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THE CONCEPT AND ESSENCE OF CRIMINAL PUNISHMENT AND SIGNS OF CRIMINAL PUNISHMENT IN THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN

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Abstract:

This article discusses the concept and essence of criminal punishment and signs of criminal punishment in the legislation of the Republic of Uzbekistan and provides relevant proposals and recommendations.

Keywords: : Essence, Criminal Punishment, Signs Of Criminal Punishment, Legislation, Fight Against Crime, Forms Of Implementation, Research, Criminal-Legal Category, Responsibility.

Criminal punishment as a historical phenomenon at all times has remained the focus of scientific discussions about the definition of the concepts of criminal punishment, its essence, function and goals. At different times, scientists have defined criminal punishment in different ways, which gave rise to controversial issues in the range of the conceptual apparatus of punishment. A certain circle of scientists included in the concepts and essence of punishment the element of punishment as the main one, in turn, other scientific circles believed that punishment is only an element that has historically developed and is not currently the main element and does not fully characterize the essence of criminal punishment. Thus, consideration of the conceptual apparatus of punishment and its essence are of great interest.

Another important issue around criminal punishment is the definition of the goals of punishment. This issue is still being discussed in scientific circles and each scientist determines his point of view, and the study of the main theories regarding the goals of punishment today has its own relevance.

Also, an individual approach is important; when choosing the type of punishment, they play an important role in the system of combating crime, as well as for the full achievement of the goal of criminal punishment.

Today, reforming the norms of criminal legislation, including the institution of criminal punishment, is one of the most pressing issues in Uzbekistan. In modern Uzbekistan, regarding the development of the mechanism for the implementation and improvement of the system and conceptual apparatus of criminal punishment, reforms have been carried out and are being implemented. Thus, at the initiative of the President of the Republic of Uzbekistan, Mirziyoyev Shavkat Miromonovich, colossal work was done in the field of reforming criminal legislation, including criminal punishment. The Decree of the President of the Republic of Uzbekistan "On the strategy of actions for the further development of Uzbekistan serves as a vivid example" adopted on 07.02.2017.

The strategy of actions in five priority areas of development of the Republic of Uzbekistan in 2017-2021 in clause 2.3. establishes the improvement of criminal legislation, which implies the improvement and liberalization of the norms of criminal and criminal procedure legislation, the decriminalization of certain criminal acts, the humanization of criminal penalties and the procedure for their execution.

An important impetus in improving the institution of criminal punishment is the Presidential Decree "On measures to radically improve the system of criminal and criminal procedure legislation" dated May 14, 2018, No.PP-3723. This Resolution approved the concept for the further improvement of the system of criminal punishment and responsibility[1]. According to this concept, further reform of both the system of criminal legislation and the institution of criminal punishment will be carried out in the Republic of Uzbekistan.

[1] Resolution of the President of the Republic of Uzbekistan "On measures to radically improve the system of criminal and criminal procedure legislation" dated May 14, 2018, No. PP-3723

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Thus, we can say that no research has been carried out from this angle, as well as the improvement of criminal punishment, the study of its essence, the definition of the main goals and functions are reflected in many ongoing reforms in the Republic of Uzbekistan, which was the reason for choosing this research topic.

Criminal punishment is one of the important institutions of criminal law, along with such institutions as crime and the institution of criminal law. Occupying an important role in the system of criminal law, the institution of criminal punishment is in the center of attention not only of the scientific community, but also of great interest is shown by the general population. History shows that since ancient time's punishment has been viewed as a negative and punitive reaction of the state to the committed criminal act, in other words, punishment served as a means to restore social justice. In different historical periods, the state, with the help of criminal punishment, tried to solve essentially the same problem, in particular, to protect society from criminal encroachments, on the most important social values that are protected by criminal law. Based on this, it follows that punishment was practically applied at all stages of human history, but this concept was clearly defined and consolidated at the legislative level not so long ago. Consequently, crime and punishment are interdependent and interrelated. These two institutions of criminal law cannot exist one without the other, but despite the connection between punishment and crime, these concepts have their own distinctive features. So, on this occasion, Zubkova V.I. notes that a crime is an action dangerous for society, directed against its rights and interests, the rights and interests of citizens; punishment is a measure aimed at protecting violated rights and interests. A crime is an action that violates the law, punishment is a legal measure of influence carried out by the state, this is the state's reaction to a person's criminal behavior[2]. Criminal punishment in this case acts as an effective method and a way by which the state resolves the emerging conflict between the person and society.

