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PROBLEMS OF CRIMINAL LEGAL FORECASTING OF INDIVIDUAL CRIMINAL BEHAVIOR

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The subject of the article is the problem of typical assessments of criminal legal risk by offenders.

The purpose of the article is to confirm or refute the hypothesis that the attitude of various persons to the possibility of being punished for violating a criminal prohibition can be typologized, and the probability of being punished depends on the criminal's belonging to the corresponding type.

The methodology includes dialectical, comparative legal, sociological, statistical, psychological methods, expert assessments, generalizing indicators.

The main results, scope of application. The original criminal-legal aspect of predicting individual criminal behavior consists primarily in determining the probability of a potential criminal being brought to criminal responsibility for a possible offense and being punished. Foresight in this case is individual in the literal sense of the word – its subject is primarily a person who is inclined to commit a crime. The position of the researcher of criminal law forecasting of individual criminal behavior, who is obliged to put himself "in the place" of a socially dangerous person, to understand the nature and process of risk assessment, and to be brought to criminal responsibility, is also original. The attitude of different persons to the possibility of being brought to justice for violating a criminal law prohibition may vary widely, acquire a different character, and have specific features. In this regard, theoretically, we can distinguish the following groups of criminal risk: out of risk ("above the law"); habitual risk; "justified" risk; frivolous risk; emotional risk; situational risk; professional risk. The validity of this typology is confirmed by both empirical experience and materials of criminal-legal and psychological research.

Conclusion. The magnitude of the criminal legal risk, of course, should be taken into account in the criminal law policy: both when assessing its purposefulness and effectiveness, and when solving the task of a comprehensive information and analytical support for it.

1. Introduction

The problem of predicting individual criminal behavior is most fully developed in criminology [1; 2; 3; 4; 5; 6; 7]. Its subject is the criminal behavior of individuals with an assessment of its probability by law enforcement officials (or researchers) in order to take (or develop) pre-emptive (preventive) measures [8; 9; 10; 11]. The results obtained and their undoubted theoretical and practical significance are a convincing example for criminal law science, which is designed to study, in particular, the laws of the impact of the threat of punishment on the consciousness and behavior of persons who can be expected to commit a crime. As far as judicial practice is concerned, prognostic assessments should be made when passing sentences; in any case, foreign researchers of the problem of predicting individual criminal behavior not only insist on this, but also offer certain recommendations, for example, in the form of a so-called structured court decision, which takes into account the risks of repeated crimes [12; 13].

The original criminal-legal aspect of predicting individual criminal behavior consists primarily in determining the probability of a potential criminal being held responsible for a possible offense and being punished. As we can see, foresight in this case is individual in the literal sense of the word – its subject is primarily a person who is inclined to commit a crime.

This is the specificity of the "purely" criminal-legal approach to the problem under consideration; it is not inherent in criminology, which is engaged in determining the probability of a person committing a crime. It is clear that such a goal cannot be set in an authentic way. The original and the position of the researcher of the criminal law predict individual criminal behavior, obliged to put

themselves "in place" socially dangerous person, to understand the nature and process of risk assessment, to be prosecuted.

Of course, taking into account the features of criminal law forecasting of individual criminal behavior, we should not ignore what unites different approaches to the study of socially dangerous behavior. Such a connecting link is the criminal motivation, the analysis of which is of interest for the study of the problem of foresight from both the criminal and criminological point of view. It should be noted that criminal law forecasting in this case "supplies" information for criminological forecasting. In turn, the experience that has been accumulated and generalized by experts in the field of predicting socially dangerous behavior can be successfully used to achieve the goals of criminal law forecasting. This experience shows, in particular, that to make a forecast, it is necessary to study and typologize persons who are inclined to commit crimes [14, p. 12].

