

Punishment and Reconciliation in Russian Criminal Law

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ABSTRACT

The article is devoted to identifying areas for improving criminal punishment in cooperation with the Institute of Reconciliation in Russian criminal law. The author stresses that the problem of punishment is "eternal" for Russian and Western criminal law doctrine, although there is some difference in research directions between them. The article concludes that in the Russian criminal law science, the approach of not the punitive definition of punishment, its features and purposes is recognized as dominant since the purpose of punishment has become obsolete by now. Reconciliation is directly enshrined in the general conditions of the Criminal Code of the Russian Federation, and above all in punishment as a manifestation of restorative justice, where the state provides the perpetrator of the crime with the possibility of a full or limited agreement on a compromise with the state.

Keywords: *punishment, reconciliation, compromise, purpose of punishment, punishment system*

1. INTRODUCTION

The urgency of the problem of reconciliation in Russian criminal law is determined by the fact that it predetermines the content, goals and limits of punishment and other criminal law measures. The punishment in the domestic criminal law has more than a thousand-year history, comprehension of which makes it possible to draw conclusions about the current state of this institution in order to propose further development and improvement. Removal of punishment in the Criminal Code of the Russian Federation requires an explanation of what includes state coercion in the form of punishment and how much compromise by the state is possible in the imposition of punishment, as well as exemption from criminal responsibility and punishment. The punishment, which included the impact on the individual in the form of some kind of legal restriction, with its state censure, condemnation, largely ceases to meet the requirements of the information society, as it does not comply with such principles of punishment as: individualization of punishment, saving criminal repression and the validity of punishment. As in its time corporal punishment is outdated, so the punishment does not meet the requirements of the 21st century.

2. MATERIALS AND METHODS

The methodology of the article is based on the whole complex of methods of scientific research: historical, comparative-legal, system-structural, gnoseological, formal-logic, etc.

At the end of the 20th century, the idea of restorative justice (not punitive punishment) started to actively develop in the doctrine of criminal law. "We do not undertake to prophesy, but as history shows the gradual and ever-accelerating extinction of punitive acts and the improvement of the social psyche and behavior of man, there is no reason to believe that this will not continue. And if it is so, then, obviously, the limit of evolution, to which the punishment variable aspires, can be only zero, i.e. the disappearance of punishment" [1]. The abandonment of punishment is a natural and objective consequence of the development of social relations, where punishment has gradually turned into a relic of past times. The creation of an industrial, then post-industrial society required a radical reformatting of criminal law measures. In this regard, the following trends in criminal law should be pointed out: it has become more dynamic, where changes and additions are made constantly and consistently; the significance of blanket dispositions in the articles of the particular conditions of the Criminal Code of the Russian Federation has increased; a systematic inter-sectoral interaction has been established; punishment in Russian law is formulated as an intersectoral legal category. The construction of a digital society, where there is a real possibility of daily control of human behavior, is also creating a new public need for the content, aims, and types of criminal punishment, where the goal of restorative justice is a priority.

3. RESULTS AND DISCUSSION

Numerous proposals in the theory of Russian criminal law to change the systemic content of punishment indicate that this institution is steadily confirming its state and public necessity and importance. For the time being, no punitive change is proposed. B.T. Razgildiev thinks that "...if some part of the criminal law, in our case - punishment, has a dangerous property, causes physical pain, suffering, the problem is not in punishment, but in general in the whole branch of law. In this regard, the punishment shouldn't be abolished but reformed." This does not mean that the reformed criminal law will not cause pain and suffering. It's a criminal law specificity. However, we should not talk about physical pain, but about social and moral pain" [2].

The state and public interest in this problem is conditioned by the ongoing socio-economic and political and legal processes that are taking place around the world and in individual countries. In this regard, it should be noted that in the criminal law doctrine of Western European states the idea of restorative justice has been formed, where the correspondence between the possibility of "forgiveness" of the offender by the state (both at the initiative of the victim and without it) and "just, rationally objective and proportional" punitive effect of the punishment is analyzed [3]. The appeal of restorative justice to the needs of the state and society lies in the fact that the convicted person is given the opportunity by his or her post criminal behavior to minimize the criminal consequences against him or her. A model of cooperation is proposed to the convicted person.

The situation in Russian criminal law is different, where it is possible to distinguish two interrelated trends in the implementation of criminal responsibility and punishment: on the one hand, the expansion and strengthening of criminal repression for certain types of criminal offenses, and on the other hand, the restriction and mitigation of criminal punishment, where one example of the implementation of the principle of humanism is the approach of reconciliation with the perpetrator.