To study the criminal-legal category of "criminal punishment", first of all, it is necessary to define and disassemble the conceptual apparatus. In the theory of criminal law, the concept of criminal punishment in different periods was defined by scientists in different ways, thus, the most different meanings were put into the concept of criminal punishment. For example, punishment was used as, one of the types of influence on the perpetrator of a crime, one of the forms of realization of responsibility, the consequence of the commission of a crime, a means of combating crimes, and also as a punishment to the perpetrator for what he did. One of the hottest debated questions about the concept of criminal punishment in scientific circles was the definition of the essence of criminal punishment and the comparison of the concepts of "punishment" and "punishment" as synonymous. In other words, a number of scientists argue that punitive methods on the part of the state are based on criminal punishment, the other half define criminal punishment as a measure of state coercion and deny the synonymy of the concepts of "punishment" and "punishment".

In the works of Feuerbach P.A. it can be determined that on the basis of punishment there should always be punishment, in other words, the essence of punishment is punishment. Feuerbach P.A. emphasized that punishment should cause real harm to the criminal. It follows from this: that evil, which the criminal himself desires, cannot be applied to him without contradicting the goal of the law; that the product into the action of punitive evil in such a state when he cannot feel it, contradicts the concept of punishment[3].

Based on the statement of P.A. Feuerbach, it follows that punishment is a historically formed social phenomenon that was punishment, in other words, punishment was a payment for the evil done. Thus, punishment was understood as punishment. The absence for that time of the element of punishment in punishment would contribute to the exclusion of the coercive meaning of this phenomenon.

Duyunov V.K. adhered to a similar theory. who, noted that the foundations of the criminal legislation of the USSR and the union republics of 1958, which did not contain a direct normative definition of the concept of criminal punishment, gave reason to believe that the legislator with the phrase: "punishment is not only a punishment for a committed crime, but also has a goal. .. "defines criminal punishment as punishment. Thus Duyunov V.K. notes that in theory, a large number of scientists define criminal punishment as a "criminal punishment", and also that "any punishment is a punishment for a crime committed by a guilty person," but nevertheless, scientists agree on one thing that criminal punishment is a measure state coercion.

In turn, A. G. Forivko noted that the state, which has established criminal-legal prohibitions on the commission of socially dangerous acts, reacts to their violation. And this reaction of his is a negative, just and inevitable retribution to the guilty person for what he

[2] Zubkova V.I. Criminal punishment and its social role: theory and practice. - M., 2002 .-- p. 3

[3] P. A. Feuerbach. Decree. op. p. 125-126. [Electronic resource]

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did - punishment, which consists in the condemnation of the crime committed and censure of the person who committed it. The forms of expression of such a reaction are different. All these measures, which, in addition to punishment, include various types of exemption from criminal liability and punishment, probation and compulsory measures of educational influence - in fact, different forms of punishment (forms of the state's reaction to the commission of a crime). Insofar as they are subject to application to a person who has committed a crime, for the fact that he has committed a crime, and to the extent that he has done it in order to restore social justice[4]. Consequently, in this case, punishment is a way to achieve the goal facing punishment, which allows us to note that punishment expresses the basic essence of criminal punishment and, in turn, retribution is one of the elements of punishment.

Analyzing the opinions of scientists about the essence of punishment as punishment, one can also determine that a number of scientists not only define criminal punishment as punishment, but also note that this punishment should be proportionate and fully correspond to the committed act, in other words, they define punishment as suffering. It would be appropriate to note BS Nikiforov: "Punishment is compulsion to such suffering, which, by its nature and duration, is proportional, commensurate with the evil deed or crime committed by the criminal"[5].

N. A. Belyaeva, also considered punishment as the essence of punishment, argued: "Punishment is punishment for a committed crime, punishment must necessarily inflict deprivation and suffering on the offender commensurate with his act, without punitive elements the measure applied to him is not punishment. Also, M. D. Shargorodsky noted: "Punishment inflicts suffering on the person to whom it is applied in full accordance with the deed. It is this property, being a necessary sign of punishment, that makes it a punishment[6]. Considering the positions of these scientists, it can be understood that this circle of scientists considered the essence of criminal punishment as punishment, as well as including in it an element of retaliation, which would have been a normal alignment for the times of past millennia, but in the modern world, in our opinion, an element of retribution in punishment is contrary to the basic principles of both the constitution and the norms of international law.

However, B.T. Razgildiev, emphasized that "Punishment is punishment for a crime, and therefore it carries an element of retribution for committed evil, but is not identical to it"[7]. N.A. Struchkov also determined that punishment should not aim at delivering suffering, but on the contrary, by punishing a person should be re-educated [8].

In turn, in the theory of criminal law, there are a number of scientists who disagree with the definition of the essence of criminal punishment in the form of punishment. So, I.S. Noah determined that punishment not only does not pursue the goal of punishment, but even more so does not set itself the task of retribution.[9]. F.R. Sundurova also notes that through punishment we are trying not only to put the criminal in conditions that exclude the possibility of committing a new crime, but also to influence his will, actions, develop in him a sense of responsibility before society, a correct understanding of the freedom of his behavior. At the same time, the state, when applying punishment, does not set the goal of causing physical suffering to the convicted person and humiliation of his human dignity.[10]. Therefore, we can determine that even if punishment contains elements of punishment and retribution, then, according to the above definition, it should not contain the goal of causing suffering. This position is fully justified since human rights and freedoms are protected by many nomes of law.

