

Criminal law measures of counteraction to marginalization of elderly persons

Środki karne przeciwdziałające marginalizacji osób starszych

TATYANA V. DOLGOLENKO

Department of Criminal Law, Siberian Federal University, Krasnoyarsk, Russia

Artykuł omawia środki karne – stosowane w ramach kodeksu karnego Federacji Rosyjskiej – mające na celu przeciwdziałanie marginalizacji osób starszych.

Słowa kluczowe: osoby w wieku podeszłym, starość, porzucenie, porzucenie w niebezpieczeństwie, Kodeks Karny, Federacja Rosyjska

The article deals with the issues concerning criminal law measures of counteraction to marginalization of elderly persons under the Criminal Code of the Russian Federation (hereinafter – the Criminal Code).

Key words: persons of elderly age, old age, abandoning, abandoning to danger, Criminal Code, Russian Federation

© Hygeia Public Health 2013, 48(1): 56-58

www.h-ph.pl

Nadesłano: 20.01.2013

Zakwalifikowano do druku: 04.03.2013

Adres do korespondencji / Address for correspondence

Tatyana V. Dolgolenko, PhD, assistant professor of criminal law, Siberian Federal University
Krasnoyarsk, Svobodny av. 79, Krasnoyarsk, 660041, Russia,
e-mail: 4ktv@mail.ru

The United Nations (U.N.) classifies people aged 60 years as elderly persons [1]. As many other countries, Russia is experiencing a process of demographic ageing. According to the international standard, population of the country is deemed to be old if people aged 65 and over make up 7%. Pursuant to the All-Russian population census of 2010 year, people aged 65 years and over made up 12.9% of the total population. Neither 'old' age, nor 'elderly' age is used as a criterion of a victim or a perpetrator. It should be noted that the Criminal Code does not contain a legal definition of victim. Pursuant to the Decision of the Plenum of the Supreme Court of the Russian Federation №17 of June 27, 2010 «On the application by courts of norms regulating the participation of a victim in the criminal procedure», «the legal status of a person as a victim is determined on the basis of his actual position, which is reflected in the resolution, but not stipulated by the latter». Therefore, any natural person is considered to be a victim if he or she is participating in social relations, which are protected by criminal law and have been infringed as a result of criminal offence. Commission of a crime against a defenseless or helpless person should be included among other aggravating circumstances listed in paragraph «g» of article 63 of the Criminal Code. Special Part of the Criminal Code provides criminal responsibility for certain crimes, ho-

wever, there is no corpus delicti containing the reference to the old age of victim. However, special attention should be paid to those crimes which indicate helpless state as a feature of a victim. Under the paragraph «c» of part 2 of article 105 of the Criminal Code, young age and helpless state of a victim, which is known by the killer, are deemed to be the aggravating circumstances. The Decision of the Plenum of the Supreme Court of the Russian Federation №1 of January 27, 1999 «On the judicial practice in murder cases (the Criminal Code, art.105)» contains the following clarification: «Under paragraph “c” of part 2 of article 105 of the Criminal Code, (murder of a person who is known by the killer to be in a helpless state) » should be qualified as an intentional infliction of death to a victim who, due to physical or mental state, is unable to protect himself/herself, put up active resistance to a criminal, and which is known by the latter while committing a crime. 'Helpless' people could be those seriously ill and the elderly, small children or those suffering from mental disorders, impairing their capacity to understand the reality adequately. A similar feature is stipulated in the following crimes: infliction of grave injury and injury of average gravity to health, torture, compulsion to remove human organs or tissues for transplantation, slave trade, rape and violent sexual actions. The victim's old age and helpless state should

be added as a qualifying factor to several other crimes, such as threat of murder or infliction of grave injury (art.119 of the Criminal Code), illegal placement in a mental hospital (art. 128 of the Criminal Code), theft (art.158 of the Criminal Code), robbery (art. 161 of the Criminal Code), robbery with violence (art. 162 of the Criminal Code), swindling (art. 159 of the Criminal Code), extortion (art. 163 of the Criminal Code). The above described factor increases social danger of these crimes and also complies with our Country's moral and ethical norms, as well as with the principle of equity, prescribed in article 5 of the Criminal Code. Special attention should be given to the wording of other two articles. The only example of a crime, which includes such a factor as the victim's old age, is abandoning to danger (art. 125 of the Criminal Code). Criminal responsibility is imposed in the case of deliberate abandoning without aid of a person who is in a state of danger to human life or health, and who is deprived of the possibility of taking measures towards self-preservation because of young age, old age or in consequence of helplessness, in cases where the convicted person had the possibility of rendering aid to that person and was obliged to take care of him/her, or who has put him/her in the state of danger to life and health. This crime is attributed to the category of crimes with not a high degree of social danger. Taking into account the tendency of exclusion of this category from the Criminal Code, it is necessary to transfer this crime to the category of average gravity crimes, for commitment of which the maximum punishment does not exceed 5 years of deprivation of liberty. Part 2 of article 157 of the Criminal Code stipulates criminal responsibility for able-bodied and of full legal age children who committed malicious evasion of the payment of money, pursuant to a court decision, for the maintenance of physically disabled parents.