The effectiveness of the implementation of the established criminal law prohibition was initially achieved by increasing the penalties. I.Ya. Feunitsky wrote that "the punishment is coercion applied to the person who has committed a criminal act... The coercion of the punishment consists in causing or promising to cause the punished person any deprivation or suffering; therefore, any punishment is directed against some good belonging to the punished person - his property, freedom, honor of legal capacity, physical integrity, and sometimes even against his life" [4]. The limits and limitations of punishment as coercion were determined by the state. G. V.F. Gegel pointed out: "Where a crime is prosecuted and punished not as *criminapublika* but as a private (for example, theft and robbery of ancient Jews and Romans, some crimes still committed by the British, etc.), the punishment retains to some extent the character of revenge" [5]. The punishment was formed as a state (public) right, which abolished revenge as a private right. It is a dynamic system where many doctrinal approaches to goals and penalties

were implemented. In its development, it was many times supplemented, reformatted, obsolete the characteristics that are not typical of it. N.S. Tagantsev presented their extensive list of measures not subject to punishment: "...since the punishment is a consequence of a criminal act committed, the following cannot be counted as punishment: firstly, coercive measures taken by public authorities in the interest of preventing or suppressing offenses, or measures of supervision over individuals or groups of individuals, in their occupation, lifestyle, previous activities, etc., which are dangerous to public or state order and tranquillity; secondly, coercive measures taken by these authorities to eliminate various types of difficulties caused by the proper performance of their activities as prescribed by law, in particular, for example, measures taken by the court bodies for the correct course of the process by the administration - for carrying out duty, customs, and sanitary supervision, etc. Furthermore, since only measures taken by the state in the public interest for the sake of law and order may be considered as punishment, the consequences and measures that serve solely to compensate for material damage caused to the victim, to restore his or her property interests and rights; measures that are imposed by the court bodies, but in the interests of various legal or moral associations or institutions existing in the state in the interest of discipline cannot be closely related to punishment. Therefore, only the measures taken by the state against persons who committed criminal acts, for the protection of law and order and protected interests, can be attributed to the punitive activities of the state" [6]. It should be noted that criminal law measures were often complemented by measures of other branches of law for a long period of time, and were recognized as part of criminal law, but later formulated as independent legal institutions and concepts. Since crime is a multifaceted and systemic phenomenon, it is not always reasonable and justifiable to use harsh penalties. Restriction of criminal punishment is expressed in the Criminal Code of the Russian Federation: other criminal law measures - three types; five grounds for exemption from criminal liability and seven grounds for probation, amnesty, and pardon. This trend is also supported by the limited use of additional penalties. At the moment, as an exceptionally additional type of punishment, deprivation of special, military, honorary title, class rank and state awards is fixed, which can be applied to a limited list of subjects.

Reconciliation in criminal law is the voluntary consent of both parties: the state that has a public interest and the person who committed the crime (private interest). This compromise is precisely formulated in the Russian Federation's criminal and criminally-remedial legislation, as it does not seek to encourage criminal behavior.

Reconciliation in Russian criminal law, in our opinion, should be seen in two meanings:

1. In the narrow sense, the direct provision in Article 76 of the Criminal Code of the Russian Federation on possible reconciliation with the victim, under the obligatory condition that a person who has

committed a crime for the first time only in certain categories: of small or medium gravity, may be exempted from criminal liability if, firstly, he or she has reconciled with the victim and, secondly, he or she has made up for the harm caused to the victim.

2. In a broad sense, reconciliation is implied as the state's consent to release a person from criminal responsibility and punishment or minimization (significant limitation) of criminal repression. In particular, it should be recognized that gender characteristics are an important feature for the limited application of certain types of punishment for women [7].

Reconciliation was earlier applied in domestic law. "The Institute of Reconciliation in the Russian pre-revolutionary criminal process is characterized by the following features:

1. reconciliation was a ground for exemption from punishment or mitigation of punishment;
2. reconciliation was intended to satisfy a private interest, but at the same time ensured a public interest, the protection of which was entrusted to the public judiciary, exempted from the relevant obligation by the will of individuals;
3. in general, reconciliation with the victim is a historical private beginning in public law..." [8].

The institution of reconciliation in Russian criminal law is given in Article 76 of the Criminal Code of the Russian Federation, which provides a formal basis for reconciliation with the victim. The conclusion of L.B. Sitdikova and A.L. Shilovskaya should be supported. They state that "...there are also mechanisms for reconciliation within the framework of the institution of exemption from criminal liability in connection with active repentance, regulated by Article 75 of the Criminal Code of the Russian Federation and Article 28 of the Code of Criminal Procedure of the Russian Federation. When a crime of small or medium gravity is committed, a person may be exempted from criminal liability if he or she voluntarily surrendered to justice, contributed to the detection and investigation of the crime, compensated for the damage or made amends for it, and as a result of active repentance, the person ceases to be socially dangerous. The fact that the main emphasis of this article is not on reconciliation as such, but on making amends or reparation" [9] draws attention to itself. In our opinion, reconciliation is also possible in cases where the perpetrator is given the opportunity to absolve himself or herself of criminal responsibility or to reduce the penalty to some extent.

