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APPLICATION OF THE PRINCIPLE OF HUMANITY IN THE CREATION OF AN OPTIMAL MODEL OF CRIMINAL SANCTIONS

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Abstract

This article analyzes the role and importance of the principle of humanity in the formation of an optimal model of criminal law sanctions. The issues of proportionality, sparing of repression, individualization of punishment, and taking into account the level of social danger of a crime in the formation of criminal law sanctions are scientifically covered. The need to classify crimes according to their social danger, distinguish between intentional and negligent crimes is also substantiated. The importance of taking into account the nature of the crime, the harm caused, the form of guilt, and the characteristics of the guilty person when determining sanctions is emphasized. The article shows the need to expand alternative punishment measures, increase judicial discretion, and strengthen the preventive function of punishment in the formation of an optimal model of sanctions. On this basis, scientific conclusions are formulated aimed at humanizing and improving criminal legislation.

Keywords: Criminal law sanctions, determination of punishment, lower and upper limits of punishment, categories of crime, criminalization of the act, ideal model of sanction, crime policy, individualization of punishment.

Introduction

Despite the fact that the problem of expressing and structuring the normative characteristics of criminal-legal sanctions is an important and urgent task today, it has not been fully studied by legal scholars. The question of what principles the sanctions in the Special Part of the Criminal Code are based on, and to what extent they conform to the provisions of scientific foundations, still remains unresolved.

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Therefore, in criminal law theory, the constructive features of criminal-legal sanctions are distinguished by the following criteria:
the first criterion is the faultlessness of the law and that prohibitions should not become excessive;
the second criterion is clarity and uniformity of the terminology used;
the third criterion is the completeness of the crime's elements, proportionality of the sanction, and economy of repression.
However, it is not difficult to understand that these criteria generally relate to the construction of criminal-legal norms as a whole. Only the proportionality and economy of repression are related to the rules for constructing the sanction. Of course, the solution to this issue has many aspects.
For example, the famous Russian criminologist G. A. Zlobin, by focusing on some of its aspects, showed that the above-mentioned criteria are also related to general principles of justice and equality before the law of citizens. However, in terms of the systematic principles of criminal law for criminalization, this may be sufficient, but it is not enough to define and research the rules of criminal law sanctions. In legal science, for the first time, M. I. Kovalyov defined the following rules in this direction and managed to clarify their meaning:
The sanction must be proportional to the real degree of social danger of a crime in all possible scenarios;
The sanction must be internally consistent and harmonious;
For crimes committed through negligence and whose consequences may differ, substitute sanctions should be provided, that is, alternative sanctions should be defined.
Some of M. I. Kovalyov's views that the sanction should be proportional to the actual degree of social danger of a crime are acceptable.
The social danger of an assault is manifested as both the material characteristic of the crime and the extent or size of the possible punishment as a sanction. According to Article 54 of the Criminal Code, which regulates the general bases for imposing punishment, the court must consider the nature of the committed crime, the degree of its social danger, the cause of the act, the nature and extent of the damage caused, the personality of the perpetrator, as well as mitigating and aggravating circumstances. However, the personality of the perpetrator often becomes the court's point of attention primarily in connection with whether his or

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her mitigating or aggravating circumstances increase or decrease the overall social danger of the crime. Of course, the upper limits of punishment specified in the sanctions of criminal law norms, in certain cases, should be established either in accordance with the general principle of humanism or in line with criminal law – that is, according to the principle of economy of repression. But in the opinion of V. V. Malsev, this circumstance does not reduce the social danger of the crime. Because the social danger of the crime is expressed through the principle of equality before the law in accordance with the sanction of the norm and the imposition of punishment. The social danger of a crime serves as a general basis for the construction of sanctions and for the imposition of a specific punishment. Therefore, the idea that the criminal consequence is the main manifestation of the social danger of a crime is widely used in criminal law science. Indeed, social danger determines the qualitative degree and uniqueness of a crime. It depends on the content and social danger of the social relations being attacked, the nature and amount of harmful consequences, guilt and its form (intent or negligence), the method of committing the crime (dangerous to many, use of force), motives and goals of the crime (base, vile, or socially indifferent, etc.). The combination of the criteria mentioned above characterizes the crime.

The more valuable the object of the crime, the more damage is done to it, and the more malicious the intent of the perpetrator, the more dangerous the crime will be by its nature, and accordingly, the punishment should be more severe. In fact, this criterion determines the lower and upper limits of certain types of punishments and also expands the possibilities of applying alternative sanctions and a number of institutions from the General Part of the Criminal Code (release from criminal liability, conditional sentencing, early release, etc.). Unfortunately, to date, classification of crimes by their social danger has not been clearly reflected in legislation and does not have a unified solution in the theory of criminal law.

The shortcomings of previous legislation have been noted in the literature, including the suggestion to unify the categories of crimes, to reflect them clearly in the law, and to establish a close relationship between specific sanctions in the Special Part of the Criminal Code and the institutions of the General Part.

In the classification of categories of crime, A. B. Sakharov's proposal to classify criminal groups by sanctions is of scientific interest. However, there is a serious

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shortcoming between the types of crimes that A. B. Sakharov enumerates and the system for defining them through sanctions. A. B. Sakharov classifies attacks on important social values and acts caused by negligence leading to serious consequences as minor crimes. At the same time, he classifies "intentional attacks on important social and personal interests without aggravating circumstances, or attacks under mitigating circumstances leading to serious consequences, or attacks not causing serious harm to public or personal interests" also as minor crimes. For such crimes, the author suggests sanctions of up to 5 years' imprisonment or other alternative punishments not related to deprivation of liberty.

"All scholars who attempted classification based on the social danger of crimes, by including crimes committed by negligence alongside intentional crimes, have remained limited to a general system."

