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To a question of purposes of the criminal executivelegislation of the Russian Federation

An object of research in the present article is the standards of criminal and executive law, regulating the purposes of criminal penalties and the criminal and executive right. The points of view of different authors on the legal nature of the purposes of punishments and their execution are investigated. The problem connected with the contradictions of activity of the bodies executing criminal penalties and the purposes enshrined in the criminal and executive and criminal legislation are exposed to analysis. The authors consider the question from the point of view of legislative fixing of the purposes of punishments and their legal nature at realization by the subjects of management. As a basis of research are the methods of comparison and the analysis of standards of the existing Russian legislation, identification of gaps in this direction and also definitions of the directions of improvement of separate precepts of law in the considered context. The main conclusions of the conducted research are suggestions for improvement of the norms of criminal legislation, regulating the purposes at appointment and execution of punishments.

Keywords: *purposes of criminal law; purposes of the criminal and executive right; restoration of social justice; prevention of crimes; prevention of offenses; correction of convicts; general and special prevention.*

К вопросу о целях уголовного и уголовно-исполнительного законодательства Российской Федерации

Предметом исследования в статье являются нормы уголовного и уголовно-исполнительного права, регламентирующие цели уголовных наказаний и уголовно-исполнительного права. Исследуются точки зрения

различных авторов на правовую природу целей наказаний и их исполнение. Подвергаются разбору проблемы, связанные с противоречиями деятельности органов, исполняющих уголовные наказания, целям, закрепленным в уголовно-исполнительном и уголовном законодательстве. Авторы рассматривают вопрос с точки зрения законодательного закрепления целей наказаний и их правовой природы при реализации субъектами управления. В основе исследования лежат методы сравнения и анализа норм действующего российского законодательства, выявления пробелов в данном направлении, а также определения направлений совершенствования отдельных правовых норм в рассматриваемом контексте. Основными выводами проведенного исследования являются предложения по совершенствованию норм уголовного и уголовно-исполнительного законодательства, регламентирующих цели при назначении и исполнении наказаний.

Ключевые слова: *цели уголовного права, цели уголовно-исполнительного права, восстановление социальной справедливости, предупреждение преступлений, предупреждение правонарушений, исправление осужденных, общая и специальная превенция.*

The analysis of scientific literature shows that in the doctrine of criminal law the special attention will be paid to the purposes of criminal penalty. At the same time, the question of the purposes of criminal penalty causes a set of controversy among the different scientists and is one of the most debatable questions connected with the institute of criminal penalty.

I.I. Likhanova, analyzing the opinions of many authors concerning the essence and the list of the criminal penalty, writes: "It is conventional under the purposes of criminal penalty to understand the end actual results which the state seeks to reach, establishing criminal liability, condemning guilty of commission of the crimes to this or that measure of criminal penalty and applying this measure" [See: 12, p. 91].

Due to the high importance of the purposes of criminal penalty without which achievement the meaning of the considered criminal and legal institute is lost they are legislatively enshrined. In this regard, they are legislatively enshrined in the p. 2 of the article 43 of the Criminal Code of the Russian Federation, where it is specified that punishment is applied for restoration of the social justice and also for correction of the convict and prevention of commission of new crimes.

Concerning the first purpose of criminal penalty – restoration of social justice – it should be noted that the concept of "justice" is the difficult estimated category which isn't disclosed at the level of the criminal or industry legislation. In too time the term "justice" took roots in the text of the criminal law, confirmation to what besides the p. 2 of the article 43 of the Criminal Code of the Russian Federation are the contents of the article 6 and p.1 of the article of the Criminal Code of the Russian Federation. Also justice is mentioned in the item 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation from

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In the theory of criminal law relation to the purpose of restoration of justice variously.

Some scientists, such as S.V. Polubinskaya, A.V. Polivtsev, giving evaluation to the considered purpose of criminal penalty, believe that its achievement in principle is impossible.

Even before adoption of the existing Criminal Code of the Russian Federation S.V. Polubinskaya believed that "because of the difficulty of measurement of exponents of achievement of the goal of restoration of justice also this purpose" can't be fixed [See: 14, p. 23]. However, after a while S.V. Polubinskaya doesn't give so categorical point of view any more [See: 15, p. 503].

A.V. Polivtsev, analyzing the purpose of criminal penalty – restoration of social justice, writes: "It is, actually, impossible to restore social justice. How, for example, it is possible to restore human life, his health? And at the material nature of criminal action it is possible to speak about some compensation only with the high degree of relativity. Of course, compensation of damage and restoration of social justice are not identical concepts. At the same time punishment it is possible to speak about restoration of social justice only in the plane of purpose of fair punishment for the committed crime taking into account the identity of the criminal" [See: 16, p. 206].

According to the other group of authors, there is a possibility of achievement of social justice as the purposes of criminal penalty. This point of view, in our opinion, is more preferable.

