

## Identification of the Features of Legal Psychology in the Analysis of the Institution of Criminal Records

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**Annotation:** The institution of a criminal record in criminal law is a specific criminal law category that is directly related not only to the committed illegal act, but to the personality of the offender. The study of the psychological aspects of a person and his activities in the context of legal regulation is a legal psychology, knowledge of which is an indicator of the professional competence of a lawyer. Recently, at the intersection of investigative, operational-search and forensic psychology, an independent direction has been developed - criminal psychology, the subject of which is the study of the psychology of the criminal, and his illegal behavior. In this research, the author analyzes the institution of a criminal record through the prism of the psychological characteristics of the criminal, his perception of his own status as a convicted person. The article proposes to revise the basic principles of criminal law relating to a criminal record, in order to protect the rights and interests of a person, to create civil and social institutions with the functions of psychological relaxation and rehabilitation of persons who have violated the law.

**Key words:** criminal record, criminal personality, criminal psychology, social consequences, psychological relief, protection of the rights and interests of a juvenile.

**Introduction.** It is well known that a criminal record is a legal state in which a person remains from the moment the court verdict enters into legal force, by which he was sentenced. The legal status of a criminal record in criminal law is inextricably linked not only with the verdict of the court, but also necessarily with the punishment that is imposed by this verdict. The duration of such a state depends on the period of time that is determined by the law of the country for the repayment or removal of a criminal record. A conviction has a social and legal nature and entails various kinds of consequences that give rise to an unfavorable legal and social result for the convicted person. Consideration of the essence and legal basis of a criminal record in different countries makes it possible to identify the nature of this institution, to suggest the psychological elements of its occurrence, to study the meaning, features, terms of repayment of a criminal record for persons who have served a sentence imposed by the court.

**Methodology.** The study is based on the principles of objectivity, justice, historicism, integrity, explanation and understanding of social and legal phenomena and processes. To achieve the goals of the study, both methods of analysis and synthesis, as well as methods of legal and psychological sciences were used, which made it possible to compare various elements of the institution of a criminal record at the intersection of sciences.

**Main discussion.** The concept and legal meaning of a criminal record varies significantly in different countries. In many European countries and in the United States, a criminal record is a person's criminal history, which is taken into account when sentencing for a newly committed crime.

The School of Industrial and Labor Relations (ILR) Criminal Justice and Employment Initiative project defines a criminal record as “a list of your contacts with the criminal justice system. This includes contacts with law enforcement and the courts and may include arrests, detentions, convictions and more.”<sup>1</sup>

There are many different ways in the US that a citizen and potential employers can access their criminal history.

Sexual or violent offender registries have emerged with federal laws named after victims of sexual assault.<sup>2</sup> Under these laws, sex offender registration programs have been established in many US states, helping law enforcement to be aware of the whereabouts of such individuals and alert the public to dangerous individuals. In addition, the federal crime information database is maintained by the National Crime Information Center (NCIC), which is located within the FBI<sup>3</sup>.

Since 2012, the European Criminal Records Information Exchange System (ECRIS) has been operating in the countries of the European Union. Through electronic communication, interaction has been established between the Member States of the European Union to exchange information on court decisions and sentences in allied countries. The program provides law enforcement agencies and courts with quick access to information about the criminal history of any EU citizen, regardless of in which Member State this person was convicted in the past<sup>4</sup>.

In the UK, there is a so-called “registry of corrupt officials” about persons who cannot serve in the police (Disapproved Register). The Police and Crime Act of 2017 (Policing and Crime Act) provided for the maintenance of lists of persons from the management staff who were dismissed from the police for unseemly acts. The “Police barred list”, which is an open access database, includes the names of those who cannot be allowed to work in the police. The second list – “Police advisory list” contains information about the persons involved in disciplinary proceedings. If, as a result of the check, a police officer is subject to dismissal, data about him are transferred to the barred list; if he remains in the service, the identity is deleted<sup>5</sup>.

