

## CHARAKTERYSTYKA KRYMINOLOGICZNA OSOBY SPOŚRÓD PERSONELU KOLONII, KTÓRA POPEŁNIA PRZESTĘPSTWO W ZAKRESIE WYKONYWANIA KAR W UKRAINIE

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**Streszczenie.** W artykule, na podstawie analizy podejść teoretycznych, dotyczących definicji "osobowość sprawcy", został sformułowany jej autorski wariant oraz dokonano charakterystyki cech kształtujących system, stanowiący treść pojęcia, a także udowodniono jego teoretyczne i praktyczne znaczenie.

**Słowa kluczowe:** osobowość przestępcy, charakterystyka kryminologiczna, cechy kształtujące system, kolonia, personel, przestępstwo, kara, wykonanie/odbywanie kary.

## CRIMINOLOGICAL CHARACTERISTICS OF PERSONS UNDER THE NUMBER OF PERSONNEL OF THE COLONY WHO CONSTITUTES CRIMES IN THE FIELD OF CARRIAGE OF UKRAINE

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**Abstract.** In the article, on the basis of the analysis of theoretical approaches concerning the content of the concept "person of the offender", the author's variant is formulated and the criminological characteristic of the system-forming features that make up his content is made, and his theoretical and practical significance is proved.

**Keywords.** Personality of the offender, criminological characteristic, system-forming features, colony, personnel, crime, punishment, execution-serving of punishment.

## КРИМІНОЛОГІЧНА ХАРАКТЕРИСТИКА ОСОБИ З ЧИСЛА ПЕРСОНАЛУ КОЛОНІЙ, ЯКА ВЧИНЯЄ ЗЛОЧИНИ У СФЕРІ ВИКОНАННЯ ПОКАРАНЬ УКРАЇНИ

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**Анотація.** В статті, на підставі аналізу теоретичних підходів, що стосуються змісту поняття «особа злочинця», сформульовано авторський його варіант та здійснено кримінологічну характеристику системоутворюючих ознак, що складають його зміст, а також доведено його теоретичне та практичне значення.

**Ключові слова.** Особа злочинця, кримінологічна характеристика, системоутворюючі ознаки, колонія, персонал, злочин, покарання, виконання-відбування покарання.

**Formulation of the problem.** In criminology under the person the criminal understands the system of negative socially significant properties, relationships and relationships, which are combined with external conditions and circumstances characterizing a person guilty of committing a crime (*O. M. Dzhuzha, 2009, p. 33*). As O. M. Dzhuzha remarked on this, in this definition the reflection of the relationship between the social and legal content of the notion of the person of the offender, namely: any person is an individual expression of socially significant properties, an individual forms of reflection of being and spiritual conditions of society. In turn, the legal position on the identity of the offender can only be said when the person considers the crime and recognition by the court guilty (*O. M. Dzhuzha, 2009, p. 33-34*). In this case, criminological study is calculated: a) individuals who commit crimes; b) different categories of crimes; c) various criminological types of crimes (*A.I. Dolgova, 2002 p. 280*). Along with this, as reasonably proved in their scientific lists. I. Dolgova, criminological study of the offender can not be exhaustive study of complex human problems and its activities (*A.I. Dolgova, 2002 p. 280*). In turn, the legal position on the identity of the offender can only be said when the person considers the crime and recognition by the court guilty (*O. M. Dzhuzha, 2009, p. 33-34*). In this case, criminological study is calculated: a) individuals who commit crimes; b) different categories of crimes; c) various criminological types of crimes (*A.I. Dolgova, 2002 p. 280*). Along with this, as reasonably proved in their scientific lists. I. Dolgova, criminological study of the offender can not be exhaustive study of complex human problems and its activities (*A.I. Dolgova, 2002 p. 280*). Therefore, in the opinion of A. P. Zakalyuk, in order to find the criteria of social quality of a person, it is first of all to exclude from the elements of its structure the natural, biological features of man, as well as neurophysiological, reflexive features and genotype, its standards and matrices, the type of higher nervous activity, temperament etc., are the emotional and volitional properties of individuals, which are also mainly formed on a natural basis (*Zakalyuk A.P., 2007, p. 241*). As O. Y. Shostko's reasoned conclusion makes it clear, most