However, if we take into account the specific characteristics of crimes committed by negligence, the degree of their social danger and the personality of the perpetrator differ seriously from intentional crimes. Also, there is no proportionality between the harmful consequences arising from the "malicious intent" of the perpetrator and unintentional acts. Therefore, in our opinion, such a proposal is logically incorrect.

The criteria for determining the social danger of crimes committed by negligence and the social danger of perpetrators are completely different from those of intentional crimes. That is why crimes committed intentionally and by negligence should not be classified according to the same criteria of social danger, and especially, categories that include both types of crimes should not be defined by the same sanctions.

Based on this classification, this category includes crimes under Article 266 of the Criminal Code (sanction of part 3 – up to 10 years of imprisonment) and Article 102 (sanctions of parts 2 and 3 – respectively, from 3 to 5 years of imprisonment). The degree of social danger of crimes committed through negligence, as mentioned, differs from one another, and none of them can be compared with intentionally committed crimes in the same category. Therefore, attempts to set a single limit and amount of sanction for them are ineffective.

Not without reason, paragraph 4 of Article 15 of the current Criminal Code does not include crimes committed by negligence among especially grave intentional

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crimes. Rather, from the perspective of social danger, crimes committed through negligence should be separated into a special category, and accordingly, typical sanctions should be established for some types of crimes committed by negligence. Although this issue has not been studied much in criminal law science, the development of scientific and technical progress requires not only the study of criteria for social danger in such offenses but also the examination of the specific characteristics of the perpetrator.

For the differentiation of liability and the individualization of punishment, it is important that in constructing sanctions, the upper limit of liability for a less serious type of the same crime be proportionate to the highest limit for the most serious wrongdoing. I. I. Karpes, criticizing the imposition of harsher types of punishment for serious and especially grave crimes, stated: “The upper limit of the sanction for an ordinary crime must, at the same time, be the lower limit for a crime with qualifying features.”

This consideration is of particular importance in developing a model for the sanction of a new criminal law norm. The ideal variants of sanctions derived from the system of values and general theoretical viewpoints are always found in juxtaposition. In fact, in the public mindset (which also affects the theory of criminal policy), the idea that punishments should be toughened for the development of society has already been shaped. Accordingly, public opinion approves the imposition of the harshest penalties on criminals, thereby confirming society’s closeness to the notion of a “firm hand.” According to studies, for example, the majority of recidivists (77% of the specialists surveyed) do not support long-term imprisonment but favor the retention of the death penalty.

The fact that the state’s severity is supported by a highly criminalized society is not a situation that requires explanation. Is not the cruelty in offenses and the cruelty in punishment of the same general nature? Such an assumption could be exemplified by the imposition of extremely harsh criminal penalties on certain defendants. The tendency to be strict with convicts is based not only on preventing crimes but also on the desire to preserve the tradition that allows the “criminal to feel the negative consequences of the crime he has committed.” This public conviction is correctly accepted by the legislator and is reflected in recognizing it as socially just and in emphasizing the restoration of “social

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justice" as one of the aims of criminal punishment. On the other hand, the opinion of 67% of the surveyed expert specialists, who believe that severe punishments are "not expedient and have no future," is much closer to the truth. As a result, the ideal model of a sanction for a particular criminal law norm varies significantly depending on by whom and when it was proposed.This, in turn, somewhat resolves the contradictions existing in the practice of the justice agencies by introducing a differentiated approach to the imposition of punishment. From this, as a rule, we can conclude that the sanction should be relatively – specifically – determined based on a pragmatic model. However, there is no way other than subjectively understanding, contemplating, and setting its optimal upper and lower limits. Scientific research has not provided a new and more reliable basis for choosing the minimum limits of sanctions. Of course, it is impossible to conduct a scientific experiment in such a situation, but, at the same time, there are no other methods for clarifying such nuances.

The law of the labyrinth, finding oneself at a dead end, proposes that the only way out is, first of all, to determine the effectiveness of the types and amount of punishments applied to persons convicted for similar crimes. This requires selecting individuals who have committed similar crimes based on the socio-demographic and psychological characteristics of the norm being developed. Such an analysis provides an idea of the more or less optimal dimension of a sanction from the perspective of special prevention, i.e., the correction and re-education of future convicts. However, the implementation of general preventive tasks encourages the regular adjustment of these dimensions. Its future direction and limits can be determined by studying the legal awareness of persons in both categories.

Firstly, by studying the legal consciousness of social strata with a high subjective probability of committing certain types of crimes.

Secondly, by analyzing the legal consciousness of practitioners—investigators, prosecutors, and judges—who will apply the new law in practice.

If the sanction model formed in the legal norm they propose is more liberal in content, then there would be a one-sided approach in its structure. On the other hand, if practitioners consider the sanction to be too lenient, they will require appropriate amendments to be introduced. Of course, such amendments should not lead to the abandonment of methods related to hiding the effectiveness of

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applying punishments to those convicted for similar crimes. Therefore, improving the sanction of the model under study should be carried out not by reducing or shortening it, but rather by expanding its limits or strengthening the court's possibilities to individualize the responsibility of the accused, that is, by introducing alternative forms of punishment into the law as another option. In this process, both professional (institutional), sociological (systematic), and axiological (value-based) considerations relevant to criminal-legal sanctions, including the noteworthy fair views of P. P. Osipov, must be taken into account.

Of course, the democratization and humanization of criminal legislation should not be limited to easing sanction punishments for serious and dangerous crimes. Rather, the main directions of criminal policy and the issues of optimizing legislation should be manifested in the gradual increase of the educational influence of criminal punishment on offenders, and in strengthening its preventive rather than punitive function. In this regard, the development and improvement of criminal legislation should be based on strong scientific foundations.

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