stage of life, education, training there is an impact to the occurrence of abnormalities in the mind of a person that generally lead to the commission of a deliberate or careless crime.

Studying the offender personality on the territory of Ukraine, D. Aleksandrov, V. Androsyuk, O. Dzhuzha, O. Gorokhovskaya, L. Kazmirenko, M. Kostitsky, A. Kudermina, I. Lanovenko, A. Miller and others emphasized that: «When establishing the causes of a specific socially significant action, including the offense, the defining one is a social reason. It actively influences the individual features of a person, determining the content, the essence of his/her behavior. Biological cause is only a dynamic, functional aspect of behavior, that is, biological factors are a condition for the action of social causes» [1, p. 76].

In our opinion, for the typology of a negligent offender, a psychological characteristic is highly relevant, which in one way or

another relates to the circumstances of the crime. The person in particular, his/her psychic world is the foundation upon which the interaction of biological and social factors takes place and which influence beyond the psychological analysis cannot be understood.

The outstanding criminologists as Yu. Antonian, M. Yenikeev, V. Eminov justified that: «Knowledge of the typology (offender) makes it possible to identify and analyze certain types of criminal behavior; it allows to explain this type of behavior by the peculiarities of this particular type of personality. Thus, according to external signs of antisocial behavior orientation, the basis of the typology of a negligent criminal comprises irresponsible attitude to the established social values and his/her duties towards them, which is manifested in various careless crimes...» [2, p. 11].

In our opinion, the offense itself serves only as a kind of social behavior, which consists of two interacting causative ties, namely: a specific life situation in which the person and his/her psychological features are. At the same time, it is impossible to accurately predict the behavior of a careless offender, since the motive does not always correspond to the result obtained, but subconsciously the person assumed and foresaw that under certain circumstances and in a certain situation, it would be possible to cause death to the victim.

The researcher V. Nomokonov believes that «...among persons who committed negligent crimes, individuals with a general negative orientation were detected 3 times less often, with a general positive orientation 5–6 times more often than among those who committed intentional crimes. The provocative situation was observed in 28 % of careless crimes vs. 17 % (in violent)...» [3, p. 48]. Instead, in our study according to these criteria, it was found that 68,4 % of the individuals who committed murder due to negligence had a general negative orientation, while the provocative act contributed to the killing in 31,6 % of cases.

Furthermore, according to the analysis of offenses committed under Article 119 of the Criminal Code of Ukraine, based on the materials of the Unified State Register of Court Decisions for the period from February 2012 to June 2017, it was established that 790 sentences were issued by the courts respectively (according to Part 1 of Article 119 of the Criminal Code of Ukraine 785 cases and part 2 of this Article – 5 sentences), of which: in the Dnipro region there were 83, in Donetsk region – 75, in Odessa region – 55,

in Kharkiv region – 50, in Zaporizhia region – 43, in Kyiv region – 40, in Rivne region – 35, in Kherson region – 33, in Vinnitsa region – 32, in Cherkassy and Zhitomir regions – 31, and in Kirovograd region – 30, Sumy region – 28, Lugansk region – 27, Lviv region – 24, Volynska region – 23, Mykolaiv region – 21, Poltava and Khmelnytsky regions – 18, Crimea region – 17, Zakarpatska region – 15, Ternopil and Chernihiv regions – 14, Ivano-Frankivsk region – 13, in Kyiv – 12 and Chernivetska region – 8 sentences.

During this period, courts of the first instance in Ukraine for the commission of crimes, as for Article 119 of the Criminal Code of Ukraine, convicted 792 persons of which: for part 1 of the article there were 786 people and accordingly in part 2 of the same article – 6 persons. At the same time, in 13 criminal proceedings courts issued acquittal sentences of which: 1 case in each regions (Zaporizhia, Rivne, Sumy, Kyiv, Cherkasy, Ivano-Frankivsk, and Crimea) and 2 in Khmelnytsky, Donetsk and Mykolaiv regions.

It is worth pointing out that only 31 % of the cases brought by the first instance court had a sentence of imprisonment, while 67 % of the proceedings were sentences that restrict freedoms. In 2 % of cases, courts have issued acquittal sentences.