importantly, one must remember that the personality of the offender is a kind of ideal model, an abstraction created on the basis of the investigation of the subjects of the crimes whose purpose is to identify such negative peculiarities of individuals, for which it is possible in the future to predict the criminal behavior of others or to repeatedly commit a crime by those who had previous criminal experience (*V. V. Golina, B. M. Golovkin, 2014, p. 87*). In the scientific literature can be found and other approaches to the definition content of the concept of "person (personality) offender" (*O. M. Bandura 2010, p. 96-97*).

State of research. The results of the study of scientific literature have shown that quite active and substantive issues related to the clarification of the content of the criminological characteristics of crimes are engaged by such scholars as O. M. Bandurka, Y.V. Baulin, V.I. Borisov, V. S. Bogatyrev, V.V. Vasilevich, V.V.Golina, B.M.Golovkin, A.M.Gumin, A.M. Dzhuzha, T. A. Denisova, V.M. D'omin, A.P. Zakalyuk, I.G. Kalman, O.G. Kolb, O.M. Lytvynov, V.O. Merkulov, O.P. Ryabchinskaya, V.O. Tulyakov, etc.

In addition, there is still no unambiguous understanding in the criminology of the concept of "Criminological characteristic of a person from the number of colony personnel who commits crimes in the field of execution sentences", which is one of the circumstances that negatively affects the state of preventive activities in the field of execution of sentences, which stipulates choice of subject and subject of this scientific article.

**Statement of the main provisions.** If we summarize these and other doctrinal positions on the identified problem of research, one can deduce the following definition of "person of the offender from the staff of the State Criminal Service of Ukraine" - this is one of the types of individuals involved in the service (work) in enforcement bodies and institutions punishments on the principles established by law who commit a crime in the area of execution of sentences by virtue of their individual social-psychological, intellectual, volitional and other negative and different from law-abiding Adian properties and by external determinants of crime.

Thus, to system-forming signs of the content of this concept, it is worthwhile to include the following:

1. These are special individuals whose legal status is defined in the laws of Ukraine "On State Criminal Execution Service" (Article 14). The qualification requirements for these persons are established in the specified law and other normative-legal acts (Regulations on passing the service in the ATS; Instructions on the procedure for selection of the service (work) at the penitentiary institutions and institutions, etc. (*I. Yakovets, 2011*). At the same time, the types of staff of the Internal Affairs Committee of Ukraine (in fact, individuals engaged in the execution of punishment) are enshrined in Art. 14 of the Law of Ukraine "On the State Criminal Execution Service of Ukraine", which, in particular, include: a) the command of the bodies and penal institutions; b) civil servants whose content, in addition, is defined in the Law of Ukraine "On Civil Service"; c) other persons who work in the Internal Affairs Department of Ukraine in accordance with the current labor legislation of Ukraine on a permanent, temporary and other legal basis.

2. The said persons serve (work) only in the specified penal institutions. It is the personnel corrected in the educational colonies and refers to the subjects of committing crimes in the field of execution of punishment. However, other persons who commit

crimes in this area of social activity in complicity (Article 27 of the Criminal Code) with the staff of these penitentiary institutions do not relate to the perpetrators of the crime in the context of this study, since there is no legal relationship with the authorities and penitentiary institutions, as stipulated in art. 14 of the Law of Ukraine "On the State Criminal Execution Service of Ukraine", they do not have (*About the State Criminal Execution Service of Ukraine, 2005*).

3. Offenses are committed only in the field of execution of punishment. The content of activities in this area of public relations is a two-way process of execution and serving of sentences, in which the first part of it is implemented by the personnel of the colonies in accordance with the powers specified in the law (in particular, in accordance with Article 18-19 of the Law of Ukraine "On State Criminal Execution Service of Ukraine", in which the rights and obligations of these persons are defined).

