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CONCEPT AND PURPOSE OF PUNISHMENT

Government policy in the sphere of fight against crime involves a set of activities among which the main role is played by measures of social, economic, political, legal, organizational, cultural and educational nature. The penalty takes some place in the system of these measures. It is an essential tool of society's security from criminal attacks. The fulfilment of this role is carried out both by the threat of punishment, which is provided in each sanction of criminal law norm, and by its implementation, that is enforcement measures to persons who have committed crimes.

Legal science, exploring issues of criminal law, with particular attention to the theoretical development problems of criminal punishment. In particular, the problem of punishment is discussed in the writings of scholars such as U.V. Aleksandrov, M.I. Bazhanov, N.A. Belyaev, V.I. Zubkov, V. Kurland, I.S. Noi, S. Polubynska, N.D. Sergievskyy, D.A. Shestakov.

The purpose of the article - to develop science-based approach to determine the content and purpose of the punishment that will be more effective protection of individuals, society and the state of crime.

Crime is an eternal category that will always exist. Punishment is a logical consequence of the most characteristic crime. It is a method of criminal law to combat crime.

Application of penalties, the impact on crime situation in the country should not overestimate and expect him to solve all the problems that arise in the course of fighting crime (the so-called lehislomanija - hope the omnipotence of the law). But do not underestimate and punishment as a method of influence on crime. It is by applying a fair, timely and inevitable punishment restrains state crime is "offensive" to it, with the aim of curbing and maximum limits of its manifestations. In addition, the presence of criminality as signs of each crime and the actual punishment helps prevent crime at all levels and in all its manifestations [1, p. 260].

In the classical period of criminal jurisprudence was the dominant view that punishment is punishment, degree of state coercion that applied by the court. Thus, A. and M. Piontkovskii Belyaev believed that the punishment - a punishment for crime, which must necessarily include certain restrictions and suffering. In particular, M. Belyaev pointed out that under the penalty as punishment for the offender, we understand the problem of suffering and loss as retribution for an offense committed by him [2, p. 25]. A. Naumov just pointed out that punishment is always punished, every kind of punishment to some extent to have a punitive sense. S. Polubynska also supports the view that punishment is an integral essence of punishment that has a specific function - not to give opportunities to commit new crimes convicted. In this sense the penalty is a prerequisite to achieve this goal of punishment is to prevent crime [3, p. 100].

Instead V. Zubkov said that the definition of punishment as the nature or purpose of punishment is not only false, but also harmful. She points out that the concept of "punishment" and "punishment" are identical, and offers to delete the term "penalty" of criminal law and legal vocabulary [4, p. 47]. Almost the same opinion famous Russian criminologist D. Shestakov, who believes that the punitive effect of punishment is a global problem that defines a circle of violence and cruelty. Therefore, he argues that in modern conditions necessary for a new approach to determine penalties and to seek new ways of applying it. The researcher proposes to abandon the notion of punishment, as it implies retaliation for acts. Onerous approach, in his view, is contrary to civilized society [5, p. 148-147].

We believe that without such properties as punishment, punishment can not exist. M.I. Bazhanov defined the concept of punishment: "punishment - a special coercive measure, used under criminal law for the crime" [6, p. 315]. Similar definitions offered Kurynov B., B. Kurland [7, p. 30] A. Reytbort et al. [8, p. 225]. Thus, B. Kurynov, defined the concept of punishment, such as: "... a forced measure, set in Soviet criminal law applied by the court on behalf of the State to persons who have committed a crime that has condemned some loss or limits its rights and expressing on behalf of negative assessment of the Soviet state and its criminal acts "[9, p. 259].

J. Noah wrote that sentence - is not only compulsory measure, combined with the punishment and used by the court to a person guilty of a crime, but the measure has its own goals and objectives. Penalties should apply to special and general prevention and correction, which involves re-sentenced person the task [10, p. 155].

In Part 1, Art. 50 Criminal Code of Ukraine defines the sentence, which is defined measure of coercion applied on behalf of the State by a court to a person convicted of a crime and is prescribed by law limiting the rights and freedoms of the convicted. [11]

The purpose of punishment - is the end result, which wants to achieve a state in the application the court to face such a special event state coercion, which is a criminal penalty.

Target sentence for centuries devoted much attention to the most prominent philosophers, theologians and lawyers. According to eminent scientist Professor M.D. Sergius, from the time of Hugo Grotius concerning the punishment was launched 24 new philosophical systems and about 100 theories that were variations of these systems [12, p. 68].

All these theories are divided into three types: absolute, relative and mixed.

The absolute theory of punishment is that punishment is retribution for the crime, it does not pursue any practical purpose. Its basis must be sought in higher principles that are self-evident to all civilized mankind.

