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Punishment as an object of scientific research: challenges and prospects

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Abstract. Is devoted to the study of the legal phenomenon of punishment from the perspective of the general theory of law. It argues the need for an integrated approach to identifying the most important characteristics of punishment, considering its historical roots, etymology of the term and development trends. Relying on dialectical methodology, the author examines the prerequisites for the formation of the social institution of punishment, starting with the emergence of the first taboo and/or prohibitions. The conclusion determines the universal nature of the phenomenon of punishment, which applies to any negative sanctions implemented as measures of legal responsibility in both public and private law. The work substantiates an increased relevance of the issue of adequate understanding of legal punishment in national and international law. Three groups of interaction of punishment with other legal phenomena (means) are differentiated; they are interaction with similar phenomena that include punishment (group 1), interaction with phenomena that functionally contribute to the consolidation and implementation of punishment (group 2) and interaction with phenomena that have an auxiliary effect on consolidation and implementation of punishment (group 3). The lack of consistency (unified strategy) in law-making and law enforcement decisions in relation to the system of punishments and its dynamics have been demonstrated. The institutional features of the system of punishments in the Russian Federation, subject to a general theoretical analysis, have been determined. Approaches to the definition of the legal meaning of impunity as an independent category of jurisprudence are considered. The author gives his point of view on the issue of the forms and content of impunity and substantiates the need for its further study. In addition to domestic and foreign doctrinal and reference publications, the provisions of international legal acts, national legislation and materials of judicial practice are used as a source base. The author formulates proposals regarding the directions for further research of the category punishment in the general theory of law.

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Наказание как объект научных исследований: проблемы и перспективы

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Аннотация. Исследован правовой феномен наказания с позиции общей теории права. Аргументируется потребность в комплексном подходе к выявлению важнейших характеристик наказания с учетом его исторических корней, этимологии самого термина и тенденций развития. Опираясь на диалектическую методологию, автор рассматривает предпосылки становления социального института наказания, начиная с возникновения первых запретов «табу». Делается вывод об универсальном характере феномена «наказание», который применяется к любым негативным санкциям, реализуемым при возложении мер юридической ответственности как в публичном, так и в частном праве. Обосновывается повышенная актуальность проблемы адекватного осмысления правового наказания в национальном и международном праве. Дифференцированы три группы взаимодействий наказания с иными правовыми явлениями (средствами): с близкими явлениями, включающими в себя наказание (1 группа); с явлениями, функционально способствующими закреплению и реализации наказания (2 группа); с явлениями, оказывающими вспомогательный эффект на закрепление и реализацию наказания (3 группа). Продемонстрировано отсутствие последовательности (единой стратегии) в правотворческих и правоприменительных решениях применительно к системе наказаний и ее динамике. Определены институциональные особенности системы наказаний в Российской Федерации, которые следует подвергнуть общетеоретическому анализу. Рассмотрены походы к определению правового значения безнаказанности как самостоятельной категории юриспруденции. Приводится авторская точка зрения по вопросу о формах и содержании безнаказанности, обосновывается потребность в ее дальнейшем изучении. В качестве источниковой базы, помимо отечественных и зарубежных доктринальных и справочных изданий, использованы положения международных правовых актов, национального законодательства и материалы судебной практики. Сформулированы авторские предложения относительно направлений дальнейшего исследования категории «наказание» в общей теории права.

Ключевые слова: запрет, санкции, юридическая ответственность, наказание, система наказаний, безнаказанность, тенденции развития, институциональность

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Introduction

The history of mankind is invariably accompanied by the processes of emergence, formation and improvement of methods and means of social regulation. Based on myths, beliefs and other irrational forms of social consciousness, mononorms regulated the simplest interactions between primitive people and their collectives, further disintegrating into ordinary and religious norms, norms of primitive morality, etc. The most serious and demanding to the behavior of people were so-called *taboos*, defined by V.I. Dal' explanatory dictionary as characteristic of the savages of Oceania prohibitions imposed on certain actions; covenants and arcane rites.