4. The commission of crimes by the personnel of the colonies is caused and stipulated by the individual-individual negative qualities and external influences committed on these subjects of crimes. In this case, we are talking about the determination of the crimes committed by the personnel of the colonies in the field of criminal-executive activity (in fact, in the field of execution of sentences), taking into account the individual level of implementation of the mechanism of criminal behavior. At the same time, the latter differs from the law-abiding by the fact that it has an objective ability to harm the objects of criminal-legal protection, because it is socially dangerous (anti-social). As AP Zakalyuk correctly pointed out in this connection, the category of anti-social (antisocial) orientation has long been used for a generalized description of the personality of the offender, as well as those who commit other unlawful or immoral acts (*Zakalyuk A.P., 2007, p. 246*).

Consequently, only in the presence of all the system-forming features without exception, one can fully speak of the social and legal essence of such a concept as "the person of the offender from among the personnel of the colonies". But, as practice shows, any criminal appears in the legal reality (in particular, in criminal-procedural legal relations) not as a person (in fact, as the person of the offender), but as a person with all its characteristics, individual properties, manifestations, defects, pathologies etc. That is why, with this approach, it is necessary to study it as a special social phenomenon (from the French *phénomène*, the Greek *phainomenon* - that which is - an exceptional, rare, unusual phenomenon, an exceptional man in a certain relation (*Bulyko A. N., 2010, p. 611*)). Proceeding from this, the disclosure of the content of the features of a particular person, including the person of the offender, is largely achieved through knowledge of the structure of the person in general, the definition of individual characteristics of its structural elements (*Zakalyuk A.P., 2007, p. 253-254*).

Under the structure in science understand the structure, the organization of something (*Kovalev T. V., 2005, p. 648*). Taking into account the above, under the structure of the offender in this article is understood the set of specific features, properties and features of these individuals, which make up its determination chain in the form of a specific internal and external organization, which manifests itself at a criminal individual level. In criminology, various variants of the scientific model of the structure of the person (personality) of the offender are offered. In particular, O.Y. Shostko introduced her in the following components, including: a) socio-demographic characteristics (gender, age, level of education, marital status, occupation, availability of

permanent work, duration, frequency of change of place of work, other sources of material income, etc.); b) moral and psychological characteristics (needs, interests, motivation, intellectual properties (emotions, volitional qualities, mental anomalies), moral and psychological qualities (views, beliefs, values orientation, internal setting, legal awareness)); c) personality-role features (household, family, production and general ties); d) criminal-law signs (the direction and duration of criminal behavior, the degree and nature of social danger, the method of committing a crime, the form of guilt, the form of complicity, the motive, etc.) (*Golina V. V., Golovkin B. M., 2014, p. 87-93*). In turn, A. I. Dolgova in the structure of the offender distinguishes six features: 1) socio-demographic features; 2) criminal-law signs; 3) social manifestations in various spheres of life (so-called social connections); 4) moral properties; 5) psychological signs; 6) physical (biological) characteristics (*Dolgova A.I., 2002 p. 280*). O. M. Dzhuzha thoroughly thinks that the structure of the person of the offender contains such signs as: biological; socio-demographic; moral and psychological; social role; criminal-law and criminological; mental anomalies that do not exclude sanity (*Dzhuzha O. M., 2009, p. 34*) A.P. Zakalyuk, summarizing the existing approaches to science, brought forth nine blocks (groups) of the person's identity of the offender, namely: a) three of them reflect the social characteristics of the person of the offender (her personality): signs of the formation and socialization of the person (block I); signs of social status and social roles (block II); direct signs of personality orientation (III block); b) the five groups reflect the biosocial characteristics of the person and, in particular, include: demographic features that have a social and psychological significance (block I); psychophysiological features, including genetic origin (block II); indicators of the physical state of health (block III); indicators of mental health (IV block); individual psychological features (V block); c) a separate block (9th in the account) contains signs related to the commission of a crime by a person (*Zakalyuk A.P., 2007, p. 258*).