Section 5 of the third book of the Swiss Penal Code (SR 311 Schweizerisches Strafgesetzbuch) regulates the rules for recording convictions and the authorities that record and register them. If there is information about a person's criminal record, it is taken into account when imposing a sentence, you can also cancel such information after the expiration of the period established by this code or by a court decision<sup>6</sup>.

<sup>1</sup> <https://cjei.cornell.edu/about-your-record/what-criminal-record-or-criminal-history#:~:text=A%20criminal%20record%20or%20criminal%20history%20is%20a%20list%20of,detentions%2C%20convictions%2C%20and%20more.> (date of access: 24.04.23)

<sup>2</sup> Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act 1994; Federal version of “Megan’s Law” 1996, Pam Lychner Sexual Offender Tracking and Identification Act 1996, Adam Walsh Child Protection and Safety Act 2006.

<sup>3</sup> Disclosure of Criminal Records in Overseas Jurisdictions. Forensic Advisory. – UK: KPMG LLP, 2019. – 114 p.

<sup>4</sup> European Criminal Records Information System (ECRIS). [Electronic resource] - URL: <https://ec.europa.eu/> (дата обращения 24.04.2023).

<sup>5</sup> URL: <https://beta.college.police.uk/article/barred-list#:~:text=Between%20its%20introduction%20on%2015,is%20a%20publicly%20searchable%20database.>

<sup>6</sup> European Criminal Records Information System (ECRIS). [Electronic resource] - URL: <https://ec.europa.eu/> (дата обращения 24.04.2023).

In the Criminal Code of Canada a criminal record is defined as a phenomenon that affects the sentencing without specifying the period of time during which it is valid. Persons with a criminal record are assigned a more severe criminal punishment, and when committing sexual assault, committing repeated crimes, it is not repaid at all<sup>7</sup>.

Specifically, the criminal legislation of the Czech Republic, has a register of persons who have ever committed a crime which, even after serving the sentence and eliminating the criminal record. Such data is stored for a long time (about 100 years) from the moment of acquiring the status of a convicted person<sup>8</sup>.

In Bulgaria, the institution of a criminal record is regulated in the Criminal Code as the legal status of a person found guilty of a crime by a court and entails legal consequences in the form of increased punishment<sup>9</sup>.

A study of the criminal legislation of foreign countries indicates that in each country a criminal record is understood as a criminal history of committed crimes, and as the legal status of a person against whom a sentence has been passed. In some countries, for example, in Canada, Spain, China, a criminal record cannot be canceled or withdrawn, in other countries, like Japan, Switzerland, Belgium, the legislation provides for the terms for the cancellation of a conviction, provided there is no recurrence of crimes. In view of the threat of transnational crime, almost all countries maintain registries of convicted persons, which are kept by special authorities, and in the countries of the European Union there is an interstate exchange of information on persons against whom there have been court verdicts.

In the countries of Central Asia, the institution of a criminal record is due to the general historical development of criminal law and a unified approach to determining criminal legal consequences.

According to the first part of Article 84 of the Criminal Code of the Republic of Tajikistan, "conviction means an officially certified fact that a person has been convicted of a particular crime to any punishment. A person is recognized as having a criminal record from the date of entry into force of a guilty verdict, to which a punishment was imposed, and until the moment the conviction is canceled or expunged."<sup>10</sup>

The Criminal Code of Kazakhstan states that a person convicted of a crime is considered convicted from the day the court's conviction comes into force until the conviction is canceled or expunged. Conviction in accordance with the Criminal Code is taken into account when determining the recidivism of crimes, dangerous recidivism of crimes and when sentencing.<sup>11</sup>

The Criminal Code of the Republic of Uzbekistan defined a criminal record as the legal status of a person caused by the fact of his conviction for a crime (Article 77). A person is considered to be convicted from the date of guilty verdict entering into force. A person released by the court from punishment is not considered convicted.<sup>12</sup>

<sup>7</sup> Collateral Consequences of Criminal Conviction. Considerations for Lawyers. Canadian Bar Association. – Ottawa, 2017. – 56 p.