Indeed, the attitude of different individuals to the possibility of being held accountable for violating a criminal law prohibition may vary widely, acquire different character, and have specific features. In this regard, we can theoretically distinguish a number of groups of "criminal legal risk":

1. Subjects who consider themselves to be "above the law", outside the limits of criminal law regulation, referring to the possibility of bringing them to criminal responsibility, despite the socially dangerous actions committed, as unrealistic (the group is "out" of risk).

2. Persons who are consciously guided by risk due to an illegal lifestyle (a group of habitual risk).

3. Offenders who rely on "luck", justifying the risk of the benefit that can be obtained as a result of the Commission of the crime (the group of "justified" risk).

4. Subjects who deliberately neglect the high probability of being brought to criminal responsibility (a group of frivolous risk).

5. Persons who are unable to assess the legal consequences of criminal attacks due to their physiological, mental state or individual qualities (emotional risk group).

6. Persons who make mistakes in assessing the circumstances, underestimating the probability of criminal legal qualification of their actions in an extreme situation (situational risk group).

7. Category of offenders who take unnecessary risks in the performance of professional duties (professional risk group).

The above typology is, of course, largely schematic. However, its validity is confirmed by both empirical experience and materials of criminal-legal and psychological research. For the purpose of argumentation of this thesis, we will turn to a more detailed description of each of the selected groups, bearing in mind the factors that can be taken into account by the relevant actors who assess the likelihood of criminal prosecution in the process of criminal motivation.

2. The “out of risk” group.

Modern historiography has presented us with a vast gallery of types who held high state positions, organized genocide, destruction of material and spiritual culture, and widespread corruption. Many of them were themselves victims of terror, active participants in which they were (usually outside of the crimes they committed). Many were never held responsible. A characteristic feature of their criminal psychology is the awareness of complete personal impunity, permissiveness. Obtaining the appropriate official status provided them with a position “above the law”. The situation in this regard has changed, but not so much that it was possible to speak about the exclusivity of the considered subtype

of subjects. The elite group is replenished as a result of the formation of additional state structures, the expansion of the circle of persons with great power, the formation of “closed” management systems that often do not have virtually independent bodies that perform control functions.

The “out of risk” group also includes organizers of criminal activity, who are essentially ideologues of the criminal environment – the so-called “thieves in law”. According to many studies, including those in which the author participated, the functions of such persons include organizing the promotion of a criminal lifestyle; creation and distribution of a Fund (“cash”, “General Fund”) for solving various issues, forming criminal activities, bribing officials, providing assistance to persons sentenced to imprisonment, and their family members, identifying various areas of criminal business, organizing “gatherings” to discuss the strategy and tactics of criminal organizations, taking into account the changing socio-legal situation, etc. They are almost never perpetrators of crimes; it is usually extremely difficult to bring them to criminal responsibility.

3. The group of familiar risk.

This group includes members of criminal organizations directly involved in the Commission of crimes, professional criminals operating both in the field of ordinary and economic crime. The named group should include “fighters” (“fighters”) who perform the functions of bodyguards of leaders of the criminal environment, leaders of criminal groups that are part of the structure of organized crime, ordinary performers engaged in extortion, transportation and sale of narcotic substances, counterfeiting, robberies, robberies and thefts, in particular, with penetration into the homes of citizens with large material values, organizers of gambling, professional fraudsters, persons systematically engaged in organized theft, etc. It