At the same time, the extended characterization of the features of the person of the offender has the following form:

1. The signs of the formation and socialization of the person include the following: a) education: its level, profile, including general and special profile; b) the presence of a specialty (profession); c) information about features acquired in the parents' family (social features of parents, participation in the upbringing of children, committing immoral acts and crimes, etc.); d) signs, features, habits, experience acquired in the usual micro-environment (in childhood, youth, at present); e) the nature (content) of classes in their free time, cultural needs, interests, their satisfaction; e) participation in the activities of associations of citizens.

2. Signs of social status and social roles consist of the following characteristics: a) social status, occupation, nature of production (education); b) family status, the presence of children, opportunities and means of their maintenance, education, upbringing, relations between spouses; c) social housing conditions, their suitability for normal residence; d) belonging to social groups of socially acceptable orientation, including interests, living conditions, and other necessities; e) belonging to groups of anti-social orientation, including the role in these groups, the motives of such participation; criminal punishment and conditions of his detention; etc.; e) social plans (perspectives) of the person for the future: availability, objectivity, possible social consequences for the environment and person, in particular.

3. The direct signs of the direction of the person of the offender are as follows: a) needs, interests, social values in the main spheres of life: in the family, in the course of study, in the workplace, observance of norms of morals and rights, as well as attitude to universal values; b) activity manifestations in the main spheres of society's activity: content, orientation, results, social attitude, assessment, promotion; c) social or antisocial needs, interests, goals, activity manifestations: content, motives, forms of implementation, social outcomes and evaluation, attitudes towards it.

4. Demographic features that have a social and psychological significance (gender, age).

5. Psychophysiological features of a person that includes such signs as: reactions, adaptations, motor skills, type of higher nervous activity, peculiarities of temperament, thinking, including vices and psychophysiological traits of a genetic origin.

6. Physical health indicators consist of the following features: a) general condition, physical defects, which directly affect the possibilities of social adaptation, development, activity; b) chronic diseases of the somatic type; c) a disease that is the result of antisocial (immoral) behavior: alcoholism, drug addiction, sexually transmitted diseases, etc.

7. Indicators of mental health include: a pathology that excludes sanity; anomalies (deviations) that limit it; anomaly within the limits of the sanity.

8. Individual psychological features consist of: a) traits of character, including negative and socially dangerous (inappropriate), including rude, dishonest, aggressive, laziness, malice, cruelty, greediness, etc.; b) volitional qualities (inertia, property to fall under someone's influence, lethargy, determination, etc.); c) emotional features, including: turbulence; unbalance; irritability; indifference; obduracy; jealousy; keenness; etc.

9. Signs related to the commission of a crime include the following: a) signs of the crime, the objects of the attack and the public danger of the latter; b) signs of a person's attitude towards the crime, the victim, the harm done and the punishment imposed; c) other criminal-law features: the presence of convictions; their characteristics; sentencing on previous convictions; application to a person of various types of release from punishment and his serving (*Zakalyuk A.P., 2007, p. 258-262*).

Conclusion. Of course, because of its legal position, the staff of the colonies who commit crimes in the area of execution of sentences does not (objectively) have a number of features of a person of the offender, common to all types of crimes and the language of which is in the scientific literature. However, it should be noted that most of them, as shown by the results of this study, are important in characterizing those personnel from the staff of these penitentiary institutions who commit crimes in the specified area of public relations.

The theoretical significance of the conclusion on the doctrinal level of all the criminological and important features of the person of the offender, including the staff of the colonies, is that in this way the appropriate prerequisites for the organization of further scientific research, taking into account established in the course of scientific research features of the criminological features of the person of the offender in certain types of criminal activities, as well as adjustments to those scientific developments related to the substantiation of the contents of the relevant comprehensive targeted prevention programs of the offender b, draft regulations for the prevention of crime and other similar doctrinal sources (concepts, strategies, main areas, etc.). At the same time, the practical significance of the general-criminological and specific features of the



person of the offender, including the colony's staff, formulated at the scientific level is that in this case the preconditions are created for the improvement of the applied principles of prevention of crimes in all directions (general social, specially criminological and individual (victimological)), as well as an overall increase in the effectiveness of preventive activities in Ukraine, including by improving the interaction between law enforcement agencies and the organizer coordination of their actions in specific criminological situations.

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