

Differentiation and Meaning of Affects and Other Emotional States of a Person

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ABSTRACT

This article reveals the differences and significance of pathological, physiological, simple, cumulative and abnormal affect; identifies the features of such states as emotional stress, frustration, emotional arousal and emotional tension. It's formed conclusions about emotional states and their implications for unification of criminal legislation, using an interdisciplinary approach. The article proposes its own definition of emotional state, which is aimed at taking into account the individual perception of traumatic situation by the perpetrator. The concept of "state of intense emotional disturbance" should be replaced by the phrase of "emotional state caused by traumatic influence", which in its meaning is psychological, criminal and forensic content.

Keywords: *intense emotional disturbance, affect, emotional state, traumatic influence, unification of criminal legislation.*

1. INTRODUCTION

The doctrine of criminal law determines the difficulty in interpreting the term of «intense emotional disturbance», due to the lack of its application in psychology. The uncertainty of this concept in other fields of science causes its ambiguity in criminal law [1]. The term of «intense emotional disturbance» is unknown to psychological science, which leads to ambiguous statements of its criminal law nature [2]. However, the use of psychological terms (e.g. affect) in the text of criminal liability law does not address all law enforcement issues. Diagnosis of affect and other emotional reactions and states in a purely psychological sense, without taking into account forensic interpretation, also creates difficulties in court identification of criminally relevant signs of accused emotional state [3]. Establishing of being a special emotional state of a person in case of premeditated murder and premeditated bodily injuries is important for the correct criminal qualification and criminal consequences determination. In sanctions of general criminal law articles, which provide a liability for premeditated murder or intentional bodily injury, in fact the punishment is three times more severe, than punishment for the committing these crimes in emotional state, which reduces the ability to realize their actions and control them.

1.1. The aim of the research

The aim of the research is in integrating knowledge about the types of emotional states (affects, emotional stress, frustration and others) and their importance for unification of criminal legislation, using an interdisciplinary approach.

1.2. Methods and materials of the research

During the analysis of the essence - «intense emotional disturbance» there was an opinion about predominant use of a multidisciplinary approach in the research of this issue in the theory of criminal law, forensic expertise, psychology, psychiatry.

Multidisciplinarity means that the views of two disciplines on a common problem are considered simultaneously, but are not integrated, because of a common matrix lack. Using an interdisciplinary approach, points of view on a common problem of two disciplines are integrated, to obtain more generalized understanding. The value of interdisciplinary lies in its ability to transform recognized theories and dogmatized knowledge [4].

The article proposes its own definition of emotional state, which is aimed at taking into account the individual perception of the traumatic situation by the perpetrator,

caused by illegal violence, systematic bullying, and cruel behavior from the victim, as well as childbirth. This concept was formed through the analysis of 30 scientific works, systematization of proposals and inconsistent provisions in previous research.

The empirical basis consists of 30 sentences of criminal proceedings, which are contained in the Unified State Judgments Registersuch crimes as premeditated murder, committed in a state of strong emotional stress.

2. RESEARCH RESULTS

The term "intense emotional disturbance" has a significant criminal law meaning, from the understanding and interpretation of which depends criminal law consequences for the perpetrator. The use of a multidisciplinary approach to determine the actual meaning of «intense emotional disturbance» leads to different interpretations. Such emotional states of a person as physiological, simple, cumulative affects, emotional stress, frustration, emotional arousal and emotional tension expert practice defines such, which can be a psychological basis for the meaning of "strong emotional excitement" because they can significantly limit person's ability to realize actions and manage them.

The concept of "intense emotional disturbance" should be replaced by the phrase of "emotional state caused by traumatic influence", which in its meaning is psychological, criminal and forensic content. Determining the individual psychological characteristics of a person, his/her emotional state from the effects of a

traumatic situation caused by illegal violence, systematic bullying or severe insults by the victim provides an opportunity to establish a relationship between traumatic situation and perpetrator's actions, accompanied by a reduction in capacity of individual to control him/herself, thereby significantly narrows the ability to aware and control of his/her actions.

In case of committing premeditated murder and intentional grievous bodily harm, it is necessary to take into account "emotional state caused by traumatic influence", which is "caused by unlawful violence, systematic bullying or severe insult by the victim". An indicative list of scientific and methodological recommendations on the preparation and appointment of forensic examinations and expert research should be supplemented by questions that should be clarified during the forensic examination: "Was the person in an emotional state, which is caused by traumatic influence, which significantly limits the ability to aware and control of his/her actions".