<sup>8</sup> Hubálek M., Zamboj L. Bezúhonnosta rovné zacházení na trhu práce (Legislativní i faktické požadavky bezúhonnosti na trhu práce z pohledu rovného zacházení) / Poradna pro občanství/občanská a lidská práva. 2007. URL: <https://poradna-prava.cz/data/images/Bezuhonnost.pdf> (дата обращения: 24.04.2023).

<sup>9</sup> <https://www.scientific-capital.ru/>

<sup>10</sup> Criminal Code of the Republic of Tadjikistan dated 21.05.98. Ahbori Madjlisi oli Respublicii Tadjikistan, 1998, №9, p.68-70

<sup>11</sup> [https://online.zakon.kz/Document/?doc\\_id=31575252&doc\\_id2=31575252#pos=90;-66&pos2=1461;-62](https://online.zakon.kz/Document/?doc_id=31575252&doc_id2=31575252#pos=90;-66&pos2=1461;-62) (date of access: 25.04.2018)

<sup>12</sup> Criminal Code of the Republic of Uzbekistan. Tashkent. «Yuridik adabiyotlar publish». 2021.p.335.

The criminal legislation of the Kyrgyz Republic, unlike the legislation of other neighboring countries, regulates a differentiated approach to the issue of a criminal record, depending on the severity of the crime committed. Thus, in accordance with Article 95 of the Criminal Code, “a person convicted of an infraction, misdemeanor and felony crime is considered to be convicted from the day the court’s conviction comes into force until the moment of cancelling. A person convicted of a less serious crime is recognized as having no criminal record from the moment of execution of the sentence<sup>13</sup>.”

Comparing the criminal legislation of the countries of the Central Asian region, we can talk about similarities both in the definition of a criminal record and in the list of criminal legal and social consequences. So, in all these countries, the commission of a new crime by a person with a criminal record affects the qualification of the crime, the choice of the institution for serving the sentence, the calculation of the term of the actually served sentence when applying humane acts in the form of a conditional conviction, parole or replacement of punishment with a milder one, aggravating circumstances, is taken into account when sentencing for recidivism. There is also a similarity in the legislative consolidation of such criminal law norms as the redemption and removal of a criminal record after a certain period of time established by law for each crime.

At this stage, we can conclude that in the criminal doctrine the institution of a criminal record has existed for a long time, has come a long way of development and exists in many countries. At all stages, it was of great importance in the prevention and suppression of crime, determined the legal consequences of a crime committed earlier. Law enforcement agencies in many countries keep a record of a criminal record, since its presence affects the qualification and punishment for the repeated commission of new crimes by these persons. This institution predetermines a more severe punishment for those who have already been brought to criminal responsibility once, and with each subsequent violation of the law, the punishment becomes more severe.

In addition to the above legal consequences, a criminal record also entails social consequences, such as, for example, a previously convicted person does not have the right to hold certain positions or engage in certain activities. The above information gives reason to believe that a criminal record is not only a legal, but also a social phenomenon, the consequences of which have an impact on the subsequent behavior and life of a person.

In this context, we consider it interesting to take the nature of the institution of a criminal record into account from the standpoint of legal psychology.

Everyone knows that legal psychology is a science that studies various psychological aspects of a person and his activities in the context of legal regulation.<sup>14</sup> The subject of legal psychology is “various phenomena of the psyche, individual psychological characteristics of the personality of the subjects of various legal relations involved in the field of law enforcement, the socio-psychological patterns of this activity that affects the psyche, consciousness and behavior of people participating in it”<sup>15</sup>.

An independent section of legal psychology is “criminal psychology”, which scientists call the psychology of a criminal, his illegal behavior in a different way.

