

Ensuring Legality, Reasonableness and Fairness of Criminal Punishment through Criminal Law Sanctions

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Abstract: The article is devoted to the analysis of the correlation between criminal law sanctions and criminal punishment. It is noted that the criminal law impact is expressed, among other things as a special activity of the state in the punishability of criminal behavior. At the same time, punishability has two forms of expression - dispositive form (foreseeing behavior as a crime in the criminal law) and sanctions (establishing a threatening punishment). Sanctions express a qualitative and quantitative assessment of prohibited acts and determine the measure of the state's reaction to their commitment. It is concluded that sanctions are an integral element of the criminal punishment system and contribute to the achievement of both its goals and the conditions that are necessary for it and its inherent properties and qualities. In particular, these minimum requirements are legality, reasonableness, and fairness. At the same time, it is noted that the sanctions themselves must also comply with these characteristics. Thus, it is stated that the establishment of criminal law sanctions and the appointment and application of criminal punishment are closely interrelated and interdependent and provide an effective criminal law impact in the aggregate.

1 INTRODUCTION


Criminal law influence is a special activity of state bodies associated with the provision of the necessary preventive, punitive and educational influence on the behavior of persons who have committed a crime and other unstable persons with the help of the resources of criminal law. In general, we are talking about the state's response to certain crimes and crime as a phenomenon. At the same time, this reaction is a complex dynamic process, including doctrinal comprehension, normative regulation and practical implementation (Podroykina, I.A., Duyunov, V.K., 2020, Дуюнов, В.К., 2021, Дуюнов, В.К., 2020, Дуюнов, В.К., Закомолдин, Р.В., 2020).


The "criminal law impact" category is closely related to the phenomenon of punishment. Punishment is a complex and ambiguous phenomenon that has a moral, ethical, social and legal content. In the broadest sense, it is a kind of social and


legal phenomenon. Punishability has a broad and narrow meaning in criminal law. In a broad sense, punishability is an inherent property (consequence) of wrongfulness, i.e. the prohibition of criminal behavior as such. In a narrow sense, this category means precisely a certain reaction of the state to the corresponding criminal behavior. Thus, criminal law punishability has two forms of expression - dispositive form (foreseeing behavior as a crime in the criminal law) and sanctions (establishing a threatening punishment) (Guzeeva, O.S., 2020, Tagantsev, N.S., 1994).

2 METHODOLOGY

The study used both general scientific and specific scientific methods of cognition of social phenomena and processes (induction, analysis, synthesis, comparison, systemic, etc.).

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3 RESULTS AND DISCUSSION

There is a fundamental discrepancy in criminal law theory and law enforcement practice between the categories of "criminal punishment", "punishment provided for by the criminal law" and "punishment imposed by a court verdict" (Guzeeva, O.S., 2020). The first has a doctrinal fundamental nature. The second is of a normative constructive nature and is expressed through the sanctions of the criminal law norms of the Special Part of the Criminal Code. The third is of an applied nature and is implemented in law enforcement. Of course, these categories are closely interrelated and interdependent, which is natural, since the system of criminal punishments, being complex and integral, is not limited by the provisions of Article 44 of the Criminal Code alone, and is regulated by the whole complex of criminal law norms and provisions on punishment, which includes both the types of criminal punishment themselves, general and special rules for its appointment, and the sanctions of articles of the Special Part (Duyunov, V.K., 2010, Duyunov, V.K., Zakomoldin, R.V., 2011). It is the integrity of the system that implies that all of its elements are closely interrelated and interdependent, and a change in one, inevitably and naturally causes a change in all the others (Studies in the general theory of systems: a collection of translations, 1969). Therefore, the effective functioning of only one element of the system in isolation from the others is impossible, since in this case, it is impossible to achieve the goals facing the entire system (Valeeva, L.R., 2012).

Sanctions directly fix the qualitative and quantitative measure of the state's reaction to a crime, which is why it is appropriate and logical to classify them as a part of a punishment system. As L.R. Valeeva rightly notes, their real role in criminal law is realized only in connection with the criminal punishment. Therefore, sanctions act as a measurement tool for a "measure" in this system (Valeeva, L.R., 2012).

