

Rozovik Irina, Student of
Magistracy of the National
Academy of Internal Affairs

THE PROBLEMS OF DEFINING A CRIME MOTIVE

The problem of motivation of criminal behaviour traditionally belongs to one of the main issues in the criminal legal studies as well as in the legal psychology. In general, crime motive is researched as an element of a single crime mechanism but in a number of cases, it is also defined as a mandatory or qualifying element of some bodies of a crime according to the Criminal code of Ukraine. However, there is some uncertainty and discussion in scientific works about the ways of understanding the essence of a crime, its distinction from such categories as needs, aims, interests, emotional states.

Meanwhile, neither psychological nor legal literature have generally accepted definition of a motive of human behaviour or action as well as a crime motive. So a motive is a legal psychological category that precedes the criminal manifestation and depicts a person's attitude to the action that is being committed by the person; a conscious desire of the occurrence of the corresponding consequences which would coincide with the predicted result. Actions which assessment is carried out by the law, have a polysemantic motivation (polymotivationality) and a motive is a dynamic category that is predetermined by the objective situation and the person him(her)self, the content of which is constantly changing.

Legal psychology offers quite a clear distinction between motive and aim: motive is a personal sense of a person's willing activity, the aim is a prediction of its personal significant result. The works of Ukrainian scientists on criminal law and criminology (almost all textbooks, dissertations, and other researches) contain a thesis that a motive is an internal incitement to commit that or another action (omission).

According to the definition of Y.P. Il'in, motive embraces a need, impulse, incitement, aspiration, and also feelings, worries, habits, the notion of duty, moral and political settings, ideas, mental processes, and conditions. The analysis of formation a criminal behaviour from the point of psychology presumes the search of answers on the following questions: why the crime is committed? what made the offender choose the criminal way of behaviour in a particular situation? what are the mental condition of the person, his (her) mental peculiarities that manifested in a criminal act?

Person's behaviour is motivated and regulated by his (her) individual, subjective perception and reflection of his (her) real-life circumstances and person's implication to these circumstances. The problem of defining a motive of a crime lies in blurring the essential characteristics of a motive and its expression through other, adjacent categories as need, aim, subject. It means that the performed analysis of scientific literature on legal psychology leads me to believe that nowadays a few directions in understanding the category 'motive' have been formed.

The first direction is represented in the works of such scientists as O.M. Lyeontiev, S.L. Rubinstein, S.A. Tararuhin, K.Y. Ihoshev, B.S. Volkov, A.V. Naumov etc. The aforementioned scientists give the definition of a motive with accordance to awareness of the existent need. So during the defining the essence of a motive, the attention is focused on a specific subject. According to this conception, a motive acts as an intermediary between a need and a final result, an aim and a realised start of a human behaviour. H. Hekhauzen states a similar point with a notion that motive is the desired target condition within the relation 'individual – environment'.

Another part of scientists (B.V. Harazishvili, V.S. Chubynsky etc.) focuses on the emotional state and willing component of an individual while finding out the matter of a motive. According to B.V. Harazishvili, a motive is an emotional state of an individual that is revealed through the manifestation of will which is connected with

the realizing of the necessity of a given behaviour and a desire of its execution.

One of the latest comprehensive studies in Ukrainian criminal law belongs to A.V. Savchenko. In his work 'Motive and motivation of a crime', he comes to the conclusion of defining a motive based on the analysis of different scientific approaches: a motive is 'an integral mental formation which motivates an individual to commit a socially dangerous act and stands for the cause of this act'.

I consider this definition fairly appropriate and generalized, having a concretized character, phenomenological component. According to A.V. Savchenko's position, the motive is defined as an internal incitement to any action.

List of references:

1. Martenko O. L. (2005). Psykholohichnyi analiz okremykh kryminalno-pravovykh poniat (za chynnym KK Ukrainy) [Psychological analysis of separate criminal legal concepts (according to current Criminal code of Ukraine)]. Extended abstract of candidate's thesis. Kyiv [in Ukrainian].

2. Orlov O. V. (2011). Motyv yak oznaka subiektyvnoi storony skladu zlochynu: sutnist ta pytannia do tsilnosti zakonodavchoho zakriplennia [Motive as a characteristic of subjective body of a crime: matter and questions on expediency of legislative consolidation]. Pravo I bezpeka. Law and safety, 4, 116-120.

3. Il'in E. P. Sushhnost' I struktura motiva [Matter and structure of a crime]. Psihologicheskij zhurnal – Psychological magazine, 2, 24-41.

4. Hekhausen, H. (1986). Motivacija j dejatel'nost' [Motivation and action]. (Vol. 1-2). Moscow: Pedagogika [in Russian].

5. Harazishvili B. V. (1964) Voprosy motiva povedeniya prestupnika v sovetskom prave [Issues on a motive of a criminal's behaviour on Soviet law]. Sovetskoe gosudarstvo I pravo – Soviet state and law, 5, 153-157.

6. Savchenko A. V. (2002). *Motyv I motyvatsiia zlochynu* [Motive and motivation of a crime]. Kyiv: Atika [in Ukrainian].

Ustymchuk Vladyslava,
Cadet of the National
Academy of Internal Affairs

CONCEPTS AND SIGNS OF THE PUNISHMENT

Before giving a definition of punishment it is necessary to find out its place in the structure of social relations. Punishment is first and foremost one of the forms of responsibility. Responsibility can be considered as a social relationship between the subject (citizen, collective) and the system of social control (in the person of its bodies) in connection with the behavior carried out by this subject. Responsibility can be understood in a social plan. In this case, it serves as a kind of relationship between people about their responsibilities and the extent of their implementation. Punishment is one of the forms (basic) of criminal liability and is part of the system of measures of criminal law influence.

Conditional these measures can be divided into two groups: not related to criminal liability (compulsory measures of educational and medical nature) and those carried out within the framework of criminal liability (punishment, conditional non-use of punishment, release from punishment). In the science of criminal law, the punishment was regarded as the most severe measure of criminal law, which, being the main form of criminal liability of a person for the crime committed by him, is appointed by the court on behalf of the state in the conviction and consists in the restrictions provided for by the criminal law or deprivation of his rights and freedoms, and also entails a special criminal-legal status of a person – a conviction. M.Y. Korzhansky somewhat differently formulates the definition of punishment. In his opinion, punishment is a measure of state induced by the court that causes certain losses and expresses on its