It can be said that relations between law enforcement agencies, courts on the one hand, and a person who has committed an unlawful act on the other hand, are regulated by both criminal procedure legislation and legal, or rather criminal psychology, since without establishing and studying the identity of the offender, his behavior before the commission of a crime and at the time of criminal acts, it is impossible to give a correct legal assessment of the event and apply the criminal law.

<sup>13</sup> <http://cbd.minjust.gov.kg/act/view/ru-ru/112309> (date of access: 25.04.23)

<sup>14</sup> Chufarovskiy, Y.F. Legal psychology. Questions and answers. Eksmo Education. Moscow. 2005.

<sup>15</sup> Ipatov, A.F. Legal psychology. Textbook. Saint Petersburg, 2022. p.5

In this aspect, it can be assumed that the bodies and officials responsible for the proceedings in a criminal case carry out their activities at the intersection of criminal procedural legislation and legal psychology.

If the tasks of criminal procedural legislation are the rapid and complete disclosure of crimes, the exposure of the perpetrators, the strengthening of the rule of law, the protection of the interests of the individual, the state and society, then the purpose of legal psychology is “the study of the psychological mechanisms of illegal (criminal) behavior; study of the factors influencing the unlawful behavior of juveniles; the study of psychological characteristics, motives for committing the most dangerous crimes against the life and health of citizens, property crimes, as well as technogenic crimes; study of the personality of offenders, psychological characteristics of persons with various deviations in the field of social functioning; development of socio-psychological foundations for crime prevention; development of prevention and warning programs for such persons in order to prevent crime and expose them to committed crimes”.<sup>16</sup>

To perform these and other tasks, representatives of the law must be guided by the principle of justice, honesty, legality and at the same time fulfill their official duty. The study of the personality of a criminal is important not only for understanding the moral and psychological prerequisites for committing crimes, but also for understanding the reasons and conditions that contributed to its commission. The psychological characteristics of the personality of the offender is taken into account when making procedural decisions both in pre-trial activities and during trial.

From this point of view, it seems to us that the psychological portrait of the criminal should be regarded systematically with the socially dangerous infringement that he committed, in order to competently organize the process of his upbringing while serving his sentence. At the same time, the analysis of the personality of the offender, his behavior, the circumstances preceding the commission of the crime, together with the legal assessment of his illegal actions, which subsequently led to the sentencing and conviction, is carried out at the intersection of psychological and legal knowledge.

But what is the real perception of such a person on the part of those responsible for the criminal proceedings?

Under the personality of a criminal, many understand a sane person who has reached a certain age. We often use expressions: the person who committed the crime, the subject of the crime, the identity of the perpetrator.

The study of the identity of the offender is of great practical importance for investigative and judicial workers, since it can influence the establishment of all the circumstances of a criminal case and the final sentencing, and in other cases, the acquittal of an innocent person. Investigators are well aware that a deep study of the identity of the offender makes it possible to more accurately establish the motives for the crime, the circumstances preceding its commission. Often, knowledge of criminal psychology helps the investigation to establish the places where the perpetrator kept the objects of the crime or material evidence, such an experience of the investigator allows you to predict the behavior of the criminal in the future, to prevent his subsequent crimes.

The psychological portrait of the personality of the offender gradually emerges during the investigation, the features of his character, habits, desires, attitude towards society, people, work are determined, in some cases a previous conviction is established, which testifies to the criminal history of this person.

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<sup>16</sup> Ipatov, A.F. Legal psychology. Textbook. Saint Petersburg, 2022. p.8



Knowledge of criminal psychology plays an important role in assessing his criminal actions, qualifying crimes, choosing a measure of restraint for him, and subsequently punishment, taking into account the social danger of the committed act and personal qualities.