Regarding the issue of a subject of a crime, any sane natural person aged 16 years before the commission of a crime is considered to be a subject to the criminal responsibility. An exception is part 2 of article 20 of the Criminal Code which provides a list of crimes for commission of which persons aged 14 years can be subject to criminal responsibility. Another age of criminal responsibility under the Criminal Code is 18 years. There are no other age-related categories distinguished by the criminal law, nevertheless, the criminal's old age should be included as such. Among other mitigating circumstances, provided by article 61 of the Criminal Code, there is a reference to underage subject of a crime. Due to the fact that mitigating circumstances list was not designed to be an exhaustive one, old age of a criminal can also be regarded as mitigating circumstance while awarding a penalty. However, according to the thesis of O.V. Barsukova:

«courts often do not take into account the old age of the accused while passing a sentence. Thus among 171 criminal cases where the accused were elderly people, only 10 sentences contained references to an «elderly» age as a mitigating circumstance, while in other cases the age of the accused was not considered by the court» [2]. Pursuant to part 2 of the article 43 of the Criminal Code, punishment shall be applied for the purpose of restoring social justice, and also for the purpose of reforming a convicted person and of preventing the commission of further crimes. According to the norms of international and national law, every convicted person shall be obliged to work. One of the major means of convicted persons reformation is labor. According to the materials of special census of convicted persons and prisoners dated November 12-18, 2009, «For the last 10 years employment of convicts has decreased by 4%. The number of partly working convicts remained on the same level (6%). At the same time the index of non-workers due to the absence of volume of work decreased (from 76,2% to 40,1%) [3]. Therefore, one of the most important positive elements of the detention regime in places of imprisonment – opportunity to work – is absent for 40.1% of convicts. This relates to able-bodied persons. Concerning the nonworking convicts, to whom elderly people are attributed, their employment is not considered to be an obligation of the administration. In accordance with article 60 of the Criminal Code while imposing punishment, the court shall take into consideration not only the nature and the degree of social danger of the crime, but also the personality of the convict, including any mitigating or aggravating circumstances, and also the influence of the imposed penalty on the rehabilitation of the convicted person and on the conditions of his family life. Consequently, special age-related characteristic of the convicted person and related psychophysical features of elderly people can and should be taken into account in the course of personal characteristics and mitigating circumstances consideration. Let us pay attention to the system of punishment. Pursuant to the article 59 of the Criminal Code capital punishment shall not be applied to women regardless their age, to persons under 18 years of age who have committed offences, and to men who have attained 65 years of age by the time of adjudication. Deprivation of liberty for life also is not imposed upon these categories of persons under article 57 of the Criminal Code. It should be mentioned that the Criminal Code contains only these two articles, referring to the elderly age (65 years). Article 53.1 of the Criminal Code contains the following limitation while awarding compulsory works. Compulsory works shall not be imposed upon underage persons, persons who are deemed to be invalids of the first and the second group, pregnant women, women with children of less

than three years of age, women aged 50 years and men aged 60 years. All other types of punishment, provided by article 44 of the Criminal Code, do not contain any age-related limitations on their imposition. There are also no any age-related limitations with the exception of awarding a punishment of deprivation of liberty for underage persons. In accordance with article 56 of the Criminal Code deprivation of liberty shall be established for a term of two months to 20 years. In case of assigning punishment by accumulation of penalties, the maximum total term of deprivation of liberty may not exceed 25 years, and by accumulation of sentences – 30 years. Therefore, all mentioned above terms of deprivation of liberty can also be awarded to elderly people. General Part of the Criminal Code does not provide any other institution with the reference to the elderly age of a criminal, while Section 5 of the Criminal Code regulates criminal responsibility of underage persons. It is noteworthy to mention that according to article 92 of the Criminal Code of Spain,

convicts who have reached the age of seventy years, or those who reach that age while serving their sentence, and who fulfill the established requisites, except that of having served 3/4 thereof or, when appropriate, 2/3, may be granted probation. Probation is also granted in cases when a person receives treatment for a grave illness which entails serious suffering [4]. Thus viewpoint of N.V. Shchedrin concerning the necessity of supplementing Special Part of the Criminal Code with the new chapter devoted to the specific features of measures of criminal-legal influence on the elderly people should be supported [5]. In conclusion, the Criminal Code does not properly reflect the needs of an actual modern Russian society and those to whom it is addressed; it does need reformation taking into account demographic condition of population, first of all, for the purpose of achieving social justice, reforming a convicted person and of preventing the commission of further crimes.

Piśmiennictwo / References

1. <http://www.un.org/russian/events/olderpersons/ageing07.html>
2. Barsukova OV. Elderly criminality and crimes against elderly people (Criminological and criminal problems). Thesis... candidate of legal science. Vladivostok 2003: 146.
3. Kalinina UI, Seliverstova VI (ed). Convicts and prisoners in Russia. According to the materials of special census of convicted persons and prisoners dated November 12-18, 2009. Jurisprudence 2012: 809.
4. Kuznetzova NE, Reshetnikova FM. Criminal Code of Spain. Zercalo, Moscow 1998: 38.
5. Shchedrin NV. «Four-track» model of Russian criminal law. Materials of the VII All-Russian Criminal Law Congress entitled Modern Criminal Policy: in search of optimal model (May 31 – June 1, 2012). Prospect, Moscow 2012: 316.