We completely share the point of view of B.S. Volkov who writes: "The instruction in the criminal law on restoration of social justice as on the purpose of punishment underlines the social and moral aspect of punishment that the evil shouldn't remain unpunished that that system of relations which was broken as a result of commission of crime" has to be restored [See: 1, p. 272].

It should be noted that achievement of social justice shouldn't be identified with punishment as a penalty for the committed crime. In this regard we agree with V.N. Zhamuldinov according to whom the considered purpose of criminal penalty can be delimited from a penalty as follows: "1) penalty can't be an ultimate goal of punishment as in that case punishment would be applied for the sake of punishment, and it is senseless; 2) at a certain stage of application of punishment the penalty can act as the intermediate purpose, further it acts as the means for achievement of more high aim" [See: 7, p. 88].

In the criminal and legal doctrine restoration of social justice as the purpose of punishment is considered from the point of view of different aspects.

In our opinion, the point of view of M.N. Stanovskiy who considers the specified purpose of criminal penalty by a research of the interests which are considered at its achievement is represented interesting. So, the specified author believes that the social justice as the purpose of criminal penalty can be characterized by at least four aspects which express the interests: convict; victim; society and the states" [See: 18, p. 18].

In spite of the fact that most of modern writers unanimously share a position of the legislator and speak about restoration of justice as about the purpose of criminal penalty, the question is raised by restriction by the legislator of the considered purpose only social justice.

According to the philosophical encyclopedic dictionary the word "social" is determined as "public, belonging to the life of people and their relations in the society" [See: 4, p. 66]. Limiting the considered purpose of criminal penalty it is exclusive restoration of social justice, the legislator excludes achievement of restoration of other parties of justice (individual, personal, etc.). It is represented interesting the point of view of V.N. Orlov according to whom "it is necessary to talk about restoration not of the social, but criminological justice" [See: 13, p. 122]. In turn, criminological justice is legitimate rights and interests of the natural and legal entities, societies, states which are broken by the commission of crime. From here restoration of criminological justice represents reduction in a former condition of legitimate rights and interests of the natural and legal entities violated by the commission of crime, society, the state.

On the basis of stated we suggest make changes in the p. 2 of the art. 43 of the Criminal Code of the Russian Federation and to provide in it such purpose of criminal penalty as restoration of the violated rights, freedoms, and duties.

Part 2 of the article 43 of the Criminal Code of the Russian Federation as the second purpose of criminal penalty calls correction of the convict.

It should be noted that the concept of correction of the convict is fixed at the level of the federal legislation. So, according to p.1 of the article 9 of the PEC of the Russian Federation correction of convicts is understood as formation at them of respect for the person, society, work, norms, rules and traditions of human community and stimulation of the right obedient behavior.

Taking into account that the concept correction of the convict is fixed not at the level of the criminal law, and in the criminal and executive legislation there is a question of the possibility of its distribution on criminal and legal understanding of the considered purpose of criminal penalty.

In this regard the point of view of N.F. Kuznetsova who acknowledged such possibility, but "only partially – is deserving attention at the use of norms on conditional condemnation (the article 73 of CC), parole from punishment (the article 79 of CC), about replacement to not left part of punishment with softer type of punishment (the article 80 of CC). In other cases the purpose of criminal and legal correction is considered reached if the convict doesn't allow a criminal recurrence. Not moral, namely legal correction means the article 43 of the article 73 of CC " [See: 10, p. 744].

In our opinion, perhaps to extend the definition of correction of the convict given in p.1 of the article 9 of the PEC of the Russian Federation to criminal and legal understanding of the considered purpose of criminal penalty as execution of the punishment is organic continuation of its essence. At an execution stage criminal penalty is fully implemented that directly promotes achievement of the punishment purposes established in the criminal law including the purposes of correction of the convict.

Among the different scientists there is no uniform relation to the considered purpose of criminal penalty.

So, some scientists consider the purpose of correction of convicts only as a method, warning facilities of commission of new crimes and deny its independence [See: 15, p. 30].

It is very difficult to agree with the given point of view. Adhering to a position of scientists who consider: "The correction exception of the punishment purposes on the basis of the fact that it is the means of achievement of the private and precautionary purpose looks unconvincing" [See: 3, p. 48].

Other scientists consider the purpose of correction of the convict from the broad point of view and consider that it absorbs the other purpose of criminal penalty – prevention of crimes.

So, in the scientific literature is specified that "in essence, represents the purpose of special prevention (special prevention) of crimes and it is reached when the convict doesn't commit new crimes. In the existing Criminal Code of the Russian Federation the purpose of correction of the convict doesn't contact achievement of such results as re-education of the convict in the spirit of the honest relation to work, exact performance of laws, respect for rules of the hostel. However it is quite obvious that achievement assumes the use of any lawful and reasonable means of positive change of the identity of the convict and his social communications" [See: 6, p. 377].

We believe that the point of view of authors who consider the purpose of criminal penalty in the form of correction of convicts as independent is the most preferable.

As I.A. Efremov specifies: "CC of RSFSR of 1960 provided one more purpose – re-education of the convict, however the current law refused it in relation to the adult criminals" [See: 5, p. 45].