Of particular note is the importance of the science of criminal psychology in the study of the personality of a juvenile delinquent, whose character is malleable and not sufficiently formed. The manifestation of patience, understanding, delicacy when conducting investigative and other procedural measures with a juvenile is an unconditional duty of the bodies and officials responsible for the proceedings in a criminal case involving a juvenile.

Before the onset of a socially dangerous encroachment, we perceive a person as an individual who has his own characteristics, which were formed in him in the course of his social life. The commission of an unlawful act indicates a violation of the balance in any human needs, the manifestation of previously hidden perverted needs. Such a manifestation of one's desires and needs leads to the fact that a person finds himself in a conflict criminal situation and is subjected to criminal prosecution, the result of which is his conviction.

In the science of statistical differences between the personality of a criminal and a person who has not committed a crime, a lot has been established. So V.V. Lunev<sup>17</sup> notes that the main difference between offenders and persons with stable lawful behavior, as well as some types of criminals from others, is in the content of the social orientation of their personality, value orientations, in the structure and content of the motivational sphere as the social core of the personality. And this is the main sign of a person in general and a criminal in particular.

The scientist's statement is, of course, debatable. The differences between criminals and non-criminals are expressed in the psychological characteristics of the individual, the perception of external factors, the established stereotypes of society. Many scientists believe that such differences do not exist at all, since the living conditions of a person, the microenvironment "levels out expressive personal traits, erases the boundaries of individuality"<sup>18</sup>. Another group of scientists experimentally proves the opposite: different types of criminal behavior correspond to a specific set of psychological traits and personality traits of the criminal. Some even suggest that there is a connection between the type of crime committed and the psychological characteristics of the person who committed it.<sup>19</sup>

But what arguments can be made when once occurring deviations from the balance of human needs become its characteristic feature on the basis of investigative and judicial decisions? There is a negative perception of his personality not only from the investigative and judicial authorities, but also from other people around him. Moreover, such a person is morally worried, psychologically feels like a criminal, "the dregs of society", underestimates his self-esteem. Regardless of which person has served the sentence, his social position of the convicted person is formed in his mind, in connection with which the balance of needs is again disturbed, since "they must be considered in relation and interaction with interests and moral feelings, which reflect the social position and value orientation"<sup>20</sup>.

It can be assumed that the psychological feature of the individual lies in the fact that a person is a social being and, under any circumstances, the formation of his interests and needs is associated with society. Accordingly, he passes the perception of his personality through the prism of the social relations in which he is. Consequently, acquiring the status of a convicted person forms a new mental state in a person, which is often a motive for committing a repeated crime.

<sup>17</sup> Luneev, V.V. Course on world and Russian criminology. Volume 1. General part. Moscow: Yurayt publ.house, 2022.003

<sup>18</sup> <https://theconversation.com/my-brain-made-me-do-it-will-neuroscience-change-the-way-we-punish-criminals-57571>

<sup>19</sup> [https://www.researchgate.net/publication/354991065\\_Criminal\\_Psychology\\_Understanding\\_Criminal\\_Behaviour](https://www.researchgate.net/publication/354991065_Criminal_Psychology_Understanding_Criminal_Behaviour)

<sup>20</sup> Ipatov, A.F. Legal psychology. Textbook. Saint Petersburg, 2022. p.25

An important role in the evolution of such a mental state of a person belongs to the established rules of behavior in society, laws and the activities of judicial and investigative bodies in the course of criminal proceedings. It turns out a vicious circle: the commission of a socially dangerous act entails criminal liability and a criminal record, which in turn gives rise to deviations in the mental state of a person, the formation of new prerequisites for repeated crimes.

Thus, it can be assumed that the public environment, the presence of special rules of conduct in the social environment, which are regulated by the rule of law, the formed public attitude towards convicted persons, are the reason for the increase in the recidivism of crimes. Moreover, the investigative and judicial authorities in the course of their activities contribute to the formation of a person who has committed a crime, stable negative thoughts from the moment of considering criminal who loses his freedom, comfort zone, privileges and his future life will no longer be happy. Such a psychologically depressed state of a person often gives rise to new motives for committing repeated crimes. These facts, of course, increase not only the number of convicted persons, but also crime in general.

