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Features of the application of punishment medical criminal offenses

The use of punishment to the convict by court order is nothing more than, as the implementation of the specific nature and size of the criminal liability established by the court in accordance with the criminal law in the science of criminal law throughout its development a lot of attention was paid to the problems of scientists punishment. Punishment, pursuing the goal of special and general prevention is the punishment for the crime committed. The main social function of punishment should be considered its preventive function that is included as part of the measures in the fight against crime. At the same time we can not ignore the specifics of reckless criminal who has in most cases, higher value systems than intentional criminal. This feature should determine punishment in sentencing for crimes of negligence is necessary and should take into account the properties collectively characterize the personality of the offender. Therefore humanization trends in the evaluation of properties of the person who commits an act of negligence, is correct. This is to be welcomed in the judicial practice everywhere. In general, extreme measures are already struggle with medical criminal offenses is the application of criminal penalties. The main part of medical criminal offenses related to the categories of small and medium gravity, providing alternative sanctions.

Key words: punishment, medical criminal offenses, fines, imprisonment, arrest.

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Медициналық қылмыстық құқықбұзушылықтарға жазаны қолданудың ерекшеліктері

Соттың үкімі бойынша сотталушыға жазаны қолдану, қылмыстық заңға сәйкес сотпен белгіленген қылмыстық жауаптылықтың нақты сипаты мен мөлшерін жүзеге асырудан көрініс табады. Қылмыстық құқық ғылымының дамуының барлық кезеңінде ғалымдармен баса назар жаза мәселесіне аударылған. Жаза арнайы және жалпы алдын алдын алу мақсатын көздей отырып жасалынған қылмыс үшін сазаын тарттыруды көздейді. Жазаның негізгі әлеуметтік функциясы ретінде қылмыстылықпен күресу шаралары жүйесінің құрамдас бөлігіне кіретін ескерту функциясын айта кетуіміз қажет. Бұл жерде абайсызда қылмыс жасаған қылмыскердің ерекшелігін ескермей кетпеу мүмкін емес, ол көп жағдайларда қасақана қылмыс жасаған қылмыскерге қарағанда жоғары құндылықтар бағытын басшылыққа алатын адам болуы мүмкін. Абайсызда қылмыс жасаған адамдарға жаза тағайындау барысында жазаның ерекшелігін анықтап және қылмыскердің тұлғасын сипаттайтын белгілердің жиынтығының қасиеті ескерілуі тиіс. Абайсызда қылмыс жасаған адамның тұлғасын саралауда ізгілендіру тенденциясы дұрыс бағыт болып танылады. Мұны сот тәжірибесінде құптауға болады. Медициналық қылмыстық құқық бұзушылықтардың негізгі дені маңызы шамалы және орташа ауырлықтағы қылмыстарға жатады және баламалы санкцияларды көздейді.

Түйін сөздер: жаза, медициналық қылмыстық құқықбұзушылықтар, айыппұл, бас бостандығынан айыру, қамау.

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Особенности применения наказания за медицинские уголовные правонарушения

Применение наказания к осужденному по приговору суда есть не что иное, как реализация конкретного характера и размера уголовной ответственности, установленной судом в соответствии с уголовным законом. Основной социальной функцией наказания следует считать его предупредительную функцию, входящую в качестве составной части в систему мер борьбы с преступностью. При этом нельзя не учитывать специфику неосторожного преступника, который обладает в большинстве случаев более высокими ценностными ориентирами, чем умышленный преступник. Это должно определять особенность наказания, при назначении наказания за неосторожные преступления необходимо и должно учитываться свойства, в совокупности характеризующие личность преступника. Поэтому тенденции гуманизации в оценке свойств личности, совершающей деяния по неосторожности, являются правильными. Это следует приветствовать в судебной практике повсюду.

Ключевые слова: наказание, медицинские уголовные правонарушения, штраф, лишение свободы, арест.

FEATURES OF THE APPLICATION OF PUNISHMENT MEDICAL CRIMINAL OFFENSES

The use of punishment to the convict by court order is nothing more than, as the implementation of the specific nature and size of the criminal liability established by the court in accordance with the criminal law [1, p 34].

In science, the criminal law throughout its development has been given much attention by scientists penalties problems [2, p 62] The punishment in pursuit of the goal of general and special prevention is the punishment for the crime committed.

The main social function of punishment should be considered its preventive function that is included as part of the measures in the fight against crime. At the same time we can not ignore the specifics of reckless criminal who has in most cases, higher value systems than intentional criminal. This feature should determine punishment in sentencing for crimes of negligence is necessary and should take into account the properties collectively characterize the personality of the offender. Therefore humanization trends in the evaluation of properties of the person who commits an act of negligence, is correct. This is to be welcomed in the judicial practice everywhere.