Theoretical framework

The dictionary by S.A. Kuznetsov indicates the Polynesian origin of this term, which means *"a ban imposed on any action, word, object, violation of which (due to superstitious beliefs) is punished by supernatural forces; something forbidden that cannot be influenced in any way"*[1]. A similar interpretation of the "taboo" concept is given by S.I. Ozhegov and N.Y. Shvedova[2]. Taboos could be associated with prohibitions against touching "things of spirits", arguing with shamans, being involved in incest, staying in sacred or cursed places, and many others. Initially, the taboo system had sacred roots, but its transformations are associated with the gradual strengthening of social foundations. Thus, V.V. Bocharov assumes that fear as a source of norm/taboo "generates emotional experiences in the human psyche forming the main component of the 'power of tradition'" (Bocharov, 2017:111).

By outlining the *waypoints* of qualitative improvement of taboos and raising the issue of development directions of the relevant "negative methodology", V.A. Yelchaninov concluded that the *taboo* system served as the basis for the formation of social prohibitions needed by society (Elchaninov, 2015:20—21). R.A. Kryuchkov believes that "taboos" are designed to protect people from the danger of risks and are often used in the context of the rhetoric of accusations and promises of retribution to bind an individual with a network of social obligations. The researcher asserts that the legal forms of fixing risk phenomena have evolved from simple prohibitions (taboo and sin) to more flexible variations suitable for use in legal regulation (Kryuchkov, 2015: 135—137).

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[1] Kuznetsov, S.A. (ed.). (2000) Big explanatory dictionary of the Russian language. Saint Petersburg, Norint Publ. (in Russian).

[2] Ozhegov, S.I. & Shvedova, N.Yu. (2006) Explanatory dictionary of the Russian language: 80,000 words and phraseological expressions. 4th ed. Moscow, A TEMP Publ. (in Russian).

Subsequent studies allow to reveal the immanent relationship between the prohibition factor (taboo) and consequence of its non—compliance, i.e., punishment. The hypothetical existence of punishment for violating the ban and potential possibility for its application form the most important incentive to *correct* behavior in accordance with the established norm and abstinence. This feeling of fear of punishment (inevitable punishment) finds its response even at the level of a primitive ideological position. As Z. Freud correctly noted, here "we are talking about a number of restrictions to which these primitive peoples are subjected: one thing or another is forbidden for some unknown reason, and it does not occur to them to think about it: they submit to this as something self-evident and are convinced that violation itself will entail the most severe punishment" (Freud, 1923:7).

The above suggests that the effectiveness of the first decrees in the form of taboos largely depends on the sanctions that ensure them — inevitable and severe punishments that encourage compliance with protected rules of behavior. Having systematized and summarized significant material on beliefs, religions and folk customs in different parts of the Earth, D.D. Fraser paid special attention to the retrospective analysis of social prohibitions and taboos. He suggested that the fear of punishment and inevitable harmful consequences created a sense of danger and traditionally preceded the observance of prohibitions. Punishments for taboo violations were primarily of a "mysterious nature"; they were punishments imposed on a person by unknown forces (spirits, deities, etc.). They could be associated with problems concerning life or health (deformity, serious illness or even death), soul (possession, loss of soul, etc.), property (loss of home, loss of magical power by talismans, etc.), good luck in business (poor fishing for a long period of time, bad luck in hunting, etc.) and other circumstances. Punishments in the form of stoning, deprivation of food, loss of civil rights (status) had a more pronounced social nature for committing acts "objectionable" to higher powers (Frezer, 2001:263—351).

Based on the trends in the development of society, methods and means of social regulation, A.R. Radcliffe-Brown argued that "law, morality and religion are three ways of regulating human behavior; they complement each other in different types of societies and are combined with each other in different ways. For the law there are legal sanctions, for morality there are sanctions of public opinion and conscience, for religion there are religious sanctions" (Radcliffe-Brown, 2001:201).

The general social system of punishment is an invariable companion of human existence which partially receives its legal formalization in the rules of law, law enforcement acts, as well as in the legal status of violators. The prerequisites, real action and consequences of the implementation of the institution of punishment in law also affect philosophical, economic, political, psychological, ideological and many other spheres where punishment reveals its presence and, in the aggregate of contexts, demonstrates its own effectiveness or inefficiency.