In absolute theories, there were increasingly reflected in legislation relative theory or utilitarian (from Lat. Utilitas - benefit). They are based on the requirement that the sentence was intended to achieve a useful purpose for society as a whole and for the punished person. According to the utilitarian theories of punishment, especially, has the task to prevent the commission of crimes on the part of the convicted person, as other members of society (punitur ne feccetur), as well as correcting the offender [13, p. 271].

Then gradually legal scholars increasingly began to lean toward an integrative (mixed) purpose of punishment, which is to combine the elements of absolute and relative theories of punishment.

Consequently, integrative (mixed) theory of punishment combine the ideas of absolute and relative (utilitarian) theories. The objectives of punishment and deterrence are considered retribution (punishment), correct punishment, as well as special and general prevention.

It is at this position is integrative Criminal Code of Ukraine. In Part 2 of Article 50 of the Criminal Code of Ukraine formulated goals of punishment: "The penalty is intended not only to punish but also correction, and prevention of new crimes as prisoners and other persons" [11]. The concept of "punishment" as used in the Code as one of the purposes of criminal punishment, which is unacceptable because both recognize punishment as the nature and purpose of punishment is impossible.

Thus, the entire sentence (or compound target sentence) are:

a) punishment - retribution convicted of an offense for the harm he has caused to society as a whole and for physical and legal persons. Convicted paying for this restriction of their rights and freedoms. When we understand punishment causing pain and loss of wine and therefore fully support the idea of the impossibility of recognizing penalty to punish. This is consistent with Part 3. 50 of the Criminal Code, which provides that the punishment is not intended to cause physical suffering or humiliation of human dignity.

b) the purpose of correction of a prisoner lies in the fact that, by acting on it during a court-appointed punishment, to change his identity in order to make the offender a safe and harmless to society a person, even if by accepting the inevitability of it serving a sentence for committing a serious new crime (the so-called legally correct).

c) prevention of new crimes by convicted (special prevention) is to put a person in an environment in which it is even wanting to commit a crime could not do so. The purpose of special prevention is achieved in two ways: a) the offender is deprived of physical possibility to commit the crime, and b) the offender shuns re-applying a punishment for a crime. Different types of sentences involving various forms of deprivation actual offender commit a new crime opportunities. When deprivation of liberty for a term of convict sent to special correctional institutions, where it is under constant protection and supervision. This aim is also achieved through the use of all legal restrictions on the rights and freedoms that characterize a particular form of punishment. And what kind of punishment is more severe, the more opportunities to achieve this goal.

g) prevent the commission of crimes by others (general prevention) is to prevent crime by unspecified persons who are likely to commit crimes and do not exclude the possibility to reach their goals in crimes, by applying penalties to persons who have committed a crime. However, the vast majority of citizens commits an offense is not that because they commit the government threatened to impose penalties, but because harm to public relations, which are protected by law, contrary to their moral and legal settings, views and beliefs.

They are inseparable unity between themselves and achieve each of them contributes to the other.

Criminal penalties in nature can objectively cause physical or mental suffering convicted, but such violence is legitimate. It should not be accompanied by bullying, torture, humiliation of human dignity and so on. Otherwise it would be a manifestation of cruelty and evil, calling public morality. The state, by contrast, refers to the effort required by the offender will change its illegal behaviour on law-abiding Punishment does not deny the positive qualities of the person who committed the crime, but merely trying to force her to act positively in the future and not break the law. Coercion can be both physical and mental and implemented regime of punishment. It is installed using the appropriate set of rules that include limitations and losses applicable to convict (physical isolation from society, physical, moral, property restrictions, terms and conditions of penal etc.).

When we understand punishment causing pain and loss of wine and therefore fully support the idea of the impossibility of recognizing penalty to punish. This is consistent with Part 3. 50 of the Criminal Code, which provides that the punishment is not intended to cause physical suffering or humiliation of human dignity. In Art. 5 of the Universal

Declaration of Human Rights on December 10, 1948 and other international instruments on human rights and treatment of prisoners said that no one shall be subjected to torture or to cruel, inhuman, degrading treatment or punishment. This principle has found expression in the criminal law of Ukraine, which does not include corporal punishment or those disrespectful.

Thus, the penalty - a measure of coercion applied on behalf of the State by a court to a person convicted of a crime and is prescribed by law limiting the rights and freedoms of the convict. All goals of penalty are inextricably linked and any punishment should be appointed with the expectation to achieve each goal separately and all of them combined. We consider it necessary to present Part 2 of Art. 50 of Criminal Code of Ukraine as follows: "The goal of penalty is the correction and prevention of new crimes committed by prisoners and other persons."

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