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Кірко Н. В.**Кийко Н. В.**

INFLUENCE OF CLASSIFICATION OF PERSONS SENTENCED TO IMPRISONMENT ON THE ACHIEVEMENT OF CRIMINAL RESPONSIBILITY GOALS

ВЛИЯНИЕ КЛАССИФИКАЦИИ ОСУЖДЕННЫХ К ЛИШЕНИЮ СВОБОДЫ НА ДОСТИЖЕНИЕ ЦЕЛЕЙ УГОЛОВНОЙ ОТВЕТСТВЕННОСТИ

Abstract. The article is devoted to the issues of classification of persons sentenced to imprisonment. Attention is drawn to the fact that the achievement of criminal responsibility goals largely depends on a clear division of convicts, depending on the criteria established by law, into homogeneous groups with subsequent differentiation and individualization of correctional and educational impact. As a result of the research, the author came to the following conclusions. In order to efficiently and effectively organize the process of correctional influence on convicts, it is rational to divide them into such categories, in relation to which the main means of correction provided for by law (established procedure for execution and serving of sentences, socially useful work, educational work, education of convicted persons, and social impact) could be applied in different volumes and with different degrees of intensity in order to ensure the achievement of the goals of punishment. Thus, differentiated application of correctional measures to convicts is possible only if they are correctly divided into homogeneous groups. Classification of persons sentenced to deprivation of liberty is of great practical importance for organizing the process of their correction and achieving criminal responsibility goals. It provides isolation from each other of various categories of convicts, thereby preventing the possibility of negative influence of more dangerous criminals on less dangerous criminals, and suggests the possibility of strengthening security and supervision, as well as the correctional and educational impact of punishment against dangerous criminals, while reducing the legal restrictions for convicts who do not pose a great public danger.

Keywords: criminal liability, punishment, convicted person, classification, imprisonment.

Аннотация. В статье исследуются вопросы классификации осужденных к лишению свободы. Обращается внимание на то, что достижение целей уголовной ответственности во многом зависит от четкого разделения осужденных в зависи-

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мости от установленных законодательством критериев на однородные группы с последующей дифференциацией и индивидуализацией исправительного и воспитательного воздействия. В результате исследования автор пришел к следующим выводам. Для того, чтобы качественно и результативно организовать процесс исправительного воздействия на осужденных, рационально разделить их на такие категории, по отношению к которым в различных объемах и с различной степенью интенсивности можно было бы применять основные средства исправления, предусмотренные законодательством (установленный порядок исполнения и отбывания наказания, общественно полезный труд, воспитательную работу, получение осужденными образования и общественное воздействие), добиваясь обеспечения достижения целей наказания. Таким образом, дифференцированное применение к осужденным мер исправительного воздействия возможно только при условии их правильного разделения на однородные группы. Классификация осужденных к лишению свободы имеет большое практическое значение для организации процесса их исправления и достижения целей уголовной ответственности. Она обеспечивает изоляцию друг от друга различных категорий осужденных, тем самым предотвращая возможность отрицательного влияния более опасных преступников на менее опасных преступников, предполагает возможность усиления охраны и надзора, а также исправительного и воспитательного воздействия наказания в отношении опасных преступников при одновременном уменьшении правоограничений для осужденных, не представляющих большой общественной опасности.

Ключевые слова: уголовная ответственность, наказание, осужденный, классификация, лишение свободы.

Information about author / Сведения об авторе

Nikolay Vladimirovich Kiyko, PhD (Law), Associate Professor, head of penal law department, Academy of the MIA of the Republic of Belarus, Minsk, Republic of Belarus, e-mail: avant_n@mail.ru.

Николай Владимирович Кийко, кандидат юридических наук, доцент, начальник кафедры уголовно-исполнительного права, Академия МВД Республики Беларусь, г. Минск, Республика Беларусь, e-mail: avant_n@mail.ru.

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In accordance with article 44 of the Criminal Code of the Republic of Belarus (hereinafter – the CC of the RB), criminal responsibility is expressed in the conviction on behalf of the Republic of Belarus by a court verdict for a person who committed a crime, and the application of punishment or other criminal liability measures based on the conviction. Punishment is a compulsory measure of criminal law influence and consists in the deprivation or restriction of the rights and freedoms of the convicted person provided for by law (Kiyko, N. V. 2015, p. 155). Criminal responsibility and punishment are not the same categories and concepts, although we should not speak about their significant differences either. Punishment is the implementation of criminal responsibility in the court's conviction. Punishment is the most important stage of criminal responsibility (Kuznetsova, N. F. & Tyazhkova, I. M. (eds) 2002, p. 10). Being a state organ intended for punishment in respect of persons sentenced to deprivation of liberty, correctional facility in accordance with the Penal Legislation of the Republic of Belarus are obliged to ensure its implementation so that the punishment will be a means of convicts correction of and prevention of new crimes.