While welcoming the achievement of global justice through the imposition of punishment on accomplices of the fascist regime following the Nuremberg trials in 1945, we must bitterly state the arbitrary and politically biased use of the institution of punishments in the XXI century, when unfair international sanctions against

Russia and Russian citizens acquired the character of discrimination and genocide. Thus, a special military operation conducted by the Russian Federation to protect citizens of the Donetsk and Lugansk People's Republics against the Ukrainian political regime (which *de facto* fell under the external control of certain countries and neo-Nazi groups and lost, due to this, its sovereignty) served as the formal basis for imposing the most extensive international and intra-national legal sanctions on the state in recent years[3]. The subsequent massive anti—Russian illegal actions in various countries, which have the form of punishment but in fact are illegal coercion, force us to turn to the basics of the theory of punishment once again and rethink them at a conceptually new level. It is obvious that the widespread dismissals of Russian citizens working abroad, expulsion of Russian students from foreign universities, suspension of athletes from international competitions (etc.), which are motivated only by belonging to the state and ethnic group, fundamentally contradict the Charter of the United Nations and the provisions of all interstate treaties and agreements in the field of rights and freedoms of a person and a citizen.

Lithuania's self—imposed blocking of transit traffic between the main territory of Russia and its enclave, the Kaliningrad Region, initiated in the second half of June 2022, motivated by the "support" of European Union sanctions to the detriment of bilateral agreements, has created threats to more than a million citizens of our country living (or staying) in the region. The unilateral exclusion of Russia from international organizations (councils, commissions) that protect the rights and freedoms of citizens is a heavy blow to the foundations of planetary security in all its manifestations. Such "punishment" does not bring anything into social reality except destructive transformations that ruin interethnic communications at all levels.

The domestic organization of the system of legal punishment in Russia and many other countries also demonstrates similar problems associated with the lack of a unified concept of law-making and law enforcement decisions. As a result, there are difficulties in distinguishing the grounds for punishment application in different branches of law, opportunities to avoid unpunishment, inconsistent application of penalties, including those contrary to the principles of law, defects in proceedings and others. To overcome such negative circumstances, it is essential to create and justify a conceptual model of punishment that will allow to put together all the necessary elements of the legal matter and investigate them in the manner understandable for the perception of representatives of industry knowledge and practitioners.

Since punishment is a form of state coercion, its execution determines the nature of the main method of legal regulation — imperative, assuming inequality of subjects of legal relations. However, this does not exclude the use of other methods of legal regulation — dispositive, incentive, etc. (Komarov, 2022:374).

Taking into account the social problems of punishment as a mandatory means of social regulation, this study will attempt to consider this phenomenon as an object of

[3] Egorov, I. 13 answers to questions about the reasons for the special operation in Ukraine. Rossiyskaya Gazeta, 23th March 2022. (in Russian).

legal research from the perspective of its essence, systemic challenges and prospects for the theory of law. Achieving this goal requires a broad methodology and varied tools, application of special and private scientific techniques on a par with general scientific ones. Normative sources, judicial practice and a variety of scientific literature of subject and interdisciplinary orientation allowed us to substantiate the author's hypothesis regarding the specific and understudied properties of punishment that need qualitative elaboration at the general theoretical level.

Concept and institutionality of punishment in law

Punishment is one of the core legal categories that receive their registration in legislation and find manifestation in legal practice; it becomes the subject of scientific discussions and debates in the context of private theories of legal responsibility, legal regulation, implementation of law, legality and law and order.

In the dictionary of V.I. Dal', punishment correlates with the imposition of a penalty, retribution, recovery for damage[4]. Dictionaries edited by D.V. Dmitriev[5] and A.P. Evgeneva[6] characterize punishment as a special measure of influence applied to a person guilty of committing an offense. D.N. Ushakov[7] in his dictionary understands punishment as a penalty imposed by those who have the right, power or force on someone who has committed a crime or misdemeanor.