is difficult to give a complete list of subjects who habitually neglect the possibility of being brought to criminal responsibility, given the constant emergence of new forms and areas of criminal activity, and the conscious perception of the experience accumulated in the structures of foreign organized crime. In recent years, for example, a type of criminal specializing in cybercrime (hacker) has emerged. Professional criminal activity, of course, includes methods and techniques to minimize criminal risk. These include: choosing the victim of an assault from among the persons involved in the Commission of crimes compromised by certain illegal actions; careful preparation for the Commission of the crime, including the destruction of traces of the crime and prompt disappearance from the scene of the criminal event; the impact on victims and witnesses of the assault, carried out through mental and physical violence; providing conspiracy and counterintelligence activities against law enforcement agencies, their divisions and services, specific employees, establishing trust relationships with them; using qualified legal "assistance" (consultations) in the process of preparing for the Commission of a crime and after criminal prosecution; misinformation of public opinion in favor of offenders through mass communication and other means; threats and violence against law enforcement officers, persons conducting private investigations, collecting relevant information in order to make it public; corruption of representatives of the criminal justice system, collecting compromising information about them for subsequent blackmail, etc. Many of these methods and techniques have long been known to investigative and judicial practice, which, of course, does not reduce their relevance. We will only note that the greatest danger is currently characterized by corruption of officials, as well as the exertion of mental

pressure on employees of criminal justice agencies, citizens involved in the orbit of investigative and judicial activities.

4. The group of reasonable risk.

Of course, the risk is considered justified from the point of view of the subjects forcing this group. Having, as a rule, relatively little criminal experience, these persons hope that by committing crimes episodically, they can safely avoid the possibility of criminal prosecution. Motives of self-interest, prevailing among the representatives of this category, prevail over considerations of the ultimate disadvantage of criminal behavior. They tend to view the threat of punishment as lottery participants who expect to win rather than lose. An analysis of the objective factors that influence such an opinion makes it clear that such a calculation is indeed justified. According to our research, the real detection rate of serious and especially serious crimes is only 4.0% [15, p. 100].

The crisis of power, the painful state of the economy, and the ineffective work of existing law enforcement agencies have led to unprecedented irresponsibility of individuals who commit various types of official abuse. Naturally, all this affects unstable citizens who, finding themselves in the appropriate situation (or contributing to its creation), take risks quite deliberately, and when practice refutes their calculations, believe that they are "just unlucky".

The opinion about fairly frequent violations of the criminal law that do not entail responsibility, as shown by legal awareness research, is quite representative. It is widespread (though to varying degrees) among the population, among legal experts, and among the mass of people who are inclined to commit crimes [16, p. 137-146].

A group of frivolous risk. It is difficult to find a more precise expression describing the attitude of the subjects in this group to the possibility of criminal prosecution for the actions

they intend to commit. The fact that the high probability of being brought to criminal responsibility does not stop them from implementing a criminal intent (most often carried out against citizens they know) makes us assume here not only carelessness and a possible calculation for the lenient attitude of the victim, but a certain pathology. As shown by psychological research, this pathology often has a sociogenic character and is due to the lack of personality in the process of education of "restraining principles". In the future, the person loses to some extent the ability to preemptively reflect reality, displacing from their consciousness the negative consequences that may occur in the future. For example, experimental data indicate that there is a certain relationship between the inability to experience anxiety, to anticipate emotional responses to harmful effects, and sociopathy, defined as chronic incorrigible behavior that is accompanied by a pronounced weakening of emotional impressionability. At the same time, a far-reaching conclusion is formulated that the absence of an emotion of anxiety in people makes it difficult (and possibly excludes) the formation of correct attitudes to the requirements of social life [17, p. 172-175]. This information is partially consistent with the materials of a.m. Yakovlev regarding the increasing emotional indifference of repeat offenders and the assessment of the degree of risk as the criminal career continues. There is also a negative impact of punishment on the mechanism for assessing the future, which is expressed in the suppression of subjective feelings of anxiety about the adverse consequences of anti-social behavior [18, p. 161, 247].

From a psychological point of view, the behavior of persons referred to the characterized category corresponds to the features of an accentuated personality (according to K. Leonhard), more precisely, of

its type, as a demonstrative person who lives in one moment [19, p. 43].

Of course, personality sociopathy, which manifests itself in an indifferent attitude to the future, does not exclude the influence of a genetic factor on the occurrence of defects in foresight in the mechanism of motivation, including criminal.