According to the Development Concept of the penitentiary system and medical and labor dispensaries organization for 2016–2020, approved by order of the MIA of the Republic of Belarus No. 167 (adopted on 20.06.2016), one of the main directions for improving the activities of correctional institutions in order to better solve the problems they face is the classification and separate detention of convicts depending on their criminological characteristics. The implementation of this task is possible only if the principle of differentiation and individualization of execution of punishment and other criminal liability measures stipulated in Article 6 of the Penal Code of the Republic of Belarus (hereinafter – the PC of the RB) is observed. Due to the classification of persons sentenced to deprivation of liberty, taking into account their division into certain groups,

law enforcement practice provides for the rational use of coercive measures and means of correction of convicted persons, as well as stimulating their law-abiding behavior. It should be noted that A. I. Zubkov noted that the principle of differentiation and individualization of punishment includes in its content the second principle – the rational use of coercive measures, means of convicts correction and promote their law-abiding behavior, since the latter is a consequence of the process of differentiation and individualization of convicts' personality themselves. (Zubkov, A. I. (ed.) 2006, pp. 16–17). Ultimately, it creates the necessary conditions for effectively achieving the goals of criminal responsibility.

Classification (from Latin *classis* – category, class and *facere* – to do) means splitting a set (class) of objects into subsets (subclasses) based on certain characteristics. In the dictionary of S. I. Ozhegov, classification is interpreted as a distribution by groups, categories, and classes (Ozhegov, S. I. 1984, p. 238).

V. Yu. Yuzhanin points out that the special classification includes the classification of persons sentenced to imprisonment. In fact, this is the division of them into relatively homogeneous categories, groups based on the most significant features of community (criteria) in accordance with the goals of punishment. The problem of effective achievement of the goals of punishment determines the classification of convicts. Dividing convicts by socio-demographic characteristics, gender, age, criminal record, form of guilt, severity of the crime, psychological and pedagogical characteristics of the individual, behavior while serving a sentence, and other characteristics, it is possible to create optimal conditions for differentiated impact on different categories or groups of convicts, which makes it possible to individualize the correctional process for each convict (Kornienko, G. A., Grishko, A. Ya. & Chorny, V. N. (eds) 2013, p. 57).

The classification of persons sentenced to deprivation of liberty is provided for by the

norms of the penal legislation of the Republic of Belarus. It is closely related to the classification of persons who have violated the law, which is carried out in accordance with the norms of criminal law. Both of these classifications have a lot in common, although they differ in their content, methods of constructing classification groups and the main goals of their formation, representing independent classification systems.

For a more complete understanding of the essence and meaning of the classification of persons sentenced to imprisonment, it is necessary to reveal its relationship to the criminal law classification, to establish their similarities and differences. The similarity of these two classification systems is primarily in the fact that both of them are aimed at improving the effectiveness of measures to combat crime. In some cases, their classification groups are formed using the same criteria. Thus, the criminal law classification is based on such criteria as the degree of public danger of the committed crime and the degree of public danger of the criminal's personality, which, in their totality, are simultaneously one of the important criteria for classifying persons sentenced to imprisonment. The commonality and interrelation of these two classifications also consists in the fact that the criminal law classification divides into relatively homogeneous categories all persons who have committed crimes, including persons sentenced to imprisonment.

All those sentenced to imprisonment represent a very heterogeneous group of offenders who differ from each other in the nature and degree of public danger of the committed crimes and the personality, in the past criminal activity, the degree of pedagogical neglect and socio-moral depravity, age, gender and other characteristics. However, despite the multiplicity of individual characteristics, all of them, depending on the most significant features inherent to certain groups of individuals, can be divided (classified) into relatively homogeneous categories characterized by common features.

Summary statistics on the activity of courts of general jurisdiction in the Republic of Belarus in the administration of justice for the 1st half of 2020 show that during this period, the country's courts considered 16,256 cases with sentencing (*Summary statistics on the activity of courts of general jurisdiction in the administration of justice for the 1st half of 2020* 2020). The number of convicted persons was 17,506. At the same time, 3,964 convicts were sentenced to imprisonment, which is 22.6% of all imposed punishments and other criminal liability measures. Given the fact that deprivation of freedom in the system of measures of criminal responsibility is one of the most severe penalties, which is highly significant among other types of punishment applied to convicts, as well as the fact that the persons convicted to imprisonment represent the most dangerous category of criminals, heterogeneous and requires a strictly differentiated application of basic means of correction to them. The legislation of the Republic of Belarus provides for a clear classification of this category of offenders.

The current criminal legislation classifies persons depending on the degree of public danger of the committed crime (Article 12 of the PC of the RB):

a) for those who have committed crimes that do not pose a great public danger, for which there is a prison sentence of no more than 2 years;

б) those who have committed less serious crimes (imprisonment not exceeding 6 years, but by negligence it is more than 2 years);

в) who have committed serious crimes (imprisonment not exceeding 12 years);

г) those who have committed especially grave crime (imprisonment for more than 12 years, life imprisonment, death penalty).

According to the degree of public danger of the personality, the criminal law classification divides criminals into those who:

a) committed crimes for the first time;

б) committed crimes in case of a dangerous recidivism;

в) committed crimes in case of especially dangerous recidivism.