A similar definition is offered in the dictionaries of S.A. Kuznetsov[8], S.I. Ozhegov and N.Yu. Shvedova[9]. According to the author of another dictionary A.A. Shushkov, to punish means "to take certain measures in relation to someone who has committed an ill act, crime, etc."[10]. Encyclopedia Britannica reveals the content of punishment in law (punishment) through "infliction of some kind of pain or loss upon person for a misdeed (i.e., the transgression of a law or command); punishment may take various forms"[11]. According to the authors of the New World Encyclopedia international project, punishment manifests itself in the practice of

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[4] Dal', V.I. (2006) Explanatory dictionary of the living Great Russian language. Vol. 2. In: Filippov, A.N. (ed.). Moscow, RIPOL classic Publ. (in Russian); Dal', V.I. (2006) Explanatory dictionary of the living Great Russian language. Vol. 4. In: Filippov, A.N. (ed.). Moscow, RIPOL classic Publ. (in Russian).

[5] Dmitriev, D.V. (2003) Explanatory dictionary of the Russian language: About 7,000 entries: Over 35,000 meanings: Over 70,000 illustrative examples. Moscow, Astrel Publ. (in Russian).

[6] Evgenieva, A.P. (1986) Dictionary of the Russian language (Vol. 2, 3rd ed.). Moscow, Russian language. (in Russian).

[7] Ushakov, D.N. (2013) Explanatory dictionary of the modern Russian language: 100,000 words and phrases. Moscow, Adelant Publ. (in Russian).

[8] Kuznetsov, S.A. (ed.). (2000) Big explanatory dictionary of the Russian language. Saint Petersburg, Norint Publ. (in Russian).

[9] Ozhegov, S.I. & Shvedova, N.Yu. (2006) Explanatory dictionary of the Russian language: 80,000 words and phraseological expressions. 4th ed. Moscow, A TEMP Publ. (in Russian).

[10] Shushkov, A.A. (2008) Explanatory and conceptual dictionary of the Russian language: 600 semantic groups: about 16500 words and set expressions. Moscow, AST Publ.

[11] Clarke D.C. et al. Punishment. Encyclopedia Britannica. 22nd December 2021. Available at: https://www.britannica.com/topic/punishment Available at: https://www.britannica.com/topic/punishment [Accessed 14th July 2022].

"imposing something unpleasant on a person as a response to some unwanted or immoral behavior or disobedience they have dislayed". From the standpoint of law, punishment is "an authorized imposition of deprivations for a guilty act, removal of something valued or infliction of something unpleasant or painful on the person being punished"[12].

It is obvious that dictionary entries in the interpretation of the main features of punishment reveal some unity in three fundamental points: 1) punishment is associated with adverse consequences; 2) punishment is imposed for violation; 3) it is not anyone who can impose (inflict) punishment, but a certain entity endowed with such a right. Combining these features, we get the following definition of punishment: a sanction, whereby a violator of social norms undergoes certain deprivation (adverse consequences) imposed by an authorized entity.

This definition is well correlated with the official legal positions of the Constitutional Court of the Russian Federation (hereinafter referred to as the Constitutional Court of the Russian Federation), where punishment is traditionally considered as a measure of responsibility established by the state for the commission of an offense (for example, in Resolution No. 5-P of March 07, 2017).

S.N. Borisov and A.S. Goryainova, noting that the problem of punishment is not only a practical, but also a theoretical issue, suggest a dynamic change in understanding punishment in concrete historical circumstances. In their opinion, punishment is good for the victim, the family, the deity, society and the offender himself (Borisov & Goryainova, 2019:40).

A.P. Kuznetsov and S.I. Kurdyukov believe that the institution of punishment occupies a special place among other legal institutions, since its target is restoration of social justice, correction of violators and prevention of offenses. Achieving the set goals allows to get a socially useful result, determine the permissible limits of the use of state coercion, identify areas for strengthening the rule of law, improve the system of punishment and, in general, increase the effectiveness of the institution of punishment (Kuznetsov & Kurdyukov, 2019:4).

A.S. Morin, thinking about the purpose and cycles of legal punishment in the production and consumption society, concludes that punishment in modern society is a method of correcting the gaps in social harmony. Moreover, punishment allows to identify the interrelationships of various elements of the repressive mechanism and define it as a means of establishing (perpetuating) inequality among people. Punishment is used by the State to create social order and can be used to control the life of an offender or a minority, which allows maintaining the status quo of society and preventing the minority class from threatening the hegemony of the dominant group (Maureen, 2020).