Investigating negligent crimes, P. Dagal concluded that: «Negligent behavior is a deviation of the person's behavior from the declared caution rules adopted in the society or in a particular social group; in this respect it can be called behavior which deviates... Such behavior may be: violation of unwritten norms of human coexistence, everyday life safety rules; violation of special rules that operate in certain social groups or public organizations; offenses of various types (civil law delinquency, administrative or disciplinary offense); crime; international legal delinquency» [4, p. 9].

Moreover, P. Dagal, distinguishing the negligent offenses into an independent group, divided the persons who committed them, according to three criteria:

- 1) accidental careless criminals who committed a negligent offense for the first time, unknowingly violated safety regulations, under the influence of a favorable or even provocative situation, or a special psycho-physiological state (affect, fatigue, a diseased condition); they are positively characterized and still did not commit offenses (approximately 50 % of careless criminals);

2) unstable negligent criminals who committed a criminal act for the first time in a normal or even impeding situation, deliberately violated safety regulations, and were not forced; who are not characterized positively, who previously did not commit offenses, including safety rules violations (about 30–40 % of negligent criminals);

3) abusive negligent criminals who were still convicted of committing offenses, and who committed particularly malicious violations of the safety regulations under the person's general negative intention (about 10–15 % of the convicted for careless crimes) [4, p. 13].

According to the proposed classification and analysis of the materials of the Unified State Register of Court Decision, it was discovered that out of 792 people who committed murder due to negligence in the period from 2012 to 2017 (see Figure) 68,4 % were in the state of alcohol intoxication and were asocial individuals who committed a careless crime for the first time but consciously; 21,4 % were unstable, committed murder for the first time because of negligence, unknowingly (forcedly) violated safety regulations under the influence of an incentive or even provocative situation. 10,2 % of the total statistical data were malicious negligent criminals who were previously convicted for committing offenses and committed a violation of safety regulations with a general negative personality orientation. None of them had previously been prosecuted for killing due to negligence.

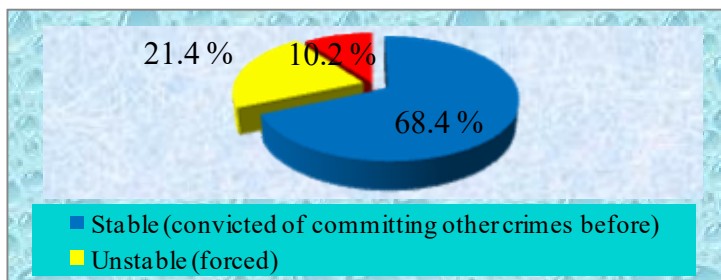


Figure. Analysis of murders committed by negligence for the period from 2012 to 2017 (in accordance with the criteria defined by P. Dagal) for all negligent crimes

In turn, S. Nezhurbida believes that: «The personality of a negligent perpetrator is characterized not only by specific criminogenic properties, but also by the features common to different types of criminals» [5, p. 107]. This view, in our opinion, is quite appropriate and is reflected in the criminological and psychological studies. The analysis of the structural elements of the person who committed the murder through negligence gives us the opportunity to vary the social and demographic definitions that characterize the natural and social opportunities and contribute to identifying the existing antisocial and asocial attitude of this person and to focus mainly on typological features. Their establishment has practical and scientific significance for revealing and distinguishing the general criminal properties of these individuals.

It can be considered that due to the analysis of the structural elements of a negligent murderer personality, it is possible to determine the social and demographic definitions that characterize the social and natural capabilities of the individual, the stability of most of the asocial orientations, and to distinguish the typological features that are peculiar for these types of offenders. The scientific and practical significance of their establishment is to identify the general-criminal properties and qualities of the specified person, to determine the level of criminogenicity, as well as the most significant general features that are formed as a result of the interaction of internal and external factors.