The criminal law classification is the basis for the classification of persons sentenced to imprisonment (primary classification). However, being the basis of the classification of convicts sentenced to imprisonment, it does not replace it, because between these classifications, there are significant differences due to the different content of norms of criminal and penal law, the tasks and activities of preliminary investigation bodies and the court, on the one hand, and correctional institutions on the other.

If the main purpose of the classification of offenders in criminal law is to assist the preliminary investigation bodies, the Prosecutor's office and the court in making the right decision when bringing a person to criminal responsibility and differentiated sentencing, corresponding to the nature and degree of public danger of the crime and offender's personality; the main purpose and task of classification of convicts sentenced to imprisonment is to ensure differentiated execution of punishment and the process of correctional influence in relation to different categories of convicts.

Article 71 of the PC of the RB is the most explicit requirement for separate serving of imprisonment by different categories of convicts. This approach is due to the fact that each of the different categories of convicts needs to receive the appropriate optimal amount of correctional and educational impact in relation to it. Thus, the execution of a sentence must be differentiated. In Belarus, correctional institutions provide for separate detention of men and women, juveniles and adults sentenced to deprivation of liberty. It is allowed to keep in one correctional institution convicted women who are serving their sentence in correctional colonies for persons serving their first sentence of imprisonment, and correctional colonies for persons who have previously served their sentence of imprisonment, as well as female juveniles who are serving their sentence in juvenile

colonies. In this case, women who have been sentenced to imprisonment for the first time and women who have previously served this sentence are kept separately. Female juveniles are in isolation from other convicts. In one correctional institution, convicted persons with especially dangerous recidivism of crimes are placed separately from convicted persons whose life imprisonment was replaced by imprisonment by way of pardon. In turn, convicts who contribute to the commission of offenses by other convicts or are inclined to infringe on the rights and legitimate interests of other convicts or to disobey the legal requirements of the administration may be placed separately in locked rooms in one correctional institution. Separate correctional institutions may be established for the placement of convicts (former law enforcement officers). Other convicts may also be sent to these institutions.

The requirements for separate detention of convicted persons established by law do not apply to medical and correctional institutions. Convicts sent to these institutions are held under the conditions established by law for institutions of the type designated by the court. Convicts who have diseases, included in the list of diseases that pose a danger to public health, determined by the Ministry of Health of the Republic of Belarus, are placed separately and in isolation from convicts who do not have these diseases.

It should be noted that the Law of the Republic of Belarus (adopted on 19.07.2016) No. 405-Z "On amendments and additions to Penal Code of the Republic of Belarus", Article 71 of the PC of the RB was supplemented by part 5-1, according to which those convicted of illegal actions with narcotic drugs, psychotropic substances, their precursors and analogues should have been placed in correctional institutions separately from other convicts or in separate correctional institutions. However, as the analysis of law enforcement practice has shown, such a decision was not entirely successful for a number of reasons. As noted in the Decision of the Constitutional Court of the

Republic of Belarus (adopted on 08.07.2020 No. R-1221/2020 “On compliance with the Constitution of the Republic of Belarus of the Law of the Republic of Belarus “On amendments to the Penal Code of the Republic of Belarus” changing the Article 71 of the PC of the RB, the legislator took into account the situation in the country, formed as a result of government measures to combat illicit trafficking in narcotic drugs, psychotropic substances, their precursors and analogues and prevention of consumption. According to the Constitutional Court, the exclusion of legislative provisions Part 5-1 of Article 71 of the PC about the rules of separate detention in correctional institutions of convicts sentenced for illegal actions with narcotic drugs, psychotropic substances, their precursors and analogs from other prisoners or detention of such persons in the individual correctional facilities do not take into account international standards on the separation of different categories of convicts, taking into account their gender, age, previous criminal record (rule 11 of the UN Standard Minimum Rules for the treatment of prisoners, adopted by UN General Assembly Resolution 70/175 on 17.12.2015; rule 18.8 of the European prison rules (Annex to Recommendation N REC (2006)2 of the Council of Europe to the member states adopted on 11.01.2006)). Thus, the Law of the Republic of Belarus adopted on 17.07.2020 No. 51-Z «On amendments to the Penal Code of the Republic of Belarus» Part 5-1 of Article 71 of the PC of the Republic of Belarus was deleted.

Summing up, it can be noted that in order to efficiently and effectively organize the process of correctional impact on convicts, it is rational to divide them into such categories, in relation to which the main means of correction provided for by law could be applied in different volumes and with different degrees of intensity (the established procedure for the execution and serving of sentences, socially useful work, correctional work, education of convicted persons, and social impact), achieving the goals of punishment. Thus, differentiated

application of corrective measures to convicts is possible only if they are properly divided into homogeneous groups. Classification of persons sentenced to imprisonment is of great practical importance for the process organization of their correction and achieving the goals of criminal responsibility. It provides isolation from each other of various categories of convicts, thereby preventing the possibility of negative influence of more dangerous criminals on less dangerous criminals, it assumes the possibility of strengthening protection and supervision, as well as the correctional and educational impact of punishment against dangerous criminals, while reducing the legal restrictions for convicts who do not pose a great public danger.

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