Some rooted in jurisprudence views proceed from understanding punishment as a legal structure of the public law system (primarily criminal and administrative) calling similar legal structures in private law negative sanctions or liability measures.

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[12] Punishment. New World Encyclopedia. Available at: https://www.newworldencyclopedia.org/entry/Punishment [Accessed 14th July 2022].

In international law, punishment is commonly referred to as negative sanctions against individuals who commit international crimes or crimes of an international nature (Stromov, 2016:216—224), while appropriate measures against States and international organizations are usually called measures of international legal responsibility or international legal sanctions or legal consequences (Resolution of the United Nations General Assembly No. 56/83 of December 12, 2001; Text of the draft articles on responsibility of international organizations provisionally adopted by the Commission: Official Records Sixty-third Session Supplement No. 10 (A/63/10)). Contrary to the indicated position, A.S. Rodionova attempts to formulate the definition of "legal punishment" as a special means of legal restriction, which is applied in a special procedural order for an offense committed at one of the stages of the implementation of legal responsibility for general and private prevention, as well as correction of the offense (Rodionova, 2010:19—20).

The functional purpose of punishment is convincingly formulated by S.S. Alekseev, who considers this phenomenon together with other protective legal means, as a carrier of "the force that is inherent in state-power coercion." These protective means create a kind of shield protecting society from undesirable (harmful, dangerous) behavior in the "legal duties — responsibility" system. Thus, it is assumed that certain behavior is excluded from the life of society, or (if it does occur) minimizes adverse consequences, making amends for harm and preventing its occurrence in the future. Punishment, along with other essential elements of legal force, characterizes its own value of law and dignity of the legal form, including mandatory normativity, clear fixation of prohibited behavior and measures of responsibility, as well as their security with state coercion, presence of procedural forms that guarantee the interests of various persons (Alekseev, 1995:170—172).

S. Raponi asserts that without a sovereign power that is able to enforce contracts under threat of punishment, people will always find good reasons to violate agreements and the rights of others if it suits their interests and when they can get away with it without sensitive consequences. At the same time, this opinion is based on the position of T. Hobbes, indicated in the work "Leviathan". The philosopher argues that it is impossible to oblige someone to do something contrary to his/her interests. And if a contract is concluded, then it will be irrational to fulfill it without a real guarantee of reciprocal performance. The threat of punishment gives everyone a reason to obey and creates confidence that others will follow the agreements concluded (Raponi, 2015:42).

We note the universal nature of punishment and find essential to improve and expand the proposed theoretical approaches to understanding this phenomenon. In particular, it seems reasonable:

— to recognize the possibility of imposing punishment both for violating prohibitions and for non-fulfillment of active duties (prohibition of inaction),

— to extend the term "punishment" to the forms of realization of any types of public and private legal responsibility, overcoming its artificial limitation by criminal and administrative legal relations,

— to take into account the inextricable dialectical connection between legal responsibility and punishment, expressed in their interpenetration and interdependence,

— to recognize punishment as the main form of realization of legal responsibility with specific characteristics and socio-legal impact,

— to take the punitive function of punishment as not the one and only and not always the main one, taking into account various branches of law and regulated relations,

— to additionally describe the causal relationship between punishment and illegal behavior, revealing the necessary information from the social circumstances that have developed in connection with the commission of illegal actions,

— to correlate the relationship of punishment to other coercive measures, including measures of legal responsibility, prevention, protection and security,

— to evaluate the methodology of research and methods of imposing punishments from the position of their social adequacy and applicability,

— in general, to audit the existing scientific views in the field of the emerging theory of punishments and contribute to the development of its conceptual provisions.

