



International Journal of Control Theory and Applications

ISSN : 0974-5572

© International Science Press

Volume 10 • Number 32 • 2017

Aspects of Comprehension of Punishment and its Objectives in the Criminal Legislation of the Republic of Kazakhstan

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Abstract: Article considers development of the questions of criminal penalty which is important as its achievement, the purposes, and also assessment of a condition of law-enforcement system of the state depends on the correct assignment of punishment. Taking into account the maintenance of criminal policy of our state there is offered a new edition of the article 39 of the Criminal Code of Kazakhstan of 2014 "Conception and the purposes of punishments" where polemic would be excluded as much as possible and the bigger accent would be put on the true content of punishment.

Keywords: Penalty for deeds, efficiency of the criminal penalties, the measure of the state coercion, A concept and the purposes of punishment, reinstatement of social justice, non-causing physical sufferings or humiliation of human dignities, prevention of commission of new criminal offenses.

1. INTRODUCTION

It is known that criminal sentencing is a closing stage of law-enforcement activity as on the basis of materials, which are received by law enforcement agencies during pre-judicial criminal case production [1, p. 107-173], the decision is made on behalf of the state by court on guilt or innocence of the person who has made a criminal offense on the basis of paragraph 1 of article 75 of the Constitution of the Republic of Kazakhstan [2, p. 19].

Therefore development of the questions of criminal penalty, especially its efficiency, is very urgent and has important theoretical and practical value as achievement depends on the correct assignment of punishment, enshrined in the criminal legislation punishments, and also assessment by society of a condition of law-enforcement system of the state are more whole.

Punishment is intended to protect all objects listed in article 2 "The tasks of the Criminal code" from different criminal encroachments namely:

1. rights, freedoms, legitimate interests of the person and citizen;
2. property;

3. rights and legitimate interests of the organizations;
4. public order and safety;
5. environment;
6. constitutional system and territorial integrity of the Republic of Kazakhstan;
7. the interests of society and state protected by the law from socially dangerous encroachments;
8. peace and safety of mankind [3, p. 32].

Besides, realization of the purposes of punishment depends on the correct assignment of punishment, fixed in part 2 of article 39 of the Criminal Code of Kazakhstan. So, for example, the correct determination of punishment promotes restoration of social justice, correction of the convict, the prevention of commission of new criminal offenses by both convicts, and other persons.

Punishment can solve these problems if it is humane, reasonable, lawful and fair.

For definition of efficiency of the criminal penalties imposed in the Republic of Kazakhstan it is necessary to take into account the following aspects. First, whether sentence is correctly imposed. Secondly, whether it is chosen exactly right type of punishment to the guilty person provided by article or articles of the Criminal Code of Kazakhstan. Thirdly, whether punishment has been achieved the objectives which are fixed in part 2 of the article 39 of the Criminal Code of Kazakhstan (restoration of social justice; correction of the convict, the prevention of commission of new criminal offenses by condemned, as well as other persons).

Fourthly, whether the punishment “cost” is proportional to committed criminal offense (criminal offense or a crime).

2. DISCUSSION

In the theory of criminal law special attention was always paid to social norms which are implemented by the compulsory force of the state. It is difficult to overestimate a role of the punishment applied by the state to the person who has made a criminal offense along with other coercive measures for safety of activity of the person, society and the state, for their protection against criminal encroachments. Really, depending on contents in the law of a concept of punishment, its purposes, conditions of determination, achievement of the objectives of criminal penalty it is possible to judge about degree of security of the identity of the person, his rights, freedoms and legitimate interests, stability of law and order in society and efficiency of law-enforcement activity of the state.

In other words, on the criminal penalties, formulated in the General part of the criminal legislation of the Republic of Kazakhstan, and also according to the sanctions of articles of the Special part it is possible to speak about the maintenance of criminal and legal policy of the concrete country, it is possible to judge whether this state is legal, and the policy pursued by it humane and fair.

Cesare Beccaria noted in work “About Crimes and Punishments”: “Not in cruelty, but in inevitability of punishment it is consisted the one of the most effective ways to prevent the crimes... Inevitability of punishment, even moderate, always makes stronger impression, than fear to be to the most severe punished if at the same time there is a hope for impunity.... Cruelty of punishment leads to the fact that desire to avoid it is amplified depending on how is big the suffering menacing to us” [4, p. 165].

At the same time concerning to the persons, guilty of commission of the grave and the gravest crimes, concealing from criminal prosecution and also at a repetition of crimes, the state has to determine a responsibility

measure rigidly, but fair. At the choice of the range of all types of punishments established by the criminal law it is necessary to consider a condition of criminal neglect of the identity of the criminal, public danger of the act made by him.