5. The group of emotional risk.

In contrast to the representatives of the previous category, the assessment of the future does not guide the behavior of the subjects who make up this group, because of high emotional stress, which essentially suppresses the ability of the individual to rational actions, including the foresight of their criminal consequences. We are talking here, in particular, about persons who commit intentional crimes in a state of passion caused by the misconduct of the victim, as well as about psychopaths. Materials of the study of psychopathic personalities record such qualities as short temper, irritability, easy occurrence of attacks of rage, affective discharges for any, even minor reasons, demonstrativeness, emotional intensity of experiences. And these individuals broken relationship subjective possibilities of implementing the needs assessment of the situation, past experiences, forecast future events (including a forecast of possible consequences of their actions [20, c. 196-200]. Similar information is provided in the works on certain types of offenders [21, p. 28-34].

6. The group of situational risk.

Representatives of this group are persons who find themselves in an extreme situation (including through their own fault), in which they make an incorrect decision that may lead to criminal consequences. They were studied by Yu. V. Golika, identifying such types of offenders as "confused", "stressful" [22, p. 84-85].

Thus, the group of situational risk is made up of subjects who unexpectedly find themselves in an extreme situation and do not have the skills to legally get out of it. This, however, does not mean that people who are under the pressure of the situation are deprived of the ability to predict the probability of a criminal outcome of what happened. Simply, the stage of foresight should be "shifted" to earlier stages in the mechanism of behavior formation, taking into account typical extreme situations in which, for example, a resident of a large city, a driver of personal transport, etc. It is logical to add the following conclusion: in the work on legal education of the population, it is advisable to pay special attention to the assessment of criminal and legal risk in extreme situations and typical methods of their lawful solution.

7. A group of professional risk.

Many professions are associated with the need to choose a solution from a number of alternatives, the likely consequence of which may be to bring the subject to criminal responsibility. It is no accident that the criminal law justifiably includes a rule on legitimate professional risk. However, it does not "reset" the probability of criminal legal risk for subjects who carry out professional activities in the industrial, economic, medical, scientific, technical and other fields, since the harmful consequences can be assessed differently by both risk-takers and law enforcement agencies.

Thus, this circumstance may be one of the factors affecting the degree of professional risk. Among others, we should mention the defects of moral and legal consciousness; insufficient level of professional training; the typical situation in which a professional makes a decision (which ends successfully earlier), which leads to the development of a behavioral stereotype; the latency of cases of improper professional risk, which often do not

become the subject of criminal legal assessment for various reasons.

8. General conclusions.

Summing up the issue of differentiation of groups of criminal legal risk and the factors that determine it, it should be noted that not all phenomena related to the topic under discussion "fit" into the proposed scheme. Thus, it is difficult to attribute to any of these groups the type of sadistic criminal who, along with a tendency to ecstatic experiences, excitability, exaltation, demonstrates pedantry in preparing for the completion of the crime, cunning, resourcefulness in an effort to avoid criminal responsibility. Similarly, risk factors may not always be subdivided strictly according to these categories, although it is important to evaluate their specific content each time. In the literature, in particular, attention is drawn to the propensity of some people to take risks, motivated by the desire to experience unusual sensations, to experience a special form of physical elevation, which is created by life on the verge of danger [23, p. 62].

This observation is undoubtedly true, but it should be clarified that risk-taking is expressed not only in certain sports activities (for example, mountaineering, parachuting, horse racing), but also in criminal behavior. This, of course, does not mean a fatal predisposition to socially dangerous actions. It is stated here that in individuals of a certain psychological type (for example, in hyperthymic individuals [24, p.288-318]), the risk propensity is often realized in deviant behavior. It should be added that adventurous personality traits, risk orientation, combined with nonconformity, the desire for independence and independence, pride, self-centeredness and confidence in the future are usually highly valued in the criminal subculture and therefore consciously developed, undergoing all kinds of training. Risk-taking is often identified with determination and

masculinity, and the subject who demonstrates this tendency in his behavior has a preferred chance to occupy a higher position in the informal hierarchy of a certain delinquent environment.