The qualitative development of the institution of punishment and its application is associated with an increase in the level of law-making and law enforcement techniques with an emphasis on the rules of social adequacy. Punishment should be neither excessively harsh nor excessively soft. Administrative discretion in the establishment of punishment should be limited in such a way as to reduce the risks of corrupt behavior and negligent attitude to their duties for those imposing penalties. At the same time, the sentencing procedure should ensure the possibility of prompt and comprehensive consideration of cases arising from violations, including equality of all participants in the process while respecting the presumption of innocence. The goal setting regarding legal consolidation and implementation of the norms of the institution of punishments also needs to be clarified. The main goal of combating punishment must be correlated with the goal of ensuring the necessary security for the state, society and individual. The danger of a single crime often does not go to any comparison with socially massive administrative offenses that have a destructive effect on public relations. In the end, it is not the fact of punishment itself that is important (its appointment and departure, fixation in official legal reporting and statistics), but the social result that is achieved by sanctioning the offender and the social ties violated by it. Thus, the factors of political bias, revenge, discrimination (including genocide), indifference and a number of other "human vices" should be "eradicated" from the targets of punishment, which, refracted through the consciousness of the lawmaker (law enforcement officer), are able to transfer punishment from the category of useful legal means to the status of harmful. As correctly indicated by the Constitutional Court of the Russian Federation in the ruling No. 1817-O of September 18, 2014 "It is not punishment at any cost, but the rights and freedoms of man and citizen that determine the meaning, content and application of laws ... as follows from Article 18 of the Constitution of the Russian Federation". The relevant provisions should be introduced into the structure of educational

standards (programs) of legal and similar fields of study and taken into account during organization and implementation of any measures aimed at enhancing legal culture and legal awareness of population.

Being initially legal, the category of "punishment" in law affects a whole layer of reality, has both objective (social) and subjective (psychological, mental) content that must be considered. From the point of view of instrumental theory of punishment in law, these are deprivations fixed in legal norms that can be applied by authorized entities to persons committing illegal acts and that form additional obligations for the latter to undergo appropriate compulsory deprivations. The question of whether to consider punishment as an institution of law (a system of norms), or as a form of realizing responsibility in a specific legal relationship, should be solved based on the set of research or practice-oriented goals.

Connection of punishment with other legal categories

The independence of punishment in the system of legal phenomena is determined by the presence of multiple connections and interactions between various elements of this system. We take the unconditional interactions with the largest legal entities (legal system, body of laws, system of legal regulation, etc.) inherently as a necessary foundation for assessing the direct and inverse links of punishment with legal phenomena of a more private order. So, we propose to differentiate the corresponding links into three groups:

— the first group: coherence with the closest legal phenomena that organizationally include punishment (state coercion, legal liability, protective legal regime, etc.),

— the second group: coherence with legal phenomena that functionally contribute to consolidation and implementation of punishment (legal norms, acts of duty, acts of law, legal relations, etc.),

— the third group: coherence with legal phenomena that have an auxiliary effect on consolidation and implementation of punishment (legal culture, legal awareness, legal education, etc.).

Coherence with the first group is of particular importance for understanding the essence of punishment, which is an integral part of the relevant legal phenomena. Thus, any punishment has a coercive potential, the implementation of which at the level of individual legal regulation may be inevitable and/or eventual. For example, all criminal punishments are implemented exclusively in a compulsory form, while individual tax, civil law and some other punishments (sanctions) can be carried out in a voluntary form, through independent actions of the violator to fulfill his/her obligation by paying a tax sanction, contractual penalty, etc.

The Constitutional Court of the Russian Federation, in its Decision No. 6-P of February 06, 2018, indicates that tax enforcement measures may have a punitive nature, being measures of legal responsibility (punishment). As early as in Resolution No. 115 of July 15, 1999, it formulated the legal position that fines are punitive in nature and are a punishment for a tax offense that is, for an unlawful guilty act

provided for by law, committed intentionally or by negligence. Paragraph 1 of Article 104 of the Tax Code of the Russian Federation No. 146-FZ of July 31, 1998 contains a provision on the obligation of a tax authority to offer a person held liable for committing a tax offense to voluntarily pay the amount of tax sanction. This leads to an unambiguous conclusion that there are cases when punishment can be implemented in a voluntary form.