Selective study of judicial practice in cases involving crimes in the sphere of health services showed that in sentencing for 70% of cases by the courts take into account extenuating circumstances only, 30% of cases – both mitigating and aggravating circumstances. A list of mitigating circumstances in the law is given in the article. 53 of the Criminal Code, it is a model, so «jurisprudence knows other circumstances, based on the moral views of the people and the courts of justice» [3, p 25].

The courts in the first instance considered positive characteristics, their first conviction, confession and cooperation with the investigation. Only 15% of the total number of convicted frankly pleaded guilty of committing an act, the rest mass of the partially admitted guilt.

As we have examined the category of criminal cases penalties are distributed under the Criminal Code of the Republic of Kazakhstan as follows:

- a) a fine -;
- b) deprivation of the right to occupy certain positions or engage in certain activities (including the use of it as a main and additional punishment);

- c) community service -;
- g) corrective work -;
- e) restriction of liberty -;
- e) arrest -;
- f) deprivation of liberty -;

Selective study of cases showed that courts rarely used the same punishment as imprisonment (of 3%). The social nature of deprivation of liberty in modern conditions is that this kind of punishment is to protect the most important interests of the state, society and the individual from the most dangerous attacks on them. «Isolation of a certain category of offenders is reasonable from the standpoint of both general and specific in terms of the prevention of crime» [4, p 46].

The Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan dated 30 April 1999 «On the rule of law courts in the appointment of criminal punishment» said: «The courts must comprehensively, fully and objectively examine the defendant about identity, bearing in mind their significance for determining the type and amount of punishment» [5, p 38].

The penalty of a fine shall be appointed by the courts more often than correctional work. The criminal law is gradually increasing the number of sanctions including a fine as the main penalty. The most significant changes in terms of expansion of penalties introduced in criminal legislation in accordance with the new Criminal Code of the Republic of Kazakhstan from July 3, 2014

The fine is determined only by the court taking into account the gravity of the offense and the property of the convicted person. The amount of the fine is now in a range of five hundred to ten thousand monthly calculation indices, established by law, for crimes (Part 2 of Article 41 of the Criminal Code of the Republic of Kazakhstan).

The punishment of «deprivation of the right to occupy certain positions or engage in certain activities» has a punitive and educational influence on those who are guilty of crimes related to the performance of official duties or professional functions. These include medical and criminal offenses. The basis of punitive detention «deprivation of rights...» is the deprivation of the convicted concrete subjective rights and a time limit of its capacity, ie choice position, profession or other occupation [6, p 36]. Currently, the correct assignment of additional punishment has been overlooked. Supreme Court of the Republic of Kazakhstan in the Resolution of the Plenum of April 30, 1999. (With subsequent amendments and additions), «On the rule of law courts in the appointment of criminal penalties» [7] solved

a number of specific questions relating to the nature of these penalties and their value in the fight against crime. Just a question about the purpose of an additional sentence, the essence of it, the values in the fight against crime has attracted the attention of specialists only in recent years [8, p 18]. No less important it is to practice and correct calculation of deadlines additional penalty of «deprivation of rights...».

In general, extreme measures are already struggle with medical criminal offenses is the application of criminal penalties. The main part of medical criminal offenses related to the categories of small and medium gravity, providing alternative sanctions.

If the actions of the medical staff inadvertently caused material or moral damage, it shall be compensated without fail.

To achieve the proper enforcement of the criminal law affect the efficiency of factors:

- 1) the level of the legal wording of the relevant legal provisions,
- 2) level of criminal law theory (theory) in terms of its law-making service of enforcement,
- 3) the level of professional activity themselves law enforcement officers and officials.

The effectiveness of the criminal law depends on how much in real life these factors (the circumstances) correspond to and complement each other. In addition, in our opinion, the effectiveness of these standards will increase if the law enforcement bodies will abide by the terms of consideration of applications and data on crimes.

The new Criminal Code of the Republic of Kazakhstan and PEC are some opportunities for more targeted preventive effects on the basis of differentiation of criminal penalties and enforcement measures. Criminal penalties, which previously acted as the main form of struggle against criminality, now more and more need to be combined with prevention measures, prevention of crime. The value of crime prevention is currently defining, as it is the main direction in the fight against crime, it is determined by a number of circumstances. A person who has committed a crime by negligence, shall be punished generally less rigid. Features of forms of guilt and their impact on the social danger of the act and of the person determine in general a different approach to the definition of the limits of blameworthiness courts deliberate and careless actions. «The consequences of careless actions may be inadequate to violation of the established safety rules. The criminal consequences of careless actions can not fully characterize the social character of the offender. Fo-