9. Ratings.

The study of judicial practice makes it possible to assess the likelihood of criminal prosecution for representatives of conditionally identified typological groups of legal risk.

1. The probability of bringing to criminal responsibility representatives of the first of the above-mentioned typological groups is close to zero. Of course, we should keep in mind the dynamics of this probability: in certain periods it may increase – and quite significantly – for example, during anti-corruption campaigns, changes in the political environment, and legislative reforms. In such critical periods, the elite group suffers "losses", but by changing its composition, it quickly adapts to new conditions and continues to exist. Information about the qualitative characteristics of representatives of this group is extremely symptomatic both in terms of the General state of the political situation and in terms of current trends in criminal law policy.

2. For persons classified as groups of habitual and reasonable risk, the desired probability acquires different values depending on many factors, the main (system-forming) of which is the type (nature) of criminal activity. For example, given the actual detection rate of crimes, the probability of conviction for premeditated murder and rape is about 20 %, for robbery and theft-about 3%, and for counterfeiting-less than 1% [15, p. 100].

3. The high probability of bringing to criminal responsibility representatives of groups of frivolous and emotional risk is due to the evidence of such crimes. Taking into account the close positive correlation between

the severity of the committed crime and the probability of criminal consequences for the perpetrator, it should be noted that there is a wide range of values of criminal risk: from very high (in the case of qualified murder) - to small (in the case of light bodily injury). Moreover, as the public danger of encroachment decreases, the "corrective" effect of such a factor as settling a criminal law conflict by colluding with the victim increases.

4. The probability of bringing to criminal responsibility persons classified as a group of situational risk depends on the frequency of extreme situations in which – through their own fault-a particular subject falls and, of course, on the size of the caused (could be caused) consequences of the relevant event. For example, in the case of those who are not guilty of creating an extraordinary situation, the probability sought is often determined by the frequency of criminal errors. Unfortunately, the lack of special modern research on the problem of criminal-legal errors does not allow us to formulate a quantitative assessment of the criminal-legal risk arising in this regard. We will pay attention only to its most dangerous "zones": active counteraction to attackers who caused them serious physical harm, detention of the criminal, resistance to police officers. The probability of criminal liability is often subjectively assessed with an adjustment for errors in criminal law practice, which often explains the seemingly passive position of a person in an extreme situation.

In connection with the above, we should mention another factor of "objectification" of criminal-legal risk, which is the possibility of using criminal-legal norms in order to prevent socially useful activities, reasonable initiative, justified criticism, etc. This possibility, which is realized in the prosecution of citizens who infringe on the interests of persons who influence criminal law policy, cannot be considered an anachronism that has

disappeared. It has not been eliminated today. This indicates that in relation to the activities of any sane individual who has reached a certain age, the criminal legal risk is equal to zero only in theory.

5. The amount of criminal-legal risk for subjects of professional activity should not be significant for two reasons. First, if a criminal risk becomes an attribute of a profession, it means that the actual profession turns into a criminal one and, therefore, requires an official ban. Awareness of this fact is necessary to change the social and legal conditions that determine the risky behavior of representatives of certain professions. Secondly, the criminal legal risk is minimized due to the existence of professional corporatism that protects its members from criminal prosecution. Of course, it is undesirable that this should be a forced reaction to an extremely unfavorable situation in relation to a particular professional activity, but it is unacceptable when corporate interests become independent of criminal law regulations. It is extremely important to prevent the possibility of merging the first and last identified typological groups of criminal law risk.

10. Conclusions.

The magnitude of the criminal legal risk, of course, should be taken into account in the criminal law policy: both when assessing its purposefulness and effectiveness, and when solving the task that should be set and solved in the foreseeable future—a comprehensive information and analytical support for it.

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