It is known that criminal penalty has to have strictly individual character and be applied in each case taking into account all objective and subjective circumstances of a committed criminal offense. Even with joint participation of two and more persons in commission of the intended crime, according to part 1 of article 29 of the Criminal Code of Kazakhstan, criminal liability of accomplices is determined by character and degree of participation of each of them in commission of a criminal offense [5, p. 34].

Each accomplice (the principal, aider, abettor, and organizer) bears criminal liability only for illegal, criminally - punishable acts (action or inaction) depending on concrete character and degree of participation in a committed criminal offense.

Important condition of efficiency of application of criminal penalties is accurate information of its purposes and conditions of determination.

In our opinion, it hasn't been absolutely justified, at determining of the purposes of punishment, an exception of such purpose of punishment - as penalty in the criminal legislation of the Republic of Kazakhstan at first - 1997, and then and 2014.

Especially as to existence of penalty as the purposes in punishment in due time there were pointed by the famous Soviet scientists as M.I. Kovalyov, I.I. Karpets, V.G. Smirnov, M.I. Yakubovich, considering a penalty as the punishment purpose.

So, M.I. Kovalyov wrote that the only method of regulation of criminal legal relations are the threat of application of the punishment which is contained in criminal and legal sanctions and its application in case of commission of penal act [6, p. 82].

Other scientist N.A. Belyaev considered that "we understand a penalty as the purpose of punishment, causing to the offender of sufferings and deprivations as punishment for the committed crime" [7, p. 25].

The similar scientific position was also stated in the works by I.I. Karpets who, in particular, noted that such characteristic sign as a criminal record which involves negative legal and moral consequences is inherent in punishment as a special measure of the state coercion [8].

This position was standard among scientists of that period and remained practically to the middle of the 70th years of the 20th century. And only by the beginning of the 80th years there are begun to appear the works of such leading scientists as V.M. Galkin, N.A. Struchkov, N.I. Zagorodnikov, A.B. Sakharov and others, disputing and calling into question the leading role of the punitive method in criminal law [9, p. 70].

The specified position was found reflection and in the criminal legislation of the USSR and federal republics existing for that period.

We aren't supporters of the leading role of the punitive method in criminal law too, however, the full refusal of such purpose of punishment as a penalty is not absolutely justified as the criminal penalty, fixed as a method of the state coercion, and means existence of the penalty.

For comparison we will give definition of punishment and its purposes in the Criminal Code of the Kazakh SSR of 1959 and the Criminal Code of Kazakhstan of 1997 and 2014.

So, in the article 20 "Punishment Purposes" of the Criminal code of the Kazakh SSR of 1959 it has been specified that "punishment is not only a penalty for the committed crime, but also aims at correction and

re-education of convicts in the spirit of the honest relation to work, precise execution of laws, respect for rules of the socialist hostel, and also the prevention of commission of new crimes as condemned, and other persons.

Punishment doesn't aim at causing physical sufferings or humiliation of human dignity [10, p. 15].

In the Criminal Codes of Kazakhstan of 1997 (article 38) and 2014 (article 39) definition, in comparison with the Criminal Code of Kazakhstan of 1961 of punishment, has undergone considerable changes and has been defined as "the measure of the state coercion, pronounced a judgement sentence. Punishment is applied to the person, found guilty of commission of a criminal offense, and is consisted, in provided by the present Code, deprivation or restriction of the rights and freedoms of this person.

Punishment is applied for restoration of social justice, and also correction of the convict and the prevention of commission of new criminal offenses, both the convict, and other persons.

Punishment isn't aimed at causing physical sufferings or humiliation of human dignity [11, p. 13].

As we see from the content of the specified punishment definition, the legislator has completely refused the word of a penalty, but at the same time, has given preference to interpretation of punishment as "measures of the state coercion", as without coercion the criminal law as branch of the law could be lost the purpose.

Unjustified refusal from such purpose of punishment as penalties from definition of punishment can be explained with the following circumstances. First, the penalty as the purpose of punishment follows from contents and a concept of punishment (Art. 39 of the Criminal Code of Kazakhstan) as punishment is the special measure of the state coercion, consisting in reaction of the state to commission by the person of a criminal offense (a crime or criminal offense). Secondly, special character of this measure is shown that sentence is imposed only by court and on behalf of the state. Thirdly, sentence can be imposed only for those acts which are provided by the criminal law as a crime or criminal offense (Art. 10 of the Concept of a crime and criminal offense of the Criminal Code of Kazakhstan). Fourthly, proceeding from the content of definition of a crime, under which, according to the article 10 of the Criminal Code of Kazakhstan, admits committed socially dangerous act (action or inaction), prohibited by the present Code under the threat of punishment in the form of a fine, corrective works, restriction of freedom, imprisonment or the death penalty [12, p. 28].