3. DISCUSSION OF THE RESEARCH

Emotions of a person are multi-spectral phenomenon that is studied by various sciences through the prism of modern knowledge. This is evidenced by the findings of

emotions researchers, noting their complexity and significance. Emotion is a complex psycho-physiological behavioral of mind as interacting with biochemical and environmental influences [5].

Emotion is a complex set of interactions among subjective and objective factors, mediated by neural/hormonal systems, which can: give rise to affective experiences such as feeling so arousal, pleasure/displeasure. On the one hand emotion generates specific feelings and influence someone's behavior [6]. Emotion is one of the speech-oriented application in which mental state of speaker conveys to others using spoken utterances termed as speech emotion recognition [7]. Emotion plays a significant role in human perception and decision making whereas, prosodic features plays a crucial role in recognizing the emotion from speech utterance. Thus, there are several applications of speech emotion recognition systems includes: medical diagnosis for psychiatric patients, emotion analysis during telephonic conversation, mental stress analysis during human conversation [8]. Development of aggression detection technique in social media it is becoming popular to identify and predict the criminal activities which can help to avoid the crimes [9].

Differentiation of the emotional state has a legal significance as it affects the choice of criminal-legal influence measures, applied to the person who committed a criminal offense.

A state of «intense emotional disturbance» is often identified with such an emotional state as physiological affect. Five types of affect have criminal and legal significance and the consideration of which leads to different criminal and legal consequences. Judicial practice is not homogeneous. Thus, Kentucky Supreme Court noted that because extreme emotional disturbance (EED) does not arise from a mental disease or defect, even though expert psychiatric or psychological testimony may be helpful in understanding and emotional reaction like EED, it is not required [10]. In forensic psychiatric practice there is a constant need to differentiate between pathological affect and physiological affect. Physiological affect – is a short-term painful disorder of mental activity of non-psychotic level, which suddenly occurs under the influence of external factors; is manifested by undifferentiated emotion, narrowing of consciousness, motor arousal and actions aimed at a strong emotional stimulus [11]. Thus, pathological affect is a form of exceptional states that deeply disrupts and/or makes it impossible to realize and control one's actions.

Neurological evidence now provides in sight into compulsion and lack of impulse control and highlights not only the neurological basis of lack of control, but also its neuroanatomical distinctiveness from lack of rationality [12].

In actions undertaken in pathological affect state, if there are medical and psychological criteria, the state of person insanity is recognized and medical measures are applied. Physiological affect involves a significant limitation of a person's ability to be aware of and control their actions.

Simple affect – is a short-term mental disorder of non-psychotic level, which occurs suddenly under the influence of external factors; manifested by emotions of anger, fear, narrowing of consciousness, motor arousal and actions against the stimulus. Simple affect is characterized by the lack of the third affective state phase namely – severe psychophysical exhaustion [11].

We consider that opinion about «systematicity of bullying» that is indicated in the disposition of article 116 of the Ukrainian Criminal Code (in article 123 of the Ukrainian Criminal Code this circumstance is absent) among the circumstances that cause a state of intense emotional disturbance as unnecessary, is contradictory, because it shows a certain legislator inconsistency. On the one hand, it is recognized that a single threat or a single strike, as a form of unlawful violence, can lead to a state of intense emotional disturbance, and on the other hand, bullying should be systematic [2]. Defining the circumstance of «systematic bullying» as a circumstance that causes a state of intense emotional disturbance, the legislator takes into account the type of affect as cumulative.

Cumulative affect – is a general psychological affect that comes under more or less prolonged stress, accompanied by intrapersonal conflict and frustration due to unsuccessful behavioral strategies, in a prolonged traumatic situation [13]. Cumulative affects can reach such depth when the ability to realize their actions and control them, although not lost, but is accompanied by narrowing of consciousness and psychopathological symptoms (e.g. elements of derealization, depersonalization, illusory perceptions) [3]. The main difference between cumulative and physiological affect is that "its first phase, during which the traumatic situation lasted, which causes the accumulation of emotional stress in the accused, is usually stretched in time." [14].

Abnormal affect – is an affective state that occurs in a person with a non-psychotic mental disorder, characterized by altered patterns of development and abnormal mechanisms depending on the biological and psychological basis. Thus it's characterized by the influence of non-psychopathic mental disorders (organic brain damage and / or personality disorder) on the course of the affective reaction. According to the data obtained by experts, the group of "abnormal affect" in its clinical manifestations is close to the group of "physiological affect". In abnormal affect, the manifestations of the affective state reflected the interaction and interference of the psychogenic affective reaction that occurred. This combination, with less pronounced in depth affective

response, compared with physiological affect, determined the significance of the impact on a person's ability to realize their actions and control them, namely the presence of a psychiatric prerequisite for recognizing limited to sanity person [11].