Initially, the individualization of punishment is aimed at establishing a measure of the state's response to a crime in sanctions, and then in imposing a punishment in each specific case in the process of applying the corresponding norm and its sanctions. In this regard, as O.S. Guzeeva correctly points out, "it is necessary to clearly distinguish punishment as an element of a sanction reinforcing a particular legal prohibition on the one hand, and punishment as a real measure of state influence imposed by a court verdict on the other hand, or in other words, to distinguish the establishment of criminal punishment and the

application of criminal punishment" (Guzeeva, O.S., 2021)

We believe that in the context and within the framework of punishability, criminal punishment and sanction are correlated as content and form, as a means and measure (Doctrinal and legislative concepts in modern criminal law of Russia, 2013). With the help of a sanction, the legislator measures from the generally envisaged criminal punishment that of its variety, term, and scope that correspond to a specific crime. A sanction expresses a state-imperious reaction to a crime, its assessment, which provides both preventing (through a hypothetical fixation of the punishment in a sanction), and counteraction (through the actual application of the punishment by the court provided for in the sanction).

We should distinguish between the concepts of "punishment" and "penalization" in the context of our research. We assume that they relate as a whole and as a part. As K.V. Chemerinsky notes, "penalization is the process of establishing the punishability of a criminal act, expressed through the establishment in the sanction of an article of the Special Part of the Criminal Code of the Russian Federation of the type and amount of punishment that can be chosen by the court when convicted for this crime" (Russian Criminal Law. General and Special parts, 2015). At the same time, we agree with the author that the application of punishment is outside the scope of penalization. Although there is a different opinion, which is expressed, for example, by A.I. Korobeyev that penalization is both the process of determining the nature of the punishability of acts and their actual punishability (Full course of criminal law. Crime and Punishment, 2008). We believe that when applying punishment it is more correct to talk not about penalization, but the individualization of punishment as an independent stage within a broader category - punishability. Thus, criminal law sanctions are a formal expression of penalization.

It is generally agreed that the punishment should be lawful, reasonable and fair, which is associated with the sanctions that are predetermined by the legislator and applied when imposing a punishment. At the same time, these processes are interrelated and interdependent, since the establishment and application of sanctions, in turn, are dictated by the need to ensure the legality, justification, and fairness of criminal punishment.

Needless to say, that the category of justice is very relative. However, in Article 6 of the Criminal Code of the Russian Federation, the legislator made an attempt to identify guidelines for the fairness of criminal punishment, pointing out the need for its

compliance with the nature and degree of public danger of the committed act. Therefore, sanctions are an expression of the final assessment of the prohibited acts from the standpoint of their public danger. Thus, through the application of sanctions, the implementation of the principle of justice laid down in them by the legislator is ensured. For these purposes, the sanctions must be balanced, i.e. they must comply with certain requirements for their content and design in terms of their internal qualities and properties (Podroykina, I.A., 2021). In particular, these minimum conditions are:

a) alternative, providing a choice (Lipinsky, D.A., Musatkina, A.A. Chuklova E.V., 2018);

b) commensuration (proportionality) to the nature and degree of public danger of the deed (Burmagin, S.V., 2021);

c) internal consistency (Banchikova, M.V., 2021).

Any criminal law sanction must be justified. And we are talking about both social and dogmatic justification. Social rationale is dynamic and based on social processes, when regulations change under the influence of changing external circumstances. The doctrinal rationale, on the contrary, is static, since it is focused on the formal component - the compliance of legislative provisions with the rules of an established legal technique (Valeev, M.T., 2019). Both components are necessary and significant, since they provide dynamic stability of criminal legislation - a combination of its stability of variability in general and the effectiveness of criminal law impact in particular (Duyunov, V.K., Zakomoldin, R.V., Butenko, T.P., Galoyan, A.R., 2020).

Thus, the opinion of L.L. Kruglikov, that criminal law sanctions should be considered not as just an element of criminal law and an article of criminal law, but as a legal structure that must comply with certain rules and requirements for both form and content, is quite fair. At the same time, without a doubt, the construction of criminal law sanctions should be based on the system of criminal punishments and the system of the bodies of crime (Kruglikov, L.L., 2013).

However, at present, in a crisis of criminal policy, as experts rightly point out, sanctions are often designed by the legislator intuitively, without a proper scientific (first of all, criminal law and criminological) substantiation. As a result, they are generally unsystematic, casuistic, and in many cases do not meet any of their minimum requirements (Golenko, D.V., 2020).

4 CONCLUSION

Thus, the effectiveness of criminal law in terms of punishability depends both on the establishment of criminal punishment in sanctions and on its practical implementation, that is, it is ensured by the coordinated, interdependent, systemic work of the legislator and law enforcer. In this regard, it is appropriate to talk about the dynamic stability of criminal legislation, that is, a reasonable balanced combination of its stability and variability, as well as the need to ensure a balance between its humanization and repressiveness (Duyunov, V.K., Zakomoldin, R.V., Butenko, T.P., Galoyan, A.R., 2020). Therefore, this requires a modern science-based criminal policy (Efremova, M.A., Rogova, E.V., Parkhomenko, D.A., Klebanov, L.R., Gorshenin, A.A., 2019).

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