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The Problems of Dualistic System Development for Criminal and Legal Measures

Alexandra Yu. Bokovnya*
Kazan Federal University, Faculty of Law, Russia

Fedor R. Sundurov
Kazan Federal University, Faculty of Law, Russia

Abstract

The proposed article studies the insufficiently studied problem of dualism during the development and the regulation of criminal legal means application to the persons who committed crimes. The authors identify two levels of legal consequences caused by the commission of crimes: 1) the system of punishments and 2) the system (or set of) other (in addition to punishment) criminal law measures. They, as a historical trend (which is observed at the present time), recognize the increasing saturation of criminal legislation with non-punitive measures. In their opinion, in terms of successful solution of the criminal legislation tasks, it is necessary to combine the application of punishments and other measures of a criminal-legal nature, that is, proper corrective and preventive measures, to the perpetrators of crimes. The article reveals a different approach to the regulation of the system of penalties; if, for example, in Russia and a number of other states of the near abroad, 13-17 types of punishments are envisaged, then only 3 "ordinary" punishments are provided in the Criminal Code of Poland. This diversity is even more evident in the regulation of other criminal law measures. The authors assess the dualistic system of measures in criminal law positively and believe that it should be improved in terms of their humanization and differentiation, depending on the severity of committed crimes, the identity of perpetrators and other significant criteria.

Keywords: Investment processes; Investment dynamics; Structural changes.

1. Introduction

Modern criminal legislation provides for a very wide range of measures of influence on persons found guilty of committing crimes - from exemption from criminal liability or from refusal to prosecute to life imprisonment or death penalty, by its nature, content, functions and conditions of application. This diversity and a significant number of criminal law measures, on the one hand, create the conditions for a more consistent individualization of criminal responsibility, and on the other hand, create objectively certain difficulties for their legislative regulation and enforcement. In general terms the structure of criminally-legal measures can be designated as follows depending on their connection with criminal liability: 1) the system of punishment types; 2) the system of other measures of a criminal-legal nature (Ashworth, 2003). The determination of an optimal correlation in the criminal legislation of the indicated substructures is a fundamental problem of criminal law (Dine and Gobert, 2000). Until the nineteenth century, one of these structures was known to criminal legislation - punishments with their inherent cruelty personifying a kind of "bloody code" of the middle Ages. And only in the subsequent practice of regulation and application of death penalty and other cruel punishments, sometimes for minor crimes, gave way to the humanization of punishment and the introduction of correctional and preventive measures in the legislation (Esakov *et al.*, 2009).

The idea underlying the evolutionary transformations in the criminal legislation, implemented since the beginning of the XIXth century, is very simple in its interpretation and is extremely important for the successful prevention of crimes by society. It consists in the refusal not only of those types of punishment that actually turn a criminal into a victim of criminal justice, "washing with blood and suffering" those individuals who do not deserve excessively stringent measures, but also in a more substantial saturation of criminal legal means by the measures of proper corrective influence on the persons who committed crimes, combined with the laws aimed to prevent crimes. And this historical trend is also being observed in the development and the adoption of new criminal codes or the modification of existing laws in different states. In the literature, they provide ambiguous assessments to the existing system of punishments and other criminal law measures, in particular, the opinions are expressed on the limitations of punishment in terms of a positive impact on perpetrators of crimes or on the exclusion of other system of measures from criminal legislation.

2. Materials and Methods

The materials for the work were the provisions of articles 2, 6, 7, 43, 44, 45, 56, 57, 59, 73, 74, 82, 82^1, 104^1, 104^2, 104^4, 104^5 of RF Criminal Code, the articles 44, 47, 48, 77, 68, 80, 81 of the Criminal Code of the Republic of Belarus, the articles 39, 40, 41, 44, 47, 66, 67, 68, 69, 70, 71, 72, 73 of the Criminal Code of Poland, the paragraphs 56, 56a, 56b, 56s, 56 d, 57, 61, 62 of the Criminal Code of Germany. The reliability of the obtained results is

*Corresponding Author

ensured on the basis of the analysis of a significant and necessary array of legislative norms, statistical data, the materials of law enforcement practice, as well as the use of modern methods for legal regulation study: logical, historical and legal, comparative law, system-structural analysis, etc (Frister, 2013).