A. Zakaluk has singled out several parameters in the criminological description of neglect offenses, which, in his opinion, are general for all their types, namely:

«1. They are committed in a particular environment of human activity. A person acts carelessly (or tolerates inactivity) in a particular environment, which requires his/her increased attention to the conditions of activity or creates a situation of forced (impulsive) carelessness. According to the above indication, the environment of committing a neglect crime can be attributed to such varieties:

a) the natural environment where human activity takes place under the scheme «man-nature», where the nature and mode of relationship are determined by the person in view of the best acceptability for him/herself and the expectation that the interests of society and nature itself will not suffer, or does not take them into attention at all;

b) a socially organized environment, which is the result of people's activities and the sphere of its implementation;

c) the domestic environment of human relations in the scheme «man – man», which is not strictly regulated by legal norms.

2. The characteristic for criminological feature of almost all neglect crimes (except those committed in the domestic environment) is the violation of special mandatory norms, rules, standards of behavior, which are determined taking into account the peculiarities of the environment (its social value, increased danger, high probability of causing damage to people's lives and health, etc.).

3. The overwhelming majority of neglect crimes are characterized by the significant damage to society, the state...» [6, p. 678–679].

On the basis of the obtained indicators and analyzed murders committed through negligence, according to the same criteria of criminological characteristics, it should be noted that for the period from 2012 to 2017 the mentioned offenses were mainly committed in a particular environment of human activity:

a) in the natural environment – 71 (or 8,9 %) murders due to negligence were committed on hunting, during the logging work, in places of illegal coal mining (according to the scheme «man – nature»);

b) 25 (or 3,2 %) – in a socially organized environment, which is the result of the people's activities and the sphere of their implementation in general, namely, during the detention in the military part, the performance of construction works on enterprises;

c) in everyday life (according to the «man – man» scheme), only 694 (or 87,9 %) murders were committed due to negligence, which is a manifestation of neglect of universal morals and culture norms, according to which the person with his/her rights, freedoms, socially acceptable interests takes the highest value.

Mostly, such assassinations were committed during street fight, in stores, in place of mass gathering of people; in the manifestation of domestic violence; due to improper parenting of the newborn baby.

Murders, committed through negligence, undoubtedly causes considerable damage, because they endanger the most valuable thing – human life. At the same time, we cannot agree with A. Zakalyuk's opinion on the lack of rules in the domestic

environment, standards of conduct, namely, special mandatory standards, which are determined taking into account the peculiarities of the environment. These rules are not formalized (textually arranged), but they were formed as a result of long-term social experience, regulating relationships in society, or explained by the relevant specialists for their compliance with certain procedures in everyday life.

Thus, when performing logging works, the person must control and ensure the safe direction of the possible tree fall, make sure that the surrounding people are in a place where they are not threatened. In addition, when feeding a newborn child, the mother should properly keep the baby, providing free breathing and, subsequently, protect the location and guarantee proper care. That is, a person at home must adhere to certain rules or safety measures, since their negligent execution or self-confidence can lead to the death of other persons in functional and social risk situations.

It can be stated that the classification proposed by A. Zakalyuk does not adequately correspond to the completeness of the criminological characteristics of the crimes committed through negligence, since most of them are committed on the domestic ground, and A. Zakalyuk's study is only covered the sphere of traffic safety rules and transport operation violation.

According to the analysis of the Unified State Register of Judicial Decisions, it has been found out that the murders committed through negligence have been carried out in the following locations: 396 crimes (or 50,1 %) in public places (in the street, near and in the premises of cafes, shops, clubs); 320 crimes (or 40,5 %) – in the premises at the place of residence, service, residence; 57 crimes (or 7,2 %) – during hunting; 14 crimes (or 1,7 %) – during the work on deforestation, illegal coal mining, field work of agricultural products harvesting; 3 murders (or 0,3 %) have been committed at work.

At the same time, it ought to be highlighted that more than 50 % of the mentioned crimes were committed in the evening and at night, namely: from 18 to 5 o'clock – 438 crimes (or 55,4 %), during the daytime – from 12 to 18 o'clock – 256 murders (or 32,4 %) were committed due to negligence. The least of them were registered in the morning hours from 6 to 12 o'clock which are 94 (or 12 %) cases.