With regard to civil liability, the supreme constitutional control body clarified that the general legal provisions including public liability are also applicable "to civil liability regulation to the extent that punitive sanctions established by the legislator by their nature also perform the public function of prevention" (Constitutional Court of the Russian Federation Resolution No. 28-P of December 13, 2016). Concerning civil liability for violations in the field of intellectual property, it was established that the amount of the latter may exceed the limit of admissibility (justice, equality) and lead to a deviation from Article 21 of the Russian Constitution of December 12, 1993 regarding the prohibition of punishments degrading human dignity (Resolution No. 28 of December 13, 2016-P, No. 40-P of July 24, 2020). Forfeiture to the state of property belonging to an employee and/or members of his/her family, whose legality has not been confirmed, in accordance with Paragraph 2 of Art. 235 of the Civil Code No. 51-FZ of November 30, 1994, was described in the Resolution of the Constitutional Court No. 26-P of November 29, 2016 as a special form of state coercion, to which general legal provisions on property liability in the form of penalty are applicable.

All types of legal liability must have a reasonable and deterrent potential to ensure the existing prohibitions and meet the main purpose of state coercion — preventive action to protect rights, freedoms and values of civil society and the rule of law (Resolution of the Constitutional Court of the Russian Federation No. 21-P of May 24, 2021). The basic principles of bringing to legal responsibility are applied to disciplinary responsibility (penalties), including penalty differentiation according to offense severity and other circumstances (Resolution of the Constitutional Court No. 31-P of December 06, 2012).

Coherence with the second group identifies the place of punishment in the general dynamics of legal regulation mechanism, including transition of punishment from the normative to individual level of legal regulation. Being part of the formal legal order, punishment is established in the sanctions of legal norms and is generally referred to as the "system of punishments", revealing coherence with such legal means as the norms of law, sources of law and normative acts of law interpretation. Specific legal relations demonstrate closer coherence of punishment with acts of law application (fixing the measure and type of punishment for specific offenders and individual stages of the process within court proceedings), as well as with acts of fulfillment of duties (serving punishment by offenders). Considering numerous functional elements in punishment implementation, a certain perspective of this phenomenon should be chosen as the subject of research and the designated components should be investigated in the appropriate relation. For example, addressing the system of criminal penalties inevitably entails analysis of criminal

norms and acts of their normative interpretation — resolutions of the Plenum of the Supreme Court of the Russian Federation.

Resolution No. 10 of July 18, 2008 of the Constitutional Court of the Russian Federation established that under the Federal Law On the Protection of the Rights of Legal Entities and Individual Entrepreneurs during State Control (Supervision) No. 294-FZ of December 26, 2008 assigning of the additional obligation on entrepreneurs to reimburse expenses incurred by state control (supervision) bodies "in connection with conducted relevant studies (tests) or examinations is, in fact, a ublic-law seizure of the offender's property, which, following this administrative measure, acts as an analogue of public-law punishment... in violation of the general legal principle *non bis in idem*". The above example revealed an incorrect connection between the system of punishment and the system of human rights measures resulted in the inclusion into a number of penalties the measure that legally has nothing to do with them. The reason for this situation, we believe, was the lack of a systematic understanding by the legislator of the differences between various measures of state coercion and consistent perception of the punishment system specifics from supra-sectoral positions. N.A. Vlasenko emphasizes that such risks as failures and defects negatively affect the achievement of the planned social result. The harm caused by violations of the principle of consistency of legislation is obvious (Vlasenko, 2019:139).

Coherence with the third group related to the legal phenomena that have an auxiliary (indirect) effect on consolidation and implementation of punishment seem to be the most complex and ambiguous for examination. Ideological (spiritual) in nature, legal awareness, legal culture and legal education (other phenomena) create conditions that promote or hinder achieving the tasks of establishing/consolidating, imposing and executing penalties. Hypothetically, the high level of legal culture of the population should have a positive impact on the institution of punishment efficiency. At the same time, the expected "effect" is possible only if high indicators of social adequacy of the punishment system and law enforcement practice based on the principles of equality, efficiency, inevitability and justice are achieved. The low level of legal culture of society, on the contrary, can be expressed in public approval of cruel and unfair punishments, contrary to common sense and the principle of humanism. For example, M.M. Babaev and Y.E. Pudovochkin correctly raise the issue of criminal punishment as a reflection of cultural attitudes in society. According to the authors, the introduction of penalties/sanctions for certain acts that have a dubious public danger often look like playing on the basic feelings (instincts) of certain citizens, their involvement for provocative purposes. Higher level of culture, including legal, will certainly have a positive impact on the development of the criminal punishment institution but this process cannot be accurately predicted, due to heterogeneity of culture and lack of a direct (linear) connection between culture and punishment. This connection is mediated mainly by political and professional-legal elements (Babaev & Pudovochkin, 2016:16).