cusing on preventive measures in the fight against crimes of negligence determines when sentencing urgency advance regulated rewards «[9, p. p 204-205.]. Incentive norms empower courts to mitigate the punishment indefinitely, or do not apply it. Having set out the factors that determine the commission of crimes in the sphere of medical care, and prevention measures, the following conclusions: In the general structure of crime to determine the proportion of the offense is also difficult, since it continues to be deep latent. The main causes of medical criminal offenses associated primarily with the economy of the country is still low salaries of doctors, lack of adequate social protection and a reliable legal barrier in the field of medical activity. Doctors are still not the case in our country to the highest-paid professionals that generates widespread corruption. By the conditions conducive to the commission of the offense are high corporate, mutual health workers, lack of access to many citizens of certain types of medical services; lack of promotion of legal and medical knowledge among the population, especially among youth and adolescents; the imperfection of the current legislation in the field of public health. Measures of general prevention should include the criminalization of new compounds in the field of medicine, the adoption of laws to ensure the safety

of the individual, the protection of the fundamental rights and freedoms. To increase the effectiveness of penalties for the commission of criminal offenses of medical conduct a full and complete generalization of judicial practice in the past years and the adoption of a separate regulatory decisions by the Supreme Court of the Republic of Kazakhstan of the offense. The most effective form of punishment in respect of health care workers is the deprivation of the right to engage in therapeutic activities or hold certain positions in the health sector. Complex preventive measures on the part of Health and Social Development of the Republic of Kazakhstan should contribute to inculcate to every citizen of the country to change their attitudes to their own health. However, improper legal support of medical activities, especially in connection with the emergence of a new transplant, does not eliminate the existing conflict of laws of different branches of law on regulation of medical activity. Under the criminal medical offense we mean intentionally or by negligence committed a wrongful socially dangerous act committed by a medical officer, in violation of professional or official duties or in complicity with other persons, causing or likely to cause substantial harm to the interests of the individual, the population and the state in the sphere of public health.

Литература

- 1 Пионтковский А.А. Основные аспекты теории наказания // Советское гос. и право. – 1969. – № 7.
- 2 Уголовное право: Общая часть./Под ред. А.И. Рарога. – М.: Юристъ, 2003 – 312 с.
- 3 Комментарий к Уголовно-исполнительному кодексу Российской Федерации. – М.: Издательство «Экзамен», 2005.– 526 с.
- 4 Ткаченко В.И. – «Общие начала назначения наказания»/ РЮ. – №4. – 2004. – 46 с.
- 5 Полубинская С.В. Цели уголовного наказания. – М.: Наука, 1990. – С. 127.
- 6 Гальперин И.М., Мельникова Ю.Б. Дополнительные наказания. – М., 2010. – С. 138 с.
- 7 Постановление №1 Пленума Верховного Суда РК от 24 апреля 1999 г. «О соблюдении судами законности при назначении уголовного наказания // Казахстанская правда. – 1999. – 21 мая.
- 8 Павлухин А.Н., Кулешова Н.Н., Южанин В.Е., Эриашвили Н.Д. Дополнительные виды наказаний: уголовно-правовой и уголовно-исполнительный аспекты. – М.: ЮНИТИ-ДАНА, 2007.– 250 с.
- 9 Нерсесян В.А. Ответственность за неосторожные преступления. – СПб.: Юрид. Центр Пресс, 2002. – С. 204-205.

References

- 1 Piontkovskij A.A. Osnovnye aspekty teorii nakazaniya // Sovetskoe gos. i pravo. – 1969. – № 7.
- 2 Uголовное право: Obshhaja chast'./Pod red. A.I. Raroga. – М.: Jurist#, 2003 – 312 s.
- 3 Kommentarij k Uголовно-ispolnitel'nomu kodeksu Rossijskoj Federacii. – М.: Izdatel'stvo «Jekzamen», 2005.– 526 s.
- 4 Tkachenko V.I. – «Obshhie nachala naznachenija nakazaniya»/ RJu. – №4. – 2004. – 46 s.
- 5 Polubinskaja S.V. Celi uголовного nakazaniya. – М.: Nauka, 1990. – S. 127.
- 6 Gal'perin I.M., Mel'nikova Ju.B. Dopolnitel'nye nakazaniya. – М., 2010. – S. 138 s.
- 7 Postanovlenie №1 Plenuma Verhovnogo Suda RK ot 24 aprelja 1999 g. «O sobljudenii sudami zakonnosti pri naznachenii uголовного nakazaniya // Kazahstanskaja pravda. – 1999. – 21 maja.
- 8 Pavluhin A.N., Kuleshova N.N., Juzhanin V.E., Jeriashvili N.D. Dopolnitel'nye vidy nakazaniy: uголовно-pravovoj i uголовно-ispolnitel'nyj aspekt. – М.: JuNITI-DANA, 2007.– 250 s.
- 9 Nersesjan V.A. Otvetstvennost' za neostorozhnye prestuplenija. – SPb.: Jurid. Centr Press, 2002. – S. 204-205.