In modern scientific circles, scientists, criminal legislation is defined as a form of expression of criminal law, which comes from the very will of the people and is not tied to it from the outside. Today, criminal legislation exists in various forms. So, it can be, both in the form of a single systematized and codified set of laws, in other words, in the form of a code, and in the form of separate acts containing specific norms of criminal law. Based on this, the Criminal legislation of the Republic of Uzbekistan, in accordance with Article 1 of the Criminal Code of the Republic of Uzbekistan, fixes the content of the criminal legislation of the Republic of

[4] Forivko A.G. Punishment as a social phenomenon. - M., 2006.p. 24

[5] Nikiforov A.S., Reshetnikov F.M., Modern American Law. M .: 1990, p. 19

[6] Shargorodsky M.D. Selected works on criminal law. - SPb .: Yuridicheskiy tsentr Press, 2003, p. 32

[7] Criminal law textbook / Ed. Doctor of Law, prof. B.T. Razgildieva and Ph.D., Assoc. A.N. Krasikova. Saratov: SUI Ministry of Internal Affairs of Russia, 2010.-p. 68

[8] Struchkov N.A.On punishment, the system, its types and other measures of criminal law. M., p. 11

[9] Noah I. The essence and functions of punishment in the Soviet state. Saratov, 1973.p. 6

[10] Под ред. Сундурова Ф.Р., Тарханова И.А.. Уголовное право России. Общая часть. 3-е изд., перераб. и доп. - М.: С.47

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Uzbekistan, thus the criminal legislation is based on the norms of the Basic Law of the Republic of Uzbekistan, as well as on generally recognized norms of international law and is regulated in the form of the Criminal Code of the Republic of Uzbekistan.

The Criminal Code of the Republic of Uzbekistan is a codified legislative act that enshrines interrelated criminal legal norms that determine the principles, grounds for criminal liability and acts related to socially dangerous, the commission of which is recognized as a crime, and the consolidation of norms defining the concept of punishment, measures and types of legal impact for unlawful acts.

The consolidation of the concepts and goals of criminal punishment in the criminal code of the Republic of Uzbekistan is the most important elements in the system of criminal law, so this norm determines the essence of punishment, the main measures of influence, the meaning and purpose of criminal punishment. The consolidation of this concept at the level of legislation defines and limits the range of legal measures of influence in the form of punishment.

It is important to note that in order to recognize any method of influence as a punishment, within the meaning of the criminal law, it is required that this measure of state coercion be directly provided for in the Criminal Code as a punishment. There is no punishment without an indication of that in the law. Consequently, other measures not specified in the Criminal Code cannot be considered a criminal punishment and applied as a punishment.

Article 42 of the Criminal Code of the Republic of Uzbekistan consolidates the essence of criminal punishment, considering the main signs and elements of punishment, which allows us to completely delimit the established elements to avoid certain difficulties in interpreting and understanding the essence and role of criminal punishment. Thus, this article in its structural form consists of 2 parts.

Part 1 defines the basic concept of criminal punishment "Punishment is a coercive measure applied on behalf of the state by a court sentence to a person found guilty of a crime, and consisting in the deprivation or restriction of certain rights and freedoms of the convicted person, as provided by law".

Part 2 sets out the objectives and content of criminal punishment.

"The punishment is applied in order to correct, prevent the continuation of criminal activity, as well as prevent the commission of new crimes by both convicted persons and other persons."

Thus, based on part 1 of Article 42, we can determine the key elements and signs of criminal punishment enshrined in the criminal law:

a measure of criminal compulsion;

carried out on behalf of the state;

proceeds from a court verdict;

in relation to a person who has committed a crime and has been recognized guilty in accordance with the established procedure;

fixes the deprivation or restriction of certain rights.

Let's take a look at each element separately. Measures of criminal coercion are measures of restriction of the rights and freedoms of a person, regulated by criminal law, which are used by the state to prevent illegal actions on the part of suspects or accused. The basis and ultimate limit of any measures of criminal coercion is the need to achieve certain goals, such as restoring social justice, achieving the goal of justice, effectively combating crime, further prevention and prevention of new crimes, as well as achieving full execution of the court sentence.