It can also be assumed that most cases of neglect murders carried out in the evening and at night can correlate with the prevailing evening consuming of alcoholic beverages.

M. Yenikeev once observed that: «In the neglect offense a significant role is devoted to the criminal situation, during which the person reveals his/her negative qualities as self-assurance, negligence, and situational dependence» [7, p. 185].

At the same time, the scientist, singling out the features peculiar to the careless perpetrator, noted the following ones: an existing motive (only the establishment of the motive would make it possible to find out the person's relation to the criminal consequences); narrowed consciousness, inability to predict all possible consequences of actions, neglect of social danger, loss of control over means and instruments; defects of perception (no recognition of dangerous signs, defects in activities evaluation, decision-making, mental and physical overload, state of intoxication, negative emotional state)» [7, p. 186–187].

For sufficiently complete understanding of the mechanism of careless unlawful conduct, it is expedient to analyze the social and demographic characteristics of those who committed the offense under Article 119 of the Criminal Code of Ukraine. This goes in line with the peculiarities of the pre-trial investigation of murders committed by negligence, which involves taking into account the criminological, social and demographic and psychological differential distinctions peculiar to those who committed the crime. In the qualitative experimental study a number of the following differences have been identified.

According to the social and demographic characteristics of those who committed murder due to negligence, it is possible to distinguish them by the criteria of age, sex, education, etc.

The overwhelming majority of casualties were committed by males (62 %) of the age group of 35–50 and women (24 %) at the age of 30–35, which almost corresponds to gender proportions in the structure of general crime. Instead, a significant number of the offenses committed by underage people (14 %) was detected, which significantly exceeds the number of young people (3,3 %) who were prosecuted under Articles 171–118 of the Criminal Code of Ukraine.

In most cases, murder is committed by men due to negligence as a result of the alcoholic beverages consuming, which in the future leads to

uncontrolled aggression that manifests itself in conflict situations (quarrels, fights) during leisure activities with strangers in public places and at the place of residence with family members where victims are mostly wives. In addition, special attention should be paid to the cases of careless weapon handling during service to the armed forces of Ukraine, hunting, carrying out services in the Ministry of Internal Affairs of Ukraine. Women commit crimes in order to protect themselves against male aggression, while improperly taking care after child, or as a result of alcoholic beverages consume.

Educational characteristics of the perpetrators are the following. Neglect crimes are predominantly (66 %) committed by persons with secondary education (incomplete – 14 % and complete – 52 %). Every third crime (29 %) is committed by persons with secondary specialized education. At the same time, only 4,7 % of the perpetrators have higher education, which makes it possible to attribute the educational factor to the preventive factors for predisposition to this type of offense, in comparison with the intentional murderers where the share of persons with higher education is almost 14 %.

The research interest is an analysis of the social status of neglect murderers. Out of the total number of persons prosecuted for careless crimes in the period of 2012–2015, 24 % were working men and 43 % were unemployed men. Among the female population: non-working offenders constitute a significant minority (14 %). At the time of the commission of the offense the amount of men and women who were receiving education, was in equal proportion (by 9,5 %). 38 % of male perpetrators and 14 % of women had family ties. Unmarried men who were among the offenders comprised twice less (19 %), and unmarried women – 9,5 %.

It was remarkable that the study did not reveal significant differentiation of offenders regarding social adaptability and professional success. In particular, there was roughly the same number of socially-adapted and non-adapted persons among male offenders (33 % and 43 % respectively) and among women (9,5 % and 14 %). Furthermore, there were no clear distinctions between the surveyed category of offenders as of a stable antisocial way of life indicator (alcohol abuse, narcosis, vagrancy, domestic conflicts, minor offenses, etc.).

Thus, the comparative results of men who led socially positive and socially negative lifestyles made up 36 % and 41 % respectively, and among women: 9,5 % of socially successful and 19 % of antisocially-minded persons.

In addition, the study determined the reason for negligence murder because of psycho-emotional states of offenders. In particular, it was found out that over 54,1 % (based on 428 cases) of those surveyed were in alcoholic intoxication (45 %) or drug-induced excitement (9,8 %).