Of course, we do not aim to limit the legitimate activities of law enforcement agencies and courts that follow the laws and principles of criminal procedure in the investigation of crimes and judicial proceedings. Officials of these bodies are responsible for criminal proceedings, and their primary task is to protect the objects protected by the Constitution, including the rights and interests of citizens.

However, it should not be forgotten that in relation to persons who have crossed the line of the law, may have made a mistake or committed a socially dangerous act for the first time, states exert an even more effective psychological burden in the form of laws that: a) help limit the civil, social, labor rights of convicted persons ; b) aggravate their situation with increased punishment when committing a repeated crime. The atmosphere of an unfriendly attitude towards the personality of the criminal, and subsequently the convicted person significantly affects his psychological state, the perception of such an attitude gives rise to desperate attempts to immediately correct this situation, to prove his significance, which often leads to repeated violation of the law.

We believe that it is necessary to discuss the main provisions of the social and legal nature of the institution of a criminal record, which entails various kinds of consequences and, to a certain extent, limits its legal status.

The study showed that the acquisition of a criminal record entails characteristic changes in the psychological state of a person, such as emotional depression, suspicion, distrust, bitterness towards others, lack of faith in the future, self-defense reaction, negative attitude towards the state and the activities of law enforcement agencies, decrease in positive emotions, loss of trust.

The above ideas give reason to believe that it is necessary to develop and adopt civil institutions and social services, whose activities would be aimed at providing a psychologically favorable environment for people who have stepped over the law, with a view to their positive attitude and reasonable perception of the event. The main goal of these institutions should be to determine the conduct of psycho-correctional and preventive work to prevent personality deformations.

In our opinion, keeping a record of convicted persons, as is the case in many countries, is justified by the fact that it contributes to a comparative analysis of the number of crimes committed, the causes and conditions conducive to their commission. In addition, information on the number of convicted persons will reveal social problems in those territories where the maximum number of crimes has been committed. But in no way should such information, as it seems to us, be disclosed and have a psychological impact on the one who is on the specified account. The legislative consolidation of such a position will testify to the guarantees of human rights and interests.

**Conclusion.** Legal conflicts of the individual with society, the commission of a crime by a person should be considered at the intersection of criminal law and criminal psychology. Society should not repel a person because he committed an unlawful act, criminal legislation must be formed taking into account the psychological characteristics of the individual and the mental situation in which he finds himself after committing a crime.

It is necessary to revise the social norms and rules of behavior that surround a person and influence the formation of his personality. In our opinion, the functions of social and civil institutions should include the duties of psychological unloading of the mental activity of the person who committed the crime, as well as the establishment of real guarantees for the adaptation and rehabilitation of convicted persons. The activities of the Centers and systems for recording convicted persons must be carried out only for the purpose of registering committed crimes for a comparative analysis of the dynamics of growth and decrease in certain categories of crimes and in a certain territory, under conditions of strict confidentiality, which would guarantee the protection of human rights and interests.

We consider it expedient to revise the fundamental principles of the institution of a criminal record, fixing the provisions that would not limit the convicted person in social, civil, labor rights. It is also necessary to attach great importance to the improvement of the institution of a criminal record in order to prevent juvenile delinquency. The functions of bodies and institutions for the social rehabilitation of juvenile offenders should also include the psychological recovery and protection of persons who have crossed the law in order to prevent the recurrence of the crime.

The study of criminal law, in particular, the institution of a criminal record at the junction with legal, or rather, criminal psychology, will certainly provide new opportunities and discoveries to improve the efficiency of the state in strengthening the rule of law, justice, ensuring the guarantee of the rights and legitimate interests of the individual.

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