Fifthly, despite a penalty exception, as the punishment purposes in the criminal law it is shown through its presence. So, various volume of a penalty in each concrete type of punishment is stimulus for inculcation of the convict of right obedient behavior.

Choosing this or that punishment, court not only determines a certain complex of deprivations and restrictions, but also sets according to standards of the criminal legislation limits of their sufficiency for restoration of social justice and correction of the convict.

It is necessary to notice that at determination of punishment the criminal legislation, to be exact sanctions of articles of the Special part of the Criminal Code of Kazakhstan, are constructed in such way that the volume of the deprivations and restrictions, caused by punishment, depends on committed illegal act (actions, inaction): the public danger of a criminal offense is higher, the punishment has to be more strict as well. At the same time the penalty as intimidation expresses severity of punishment. In turn, gravity of the imposed sentence has to depend on character and severity of the committed crime, the identity of the criminal and other obligations.

Let's give an example from practice. July 18, 2016 in the city of Almaty, the previously convicted native of the Kyzylorda region Ruslan Kulekbayev, for the committed a number of the crimes, and where eight employees of law enforcement and special bodies, two civilians who have entailed death, and also for attempted murder of three more citizens, Almaly court of Almaty city sentenced the last to an exceptional measure of punishment -

the death penalty on November 2, 2016, provided by Art. 255 of the p. 4 — “The act of terrorism”, Art. 99 of the p. 2 — “Murder of two and more persons”, Art. 24 of the p. 3 — “Preparation for a crime and attempted crime”, Art. 99 of the p. 2 — “Attempted murder”, Art. 192 of the p. 4 — “Holdup by a group of persons», Art. 287 of the p. 4 — “Arms trafficking”, Art. 288 of the p. 2 “Illicit manufacturing of weapon”, Art. 291 of the p. 4 — “Stealing of weapon», Art. 200 of the p. 4 — “Carjacking”, Art. 126 of the p. 2 — “Illegal imprisonment” of the Criminal Code of Kazakhstan.

Thus, it is possible to draw such conclusion that even though the penalty isn't allocated in the existing Criminal legislation of the Republic of Kazakhstan in the independent purpose of criminal penalty, at the same time, it is present in it, as reflects contents and legal essence of the punishment.

Criminal penalty without penalty elements as a result of determination of which, to the person who has committed a criminal offense when certain deprivations and sufferings aren't caused to the guilty person can't be recognized as criminal penalty.

Other aspect of punishment, which also needs in specification and reconsideration for increase in efficiency of its application, is the purpose of punishment and a condition of its application, fixed in part 2 of the article 39 of the Criminal Code of Kazakhstan “A concept and the purposes of punishment” as reinstatement of social justice and not causing physical sufferings or humiliation of human dignities.

It is necessary to notice that establishment by the criminal legislation of RK and the CIS countries before punishment of a main objective as reinstatement of social justice was caused a polemic in the scientific environment.

Ambiguity of a position of scientists-lawyers in the matter is caused, from our point of view, that at determination of punishment it is difficult and somewhere it is impossible to provide them.

Let's consider in more detail. Really, at determination of punishment it is made an attempt by the state to restore pre-criminal state of the victim by various means, established in the law. For example, compensation of material and moral damages, confiscation of property, penalty and another.

According to ones scientists, punishment doesn't possess restoration function that the proclaimed purpose – is restoration of social justice, and it doesn't correspond to the content of punishment. The possibility of restoration of the violated rights exists only within civil, but not at realization of criminal and legal relationships. Criminal penalty can't compensate the physical and moral damage, caused by committed criminal offense. It is capable to satisfy only feeling of social justice (which, in this case, is similar to “out of revenge”) [13].

Other scientists claim that criminal penalty has potential to restore social justice as it is allocated reconstructive [14, p. 364] or compensatory [15, p. 42] properties.

That is it is about possible restoration of the rights broken by a criminal offense or to compensate the caused damage, as a result of application of criminal penalty.

At the same time, according to scientists it is difficult to establish how there are achieved such objectives of punishment as restoration of social justice, as, so far there is no developed complex of retaliatory measures and indicators of efficiency of their application because of their scientific non-readiness [16, p. 14].

According to the Russian scientists, restoration of social justice as process is a reduction in a former condition of legitimate rights violated by means of criminal encroachment, duties and interests of natural and legal entities, societies, the state and the world community [17, p. 222].

We adhere to this position that punishment can restore social justice only in some cases.

For example, how it is possible to restore social justice if it is about murder or rape. Or as it is possible in sentencing process which is a measure of the state coercion, not to inflict physical suffering (application of the handcuffs, support under escort, movement in the special vehicle, etc.) or humiliation of human dignity (place the person in a cage at the trial, showing on television, the publication in mass media, etc.).