The conclusions of forensic psychiatric examination also define the emotional state as a state of emotional arousal, which has a significant impact on person's consciousness and behavior (indicating that the impact is identical to physiological affect). This condition arises as a result of prolonged systematic abuse, which was expressed in ridicule, unreasonable humiliation of personal dignity and indecent behavior, as well as severe verbal abuse by the victim. In this regard, the usual stereotype of responding to conflict situations was broken. The person had a sudden emotional arousal in combination with a pronounced narrowing of consciousness, perception fragmentation and impaired (fixation attention on the insult, on the victim and uncontrolled striking) conscious-volitional control of their behavior [15].

We don't consider the proposal to replace the concept of «intense emotional disturbance» with «a state of strong emotional arousal» to be fully justified [16]. Because "emotional arousal" and "emotional tension" are recognized as two varieties affective states of cumulative type, characterized by long-term accumulation of emotions due to personal and situational characteristics. Such states don't belong to the physiological affect, in their intensity, but the case law refers them to a state that is identical to the affect in its criminal law sense. However, the identification such states as "emotional arousal" and "emotional tension" with affect is incorrect, because they have no the signs of "suddenness"[17]. "Strong mental excitement that suddenly arose" in the qualification of the offence can be determined by the expert opinion about the occurrence of physiological or cumulative affect state. The expert psychologist can identify other emotional reactions and states, which by definition may not be related with an affect, but are characterized by sudden arise, provocations by the victim and a partial narrowing of consciousness [3].

Scholars have long debated about need for improve the term "intense emotional disturbance". Thus, Russian scientists determine the need to exclude psychological term "affect" and criminal law term "intense emotional disturbance" in order to replace it with "an intense emotional experience that suddenly arose." This is justified by the fact that relevant changes allowed to reflect in expert opinions more differentiated assessment of emotional reactions and states, bringing their diagnosis closer to psychological ideas about different types of emotions [3]. Other scholars take an opposite view, arguing that it is useless to look for psychological term which would encompassed all emotions that are able to disrupt significantly mental activity and reduce the ability

to aware or control one's actions. Therefore, it is believed that "the state of intense emotional disturbance" should be replaced by the phrase

"a state in which person couldn't be fully aware of his/her actions and (or) control them." This will correctly reflect the psychological content and cover different types of emotional states that have criminal significance, because of having a significant impact on mental activity [18].

In our view, an interdisciplinary approach should be taken into account and its significance and actual content should be psychological, criminal and forensic. In resolving this issue, it is important to take into account the theoretical development and forensic expertise of the issues under consideration. The scientific and methodological recommendations of forensic examinations preparation and appointment and expert studies indicated that special attention should be paid to emotional state evidence [19]. In certain circumstances - immediately at the time of events and (or) at the time of events preceding, as well as after their completion. In the appointment of psychological expertise, among the identified indicative issues, the following is specified: whether a person is able to understand real content of own actions and fully consciously manage them and anticipate consequences, taking into account his/her an emotional state; whether a person was in emotional state (strong fear, depression, confusion, despair, stress, frustration, etc.), which significantly affected his/her consciousness and behavior at the time of wrongdoing committing; whether a person was in a state of clear emotional arousal or emotional tension, which can be considered as a psychological basis for a state of intense emotional disturbance; whether a person was at the time of wrongdoing committing in a state of physiological affect as a psychological basis for intense emotional disturbance; whether a situation that is under investigation is psycho-traumatic for the person (if so, has it caused human suffering) [19].

The analysis of formed questions from scientific and methodical recommendations allows concluding that physiological affect, emotional stress, frustration, the expressed emotional excitement or emotional tension can be considered as a mental precondition of such legal concept statement as "intense emotional disturbance".

4. CONCLUSIONS

It should be borne in mind that current process of criminal law codification is aimed at introducing into the General Part of the Criminal Code a significant number of issues, which now are regulated by the Special Part. It is advisable to avoid special rules and qualifying, "privileged" features of corpus delicti [20].

Thus, a certain vector of criminal law reforming proves that in future will exist a common list of qualifying and privileged features of corpus delicti for all types of

crimes in order to unification of criminal legislation. Therefore, we consider that it would be appropriate to formulate a proposal in the following form: "emotional state caused by traumatic influence", which is "caused by illegal violence, systematic bullying or severe insult by the victim". This position is aimed at taking into account the individual perception of traumatic impact from illegal actions that caused a person's emotional state in which he/she couldn't be fully aware of their actions and (or) control them.

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