3. Results and Discussion

If the Criminal Code of Russia, as well as of other states close to it, the definition of punishment is provided, then it is absent in the legislation of the states of Western and Eastern Europe. Meanwhile, its legislative definition is necessary from the point of view of the interests of punishment separation from other measures. Uncertainty in the interpretation of punishment is also evident in the doctrine of criminal law. Punishment is defined as the sanction imposed by the court on the offender on behalf of the state, as the evil inflicted on the punished for the committed crime, as the acts of coercion, retaliation, etc. Such criminal punishment definitions are one-sided and can't be considered as exhaustive. At the same time, we note that the punitive nature of criminal punishment is pointed out in German literature. It seems more preferable for us to determine the punishment in the Russian Criminal Code (part 1, article 43), in which the formal (the punishment is stipulated by the Criminal Code) and the essential (consists in deprivation or restriction of the rights and freedoms of a person who committed a crime) feature are combined (González and Villalobos, 2016).

Unlike the Criminal Code of the RSFSR of 1960 (Part 1, Article 20), the Russian legislator does not indicate that punishment is punitive by nature. Punishment, understood as the totality of the most significant restrictions and deprivations, substantively isolates punishment from other criminal law measures. Therefore, this significant feature should be reflected in Part 1, Art. 43 of RF Criminal Code during the determination of punishment concept. The analysis of RF Criminal Codes and the CC of a number of other states testifies to the diversity of approaches to the determination of the content and the structure of penal systems and other measures of criminal-legal nature. Thus, RF Criminal Code provides for 13 types of punishment: fine, deprivation of the right to occupy certain positions or engage in certain activities, deprivation of special, military or honorary title, class rank and state awards, compulsory works, correctional labor, the restriction on military service, forced labor, arrest, the detention in a disciplinary military unit, the imprisonment for a certain period, life imprisonment, death penalty (Article 44). In this case, it provides a single list of basic and additional types of punishment. In 2003, the Russian legislator excluded the confiscation of property from it, and in 2006 he provided the confiscation of property as another measure of a criminal-legal nature. Per se, the same set of punishments we see in the Criminal Code of so-called near abroad states. Although (which is quite natural) there is a certain specificity in them. For example, Part 1, Art. 48 of the Criminal Code of the Republic of Belarus provides for 11 types of punishment, which can be appointed as the main ones. Part 2 of this article specifies separately that the deprivation of military or special ranks and the confiscation of property can be used as additional punishments (Kazakova and Klyostor, 2018). Let's note also that public works (the analogue of mandatory works under RF Criminal Code) in accordance with Part 3, Art. 48 of the Criminal Code of the Republic of Belarus can be used as not only the main, but also additional punishment. This Code does not provide the deprivation of an honorary title, as well as state awards. Under the Criminal Code of the Republic of Tajikistan, the confiscation of property is recognized as the most severe form of punishment, following the death penalty and the deprivation of liberty (Article 47). According to Part 1, Art. 42 of the Criminal Code of the Republic of Lithuania, the least severe punishment is the deprivation of public rights, and public works (the analogue of the mandatory works in RF Criminal Code) are recognized as less severe penalties than a fine. This Code does not provide death penalty as punishment. An essential feature of the Criminal Code of the states mentioned above is that they provide fairly representative lists of punishment types (from 8 in the Republic of Lithuania to 11 in the Republic of Tajikistan, 13 in the Republic of Belarus) (Koehler and Deck, 1991).

The Criminal Codes of some Western European countries provides a fairly limited set of penalties. For example, the Criminal Code of Germany provides temporary imprisonment, life imprisonment, a fine, a fine along with imprisonment as the main punishments, and the prohibition of driving a motor vehicle as an additional punishment. And the Criminal Code of Switzerland provides for a convict prison, imprisonment, arrest and fine as the main punishments and five additional punishments. Moreover, the third section of this Criminal Code regulates both penalties and other measures (preventive pledge, Article 57), confiscation (articles 58, 59), compensation to the victim, the publication of the sentence (Article 61), that is, there is a certain mixing of legal consequences in the form of punishments with the consequences of the second level, that is, with other criminal law measures. Art. 9 of the Criminal Code of the Netherlands gives separate lists of the main types of punishment (imprisonment, public works, fine) and additional types of punishment (the deprivation of certain rights, the placement in the state correctional house, confiscation, a sentence publication).