Based on this, it is possible to determine the main features of criminal coercion measures: they are carried out against the will and desire of citizens; objectively restrict the rights of a person; are applied by a court verdict; regulated by criminal law and criminal law;

Also, it would be appropriate to note that the criminal legal impact in the form of criminal punishment has a number of distinctive features from criminal procedural measures of coercion, one of the main examples of this difference is the legal consequence of criminal coercion in the form of a criminal record. Thus, S.A. Baleev notes that the criminal-legal consequences of a criminal record can be manifested as: an aggravating circumstance that affects the qualification of a crime; grounds for recognizing a person as a particularly dangerous recidivist; an aggravating circumstance when imposing a punishment; circumstances precluding or limiting exemption from criminal liability and punishment[11].

Consequently, the legal consequence of criminal punishment is always a conviction. Thus, one of the main distinguishing features of criminal punishment is the presence of a legal consequence of a committed unlawful act.

Implementation on behalf of the state. The state nature of the coercive measure. This means that punishment can only be imposed on behalf of the state and is a

[11] http://viperson.ru/articles/chernov-aleksandr-dmitrievich-aktualnye-problemy-ugolovnogo-nakazaniya

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public-legal, state assessment of the act as criminal, and the person who committed it as obliged to undergo punishment.[12]. Thus, the state has an absolute monopoly in terms of the appointment of a criminal punishment, and only the state determines all the powers in the sphere of execution and imposition of criminal punishment, and establishes the grounds for the application, content and types of criminal punishment. According to the verdict of the court, after the determination of the guilt or innocence of the person, the court, having considered each case, determines the punishment in case of establishing the guilt of the person in the commission of the crime. The judicial authorities have the excluded right to issue a sentence in criminal cases, this principle determines the fact that, apart from the courts in the territory of the Republic, other bodies have no right to administer justice and impose punishments. Thus, criminal punishment can only be imposed by a court verdict.

In relation to a person, a person who has committed a crime and is recognized guilty in the prescribed manner is responsible for an offense, which, in accordance with the Criminal Code, is recognized as a crime and contains all the elements of a crime. In this case, one of the most important signs of corpus delicti is guilt, and in the investigation, criminal punishment is applied in relation to the person who has been proven guilty. Since the absence of guilt in the composition of the crime makes it impossible to apply criminal punishment, in this situation, the judicial authorities cannot impose a criminal punishment without making the person guilty.

The presumption of innocence also plays an important role in this regard. The Constitution of the Republic of Uzbekistan fixes, in particular, in Art. 26, it is established that everyone accused of committing a crime is presumed innocent until his guilt is established legally, through a public trial, in which he is provided with all the opportunities for defense. Also the Criminal Procedure Code of the Republic of Uzbekistan defines this principle, in Art. 23 of the Code of Criminal Procedure of the Republic of Uzbekistan, it is determined that a suspect, accused or defendant is considered innocent until his guilt in committing a crime is proved in the manner prescribed by law and established by a court verdict that has entered into legal force. Consequently, without establishing the guilt of a person in the commission of a crime, a criminal punishment cannot be imposed. And this feature has an important role among the main features characterizing criminal punishment in the law.

In turn, the theory of criminal law defines 6 main features of criminal punishment, thus the features are divided into: conviction of a person guilty of a criminal act on behalf of the state; the greatest severity of repression (as opposed to administrative or civil-law types of coercion); application of punishment only to persons (individuals) guilty of committing a crime; the possibility of applying criminal punishment only by a court verdict; the content of the punishment in the deprivation or restriction of the rights and freedoms of the convicted person provided for by the Criminal Code; conviction - a consequence inherent only in criminal punishment[13].

Analyzing these signs and signs established in the Criminal Code of the Republic of Uzbekistan, it can be noted that the edition of Art. 42 of the Criminal Code of the Republic of Uzbekistan fully embodied all the signs of criminal punishment defined in the theory of criminal law.

There is also a classification according to groups of signs, which follows from a systematic analysis of the legislative definition of punishment. There are three groups of signs of punishment: signs that characterize the essence of punishment; signs characterizing the content of the punishment; signs characterizing the form of punishment[14].

Thus, based on the table and considering the norms of the criminal codes of other states, it can be noted that the main features enshrined in Art. 42 of the Criminal Code of the Republic of Uzbekistan are not only fundamental for our legislation, but these signs are also indicated in the norms of other states. Consequently, the consolidation of criminal punishment at the legislative level allows us to conclude that criminal punishment is imposed only by a court verdict and on behalf of the state and a person guilty of committing a crime that is proven in accordance with the law, in other words, a violation or absence of one of these signs does not make legal coercion as a criminal penalty.

[12] [http://lawbooks.news/sotsiologiya_910_912/funktsii-ugolovnogo-nakazaniya-41004.html

[13] Afinogenov S.V. Criminal law of the Russian Federation. General part: a textbook for university students. - M., 2002. - p. 318

[14] Gaukhman L.D. Criminal law: textbook. - M., 2007 .-- p. 177-179..