A fairly large number of offenders is explained by the presence of a stressful condition (57 % of suspects), due to a number of reasons. Thus, 42,6 % of offenders consider the emergence of psycho-emotional tension as the result of the deployment of conflict with the victim. In fact, the same number of stressful situations was caused by tension in family relationships and aggravation of problems at the work place (by 4,8 %, respectively). It was determined that a certain number of negligent crimes was committed as a result of weakened self-control in a state of emotional excitement, both being together with the victims, and as a negative reaction to the third party while hunting.

Significant features are characterized by the behavior of suspects in the process of pre-trial investigation. It has been distinguished that 86 % of perpetrators realized that they had committed an assassination under Article 119 of the Criminal Code of Ukraine and found sincere repentance in the committed action. The vast majority of offenders (82 %) expressed their willingness to cooperate with the investigator and establish positive and productive contact with him/her, indicating the absence of their criminalization and negative attitude to legal norms. Only 9,8 % of the suspects were cynical and indifferent to the perpetrator. At the same time, 4,8 % of offenders resorted to imitation of repentance in order to avoid or reduce punishment.

The foregoing situation can be explained by the fact that 12,8 % of suspects during the pre-trial investigation did not show a desire for positive interaction during the investigation. The characteristics of those who committed murder also could be described as the practical absence of an active counteraction to the pre-trial investigation process.

The study obtained data relating to the identification of the most peculiar characteristics of neglecting perpetrators personality in comparison to persons brought to responsibility for intentional murder (Article 115 of the Criminal Code of Ukraine). A number of psychological features which are statistically significant while characterizing the identity of intentional criminals have been specified. These include: cruelty (34 % of intentional murderers, as opposed to 19,5 % of careless offenders), impudence (42,4 % and 14,6 % respectively), contempt (38,7 % and 9,8 % respectively), malice (46,8 % and 14,6 % respectively), aggressiveness (60,4 % and 16,3 % respectively) and brutality (37,8 % and 16,8 % respectively).

In addition, certain psychological features, which are common to both categories of persons, whose actions led to the death of the victims, have been identified. These include: falsity (21 % intentional and 22 % unintentional murders), excitability (20 % and 24 %), conflict (58,6 % and 46,3 % respectively), audacity (28 % and 22 %), meanness (12,7 % and 7,3 % of people), mercenariness (18,6 % and 14,6 % of offenders, respectively) and immorality (21,95 % and 22,6 % respectively). The only psychological trait of the individual has been more or less statistically significant in the category of careless offenders, is tolerance which belongs to 19,5 % of people in contrast to 6,7 % of deliberate murderers.

The determined differential typological peculiarities of the offender personality make it possible to form a notion of a sufficiently anticipated psychological profile. That is, when studying a person as a negligent murderer, one ought to pay attention to the circumstances that cause a person to commit a murder and to psychodynamic peculiarities that are capable of determining the direction of criminal behavior.

At the same time, the presence of some common features inherent to both intentional murderers and negligent offenders (conflict, audacity, petty) indicate the need for a thorough analysis of their nature and determination.

The same applies to the uncertainty, non typical psychological profile of neglect offenders, which requires consideration of illustrative objective material, reflected in forensic psychological expert studies. Unfortunately, the volume of a separate publication

does not allow to fully covering the declared issue, however, the considered material can be used to prevent delicts by negligence, when seeking the most effective ways and means of their prevention.

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**Диференційно-типологічні особливості осіб,
які вчиняють правопорушення через необережність**

Розглянуто низку соціально-демографічних, криміногенних і психологічних особливостей, які характеризують особу необережного правопорушника. Проаналізовано детермінацію та зумовленість зазначеними особливостями окремих різновидів правопорушень, учинених через необережність. Акцентовано на чинниках, притаманних виключно особі правопорушника.

Ключові слова: особа правопорушника, правопорушення з необережності, детермінанти правопорушення, диференційно-психологічний аналіз особи, типологічний підхід.