At the present time, when punishment has been abolished, a thorough analysis of Russian criminal legislation is required, where other measures of a criminal nature have acquired independent meaning. In particular, the imposition of a court fine in the Criminal Code of the

Russian Federation raised the question of the limits of its enforcement.

Criminal punishment is subject to legislative regulation for a long period of time. In Russian criminal law it was understood as a punitive influence of the state. In Soviet criminal legislation, the concept of punishment was regulated in various editions, as different approaches to its formulation were used. According to Article 7 of the Guidelines on Criminal Law of the RSFSR of 1919, "punishment is those measures of coercive influence by means of which the authorities ensure this order of public relations from the violators of the latter (criminals)". In the Criminal Code of the RSFSR of 1922, the punishment was formulated as a defensive measure. The 1926 Criminal Code of the RSFSR established social protection measures as a complete replacement for the institution of punishment, but this reform failed and the institution of punishment was restored. In our opinion, this wide range of notions of punishment was due to the search for new approaches of state influence on the persons who committed a crime under the new state system. On the one hand, the concept of tougher criminal repressive measures was implemented, while on the other hand, a radical alternative to punishment in the form of social protection measures was proposed. The 1960 Criminal Code of the RSFSR provided a broad list of grounds for exemption from punishment. At present, the Russian legislator has also proposed other criminal law measures as a significant alternative to punishment.

The nature of criminal punishment is a historically variable category because it is conditioned by the objectives of the criminal policy pursued by the State. N.S. Tagantsev, in the early 20th century, noted: "The creation of criminal law is the self-limitation of the law enforcement authorities, obtained in the modern state by bloody struggle, centuries of the suffering of the previous generations. The gradual replacement of the overbearing "don't touch!" with a more restrictive one: "don't touch, it was more than flesh and blood could bear!" and a modern ruling: "guilty of grievous bodily harm is punished by the correctional house", testifying to the development of citizenship, but does not mean a qualitative change in the rights of the legal protection authorities in relation to persons subject to the norms" [6]. Punishment in Russian criminal law is, on the one hand, a traditional institution and, on the other hand, its content and system are constantly being changed and supplemented depending on the solution of state tasks.

Also, forced measures of educational impact should be recognized as an independent element in the system of reconciliation in Russian criminal law. It is in them that the idea of reconciliation is largely embedded. Educational measures are not punitive in nature but are designed to raise the minor (to eliminate shortcomings in education) and shape his personality. In this case, the state authorizes the waiver of punishment, which is replaced by a measure of public sanction. The same approach is taken in German criminal law. According to Clause 5, Subclause. 1 Jugendgerichtsgesetz, educational measures may be

imposed for the commission of an offense by minors. Educational measures include:

1. instructions addressed to the perpetrator (Weisungen), the application of which is regulated in Clause 10 Jugendgerichtsgesetz;
2. the regulations on educational assistance (Hilfe zur Erziehung) according to Clause 12 of the Jugendgerichtsgesetz.

Clause 10 of paragraph 1 of the Jugendgerichtsgesetz defines instructions as duties (Gebote) and prohibitions (Verbote) which regulate the way of life of a teenager and therefore promote and guarantee his upbringing. The instructions may not contain any unacceptable requirements for a teenager's way of life.

The Jugendgerichtsgesetz in Clause 10 of paragraph 1 specifies the following types of instructions, which imply the performance of certain duties, the list of which is open:

1. Obligation to follow the instructions about the place of stay;
2. Obligation to live in a family or social institution;
3. Obligation to enroll in studies or work;
4. Obligation to perform certain work;
5. Obligation to be under the direction and supervision of a certain person;
6. Obligation to take part in social training course;
7. Obligation to reconcile with the victim;
8. Obligation not to maintain a relationship with certain people or not to visit places of entertainment;
9. Obligation to participate in the study of traffic rules [10].

4. CONCLUSION

Also, Clause 46a of the German Criminal Code provides for a provision on reconciliation with the victim (Täter-Opfer Ausgleich), which applies to juvenile criminal law. The perpetrator must fully or substantially compensate for the harm caused, or demonstrate a serious desire to compensate for the harm caused or reimburse for the harm where this involves a significant personal cost or personal abandonment of something. The advantage of this procedure under juvenile criminal law is to allow juveniles to critically examine what has happened and restore public peace and harmony.

In conclusion, it should be concluded that punishment and conciliation in Russian criminal law are interrelated, historically volatile legal categories due to socio-political and economic conditions. At present, the abolition of punishment has been enshrined, owing to the priority of a state compromise in the implementation of criminal

responsibility in the form of restorative justice in the Criminal Code of the Russian Federation. Punishment, other criminal law measures and compulsory measures of educational impact are defined as mandatory and/or optional legal consequences of the commission of an offense.

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