The most extensive and multistage system of punishments is provided by the Criminal Code of Spain. According to Art., imprisonment, deprivation of certain rights and fine are represented by 32 punishments, appointed as basic or additional. And by nature and duration the punishments are divided into strict (7 types), less strict (9 types) and minor (4 types) (Article 33). Additional punishments may be imposed for the same period as the basic ones. Such measures are envisaged as punishment in the Criminal Code of Spain, which are regulated in the Criminal Code of Russia and a number of other states as other measures of a criminal-legal nature, for example, the deprivation of the right to stay or visit certain areas. The comparative analysis of modern legislation shows certain patterns - the less the penalties envisaged in the Criminal Code, the more other (besides punishments) measures are regulated, and vice versa. The regulation of punishments and other measures of a criminally-legal nature can be likened to two communicating vessels: the addition of a liquid in one of them entails its reduction in the other. For example, the RF Criminal Code, as was already noted, provides for 13 types of punishment, which differ substantially by their nature, content and application conditions, and only 6 other non-systematized criminal-law measures: conditional conviction (Article 73, 74), postponement of serving a sentence (Article 82, 821), compulsory measures of educational influence (Article 91, 92), compulsory measures of a medical nature (Article 104), the confiscation of property (1041, 1042, 1043) and a judicial fine (the art. 1044, 1045).

The detailed regulation of the system of punishments and other measures are observed in the Criminal Code of Switzerland; its first chapter of the third section provides main penalties (convict prison (Article 35), imprisonment (Article 36), arrest (Article 39), fine (Article 48), 5 additional types of punishments: dismissal (art. 51), the deprivation of parental or custodial authority (Article 53), the prohibition to engage in a particular profession, craft or conclude commercial transactions (Article 5), the deportation outside the country (Article 55), the prohibition to visit a particular restaurant (Article 56) and 5 other measures (preventive pledge (Article 57), confiscation of dangerous items (Article 58), confiscation of property benefits (art. 59), compensation to the victim (Article 60) and the publication of the sentence (Article 61). The same chapter regulates conditional release (Article 38), conditional conviction (Article 41), as well as security measures: the internment of "habitual" criminals (Article 42), the measures applied to the mentally ill (Article 43), the treatment of persons, abusing alcohol and narcotic substances (Article 44), conditional and probationary release (Article 45).

The punishments and other criminal law measures are sufficiently consistently differentiated in the Criminal Code of Poland. According to Art. 32, the punishments are fine, the restriction of freedom, imprisonment, the imprisonment for a period of 25 years, life imprisonment. And at the same time the Art. 39 provides 8 criminal-legal measures: the deprivation of public rights, the prohibition to occupy certain positions, to use a certain profession or engage in certain economic activities, the prohibition to operate vehicles, the confiscation of items, the obligation to compensate for harm, monetary compensation, cash payment and bringing the sentence to public notice. Apparently, the Criminal Code of Poland has a clear distinction between punishments and criminal law measures (as secondary legal consequences of a crime commission). It does not provide for additional penalties. And in our opinion, the functions of additional impact on convicts are called upon to fulfill criminal law measures (González and Villalobos, 2016).

4. Discussion

One of the advantages of modern state criminal legislation is the regulation of other (besides punishment) measures of a criminal-legal nature in it along with the penal system which are systematized in the Codes of some states (CC of Poland, Switzerland, etc.), and in the legislation of other countries such systematization is absent. It is absent in RF Criminal Code, as well as in a number of neighboring countries. The regulation of two levels of legal consequences after a crime commission, that is, the system of punishments and the system (or a certain set) of other criminal law measures is subject to the narrowing of punitive action scope by the application of punishment and, at the same time, the achievement of criminal responsibility goals based on the use of non-punitive, corrective and preventive measures. The ultimate goals of punishment and other measures are the same, but they differ from each other only by the means and the mechanism of their achievement. There is a diversity of other criminal law measures in the criminal legislation of foreign countries. In Russia, one should study this experience, transform the penalties in the form of right deprivation to occupy certain positions or engage in certain activities and the deprivation of special, military or honorary title, class rank and state awards into the measures depriving specific rights and titles, and to systematize other measures of criminally-legal nature (Stephen, 1883; Sundurov, 2005).

5. Conclusions

Apparently, the criminal legislation of Russia and other states gives a different legal nature to the measures of a criminal-legal nature; the same measures by their content are regulated as an additional punishment, or the main punishment, or a criminal law measure with the implementation of criminal liability, or associated with the release from it and the cessation of criminal prosecution. The ambiguous interpretation of the legal nature of these measures is explained by various approaches to the definition of criminal penalties for acts; if certain measures are recognized as additional punishments, there is the tendency to increase the punitive potential of a punishment, and if they are envisaged as other measures of a criminal-legal nature, then not punishing but corrective-preventive measures are envisaged. The development of a socially acceptable dualistic system of punishment and other measures of criminal-legal nature makes it possible to differentiate punitive and corrective-preventive effects more consistently depending on the severity of the crimes committed, the perpetrator peril and other significant criteria (Sundurov, 2009).

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