According to V.A. Yakushin and O.V. Tyushyakova: "Correction and re-education are two independent purposes which were absolutely fairly noted by the legislator". The authors believe that "the Criminal Code of the Russian Federation of 1996 took in this regard a step back, having refused the re-education purpose" [See: 20, p. 48 – 49].

It is very difficult to agree with the point of view of V.N. Orlov who specifies that "in the course of application of criminal penalty the objectives of re-education of convicts concerning the condemned minors nevertheless can be achieved" [See: 13, p. 168]. This situation first of all is explained by the psycho-physiological level of development of the minor. In this connection, for example, it is possible to provide independent norm of "The punishment purpose concerning minors" in which is specified that punishment is applied to minors not only for, provided in the p. 2 of the article 43 of the present Code, but also for the purpose of re-education of the convict in the chapter 14 of the Criminal Code of the Russian Federation.

In the p. 2 of the article 43 of the Criminal Code of the Russian Federation also, the purpose of criminal penalty in the form of prevention of commission of new crimes is fixed.

On the orientation prevention of commission of crimes as the purpose of criminal penalty is divided into the general and private (special) prevention. Strangely enough, such division isn't enshrined in the text of the existing Criminal Code of the Russian Federation though it was established in the article 20 of CC of RSFSR and also p.1 of the art. 1 of the PEC of the Russian Federation doesn't subdivide the purpose of prevention of crime on special and general.

The legislative regulation of the considered purpose of criminal penalty ambiguously is treated in the scientific literature.

Some scientists understand only the general prevention as this purpose.

So, R.R. Galiakbarov considers that "prevention of commission of new crimes, or otherwise – the general prevention as the purpose of punishment consists in the impact on all other unstable members of the society for their deduction from commission of crime" [See: 2, p. 342].

Other scientists consider prevention of commission of new crimes more widely, putting in the contents of this term not only the general, but also the special (private) prevention [See: 19, p. 126].

E.V. Zhidkov adheres to the other position. Proceeding from the analysis of a concept "new", determined by the Big explanatory dictionary of Russian as what appeared recently or didn't exist earlier, the author believes that the concept "prevention of new crimes" used in the art. 43 of the Criminal Code of the Russian Federation covers prevention of criminal encroachments which can be made after adjudgement irrespective of who can make them" [See: 8, p. 14].

It is impossible to recognize the specified statements true as the formulation of the purpose of criminal penalty in the form of prevention of commission of new crimes concerns the persons who already committed crimes that is actually the legislator points only to special prevention.

As fairly specified N.F. Kuznetsov: "As a result of the wrong understanding it was developers of the CC project of 1994 of the general prevention kind of CC of 1996 which is missed in the art. 43 about the punishment purposes because its addressee isn't designated" [See: 9, p. 22].

Truly, E.V. Kurochka considers that legislative restriction in the p. 2 of the art. 43 of the Criminal Code of the Russian Federation only with the special prevention contradict p.1 of the art. 2 of the Criminal Code of the Russian Federation where as one of the tasks of criminal law "prevention of crimes" as which it is necessary to understand both special, and general prevention acts [See: 11, p. 84].

Analysis of the given points of view leads to a conclusion that the purpose of criminal penalty in the form of general prevention of commission of crimes is addressed to an unlimited circle of people including to the persons who aren't inclined to participation in the criminal activity. Our position is based that the considered purpose of criminal penalty is implemented not only by the means of threat of its appointment, but also by the means of educational impact made on all members of the society, especially on the category of minors who by the law aren't a subject to criminal liability, but don't incline to their commission in connection

with the educational influence including realized by the means of achievement of the considered purpose of criminal penalty

In our opinion, it is necessary to make changes in the Criminal Code of the Russian Federation, having added the instruction on such purposes of criminal penalty as a special and general prevention of crimes. For this purpose it is necessary to state the p. 2 of the art. 43 in the following edition: "Punishment is applied for restoration of social justice, correction of the convict and also for prevention of commission of crimes, as condemned, and other persons".

In p.1 of the article1 prevention of commission of new crimes, as condemned, and other persons is provided in the criminal and executive legislation. Thus, there is a contradiction between the criminal and executive legislation as the PEC of the Russian Federation indicates both the general and private prevention.

However the main part of the activity of criminal and executive inspection and the staff of correctional facilities during execution of the punishment is directed to prevention of the offenses committed both by the convicts and other persons. Thus these contradictions lead to the fact that warning and stopping different offenses employees violate p.1 of the article 1 of the Criminal and executive legislation. Suppression of the offenses by the staff of FSEP is a basis of providing the regime in correctional facilities and a basis of prevention of repeated crimes as among the persons serving the sentences which aren't connected with imprisonment and among the persons which are contained in the correctional facilities. We suggest to state p.1 of the article 1 "The criminal and executive legislation of the Russian Federation has the purposes correction of the convicts and prevention of commission of the offenses and new crimes as by the other persons and by the condemned."

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