Therefore obviously impracticable provisions, concerning restoration of social justice or non-inflicting of the physical sufferings at the determination of punishments, in the Criminal legislation of the Republic of Kazakhstan which were put in CC of the Kazakh SSR of 1959 and were passed step by step at first into the Criminal Code of Kazakhstan 1997, and then from it into the Criminal Code of Kazakhstan of 2014, in our opinion, need reconsideration and specification.

Especially, separate provisions of the existing the Criminal Code of Kazakhstan, by results of two years' law-enforcement practice, are exposed to fair criticism from the management of the Prosecutor General's Office, representatives of the judiciary and other law enforcement agencies of the Republic of Kazakhstan now.

This situation doesn't reflect the true content of criminal penalty, but also significantly complicates work of law enforcement agencies and their activity, which recently becomes more and more transparent and available to mass media and for all society, proceeding from directions of the Head of our state, Leader of our Nation, President N. A. Nazarbayev.

In the given matter the position of the Russian scientist V.N. Orlov is interesting, who notes that any criminal penalty, it always deprives or limits the certain legal behavior condemned in the choice, where besides the subjective rights there are also entered the legal opportunities which are legitimate interests of the personality [18, p. 53].

In our opinion, the focus should be only on the punishment for deeds, and the maintenance of a penalty, that is punishment has to be corresponded to gravity of the committed crime. Then social justice and a preventive role of the criminal legislation will be provided.

B.K. Shnarbayev is absolutely right that punishment always causes to the criminal certain deprivations, sufferings. They can be physical, moral, material and other character. At condemnation to imprisonment, the convict is limited in a number of the personal rights and what is the most important - freedom. At application to the convict of a penalty, confiscation of property he has worsen financial position [19, p. 9].

The criminal legislation has to be rigid, even cruel concerning the ardent criminals who are repeatedly judged, committing crimes intentionally and their stay in society represents the increased danger to the people around. They should be isolated from society, certainly.

At the same time the criminal legislation has to show humanity concerning persons for the first time committed crimes, especially if it is about the crimes committed on imprudence.

According to U.S. Dzhekebayev, the correct explanation of the purposes of criminal penalty has great theoretical and practical value. It is well-known that in society nothing becomes without conscious intention, without the desirable purpose. From there it is clear an importance of a clear idea of the purposes of criminal penalty. The purposes, determined by the legislation, influence, on the one hand, the choice of means, and with another, the chosen means influence a way of implementation of this purpose. Knowledge of these difficult dependences it is necessary both for improvement of the legislation, and for its practical application [20, p. 2].

Thus, for ensuring high efficiency of punishment determination, it is necessary to be defined conceptually before in the true content of criminal penalties and its purposes.

3. CONCLUSION

In our opinion for reduction in compliance of form and content of the article 39 Criminal Code of Kazakhstan of 2014 “A concept and the purposes of punishments”, it is possible to offer a new edition of the above-stated article, taking into account the maintenance of criminal policy of our state, it would exclude polemic in this matter as much as possible and would more reflect the true content of punishment.

1. Punishment is the measure of the state coercion, appointed according to the court verdict concerning the person, found guilty of commission of the criminal offense, provided by a special part of the Criminal Code of Kazakhstan.
2. Punishment is not only a penalty for deeds, and also is directed to correction of the convict and the prevention of commission of new criminal offenses, both the convict, and other persons.
3. It isn't allowed an independent change (decrease, excess) of limits of the punishment, established by court at its execution.

Especially, as in the right also the purpose is defined as the expected and desired result of realization of these or those opportunities of reality which have been previously estimated and chosen [21, p. 22].

It is necessary to take into account words of famous Cesare Beccaria who fairly noted that the punishment purpose, therefore, consists in the prevention of the new acts of the criminal, doing damage to citizens of the society and in keeping out of others from similar actions. Therefore it is necessary to accept such punishments and such ways of their use which being adequate to the committed crime, would make the strongest and longest impression on souls of people and wouldn't inflict on the criminal considerable physical suffering [22, p. 106].

It is necessary to remember that the main mission of the existing Criminal Code of Kazakhstan has to be directed to the solution of the main objectives of the criminal legislation such as: protection against socially dangerous encroachments of the rights, freedoms and legitimate interests of the person and the citizen, property, the rights and legitimate interests of the organizations, public order and safety, the environment, the constitutional system and territorial integrity of the Republic of Kazakhstan protected by the law of interests of society and state, protection of the peace and safety of mankind, and also the prevention of criminal offenses, decrease in number of the prison population of our country, increase in efficiency of the criminal legislation and law-enforcement system and the most important creation of a favorable situation for further development and prosperity of the Republic of Kazakhstan.

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