The proposed differentiation of the interaction of punishment with other legal phenomena (means) can be used in legal practice to build a unified and coordinated system of requirements for the formation of punishment institution and methods (techniques) of its implementation.

The system of punishment in law as a theoretical and practical issue

The concept of *punishment system* in the legal and political context is frequently used. Speaking about the system of punishment, it is customary to understand it as a complex of interrelated and distributed (structured) types of sanctions qualified according to certain principles, enshrined in legal norms. In this regard, the punishment system refers to objective law and has a pronounced normative character. From the point of view of logic, the system of punishment is a collective concept, since it "suggests features of a certain set of elements that make up a single whole" (Kirillov & Starchenko, 2008:37). The functional characteristics of the system of means that contribute to imposition of punishment are usually described with the term *system of sentencing* (Dolgopolov, 2020:268—270), and contributing to their implementation with the term "*system of execution (serving) of punishment*" (Malin, 2011:80—83).

The thesis about the inextricable connection of the rule of law and the system of norms is unconditional, since the actual rule of law should become a natural result of the implementation of the internal (formal) law and order expressed in a coordinated set of norms. In this sense, the system of punishment is a particular manifestation (section) of the legal system, belonging to a certain set of norms. Thus, the sectoral set of norms containing punishment allows us to acknowledge the existence of a system of criminal penalties, administrative penalties, disciplinary penalties, etc. Differentiation of norms establishing punishment justifies sanctions in public and private law. In other words, there can be quite a lot of approaches to *systematize* them. In turn, the *official* system of punishment is usually understood as a *list* of types of specific penalties that can be imposed legally. They may be described in a random order, or according to criteria: from milder to more severe, from basic to additional, from previously introduced to later introduced and others.

To a certain extent, the system of punishment establishes the limits of variability when choosing a punitive measure for a particular offense. It should be noted that individual penalties cannot be applied to certain groups of offenders. For example, in Russia, only individuals can be subjected to criminal punishment (Article 19 of the Criminal Code of the Russian Federation). Detention in a disciplinary military unit, as a type of criminal punishment, is assigned exclusively to persons who have the status of a serviceman (Article 55 of the Criminal Code of the Russian Federation). Administrative suspension of activity, as a type of administrative punishment, can be applied exclusively to legal entities and individual entrepreneurs (Article 3.12 of the Code of Administrative Offences of the Russian Federation), and administrative expulsion from the Russian Federation is possible only in relation to a foreign citizen

or a stateless person (Article 3.10 of the Administrative Code of the Russian Federation).

In turn, absence of variability limits of sanctions in international law clearly demonstrates absence of any reasonable principles in imposing punishment on the main sovereign subjects — States. Thus, in February-March 2022, unprecedented arbitrary actions[13] were committed against Russia to freeze Russia's currency and gold reserves in foreign securities, seize state property abroad and apply other unilateral sanctions in violation of the established procedural forms, without participation of judicial authorities. These examples convincingly prove that the absence of any adequate systematization of sanctions in interstate relations can lead to absurd situations when the legitimate interests of sovereign States can be infringed by other States contrary to the norms of the most important international documents, including the Charter of the United Nations of June 26, 1945.

Any transformation of the punitive system in national law should be carried out considering the possible consequences. For example, exaggeration of the principles of *economy of criminal repression* or humanism, expansion of judicial discretion in imposing penalties *below the lowest* or even refusal to apply them (including with replacement by a judicial fine) are negative factors. Adversely, recommendations expressed by numerous lawyers to tighten up constitutional and legal responsibility, to clamp down on property responsibility of officials (sanctions at the junction of administrative, material and civil liability) and specific expansion of sanctions (otherwise) should be critically considered in terms of the possible effect on the punitive system. It is important to be aware of the Romano-Germanic roots of the Russian legal system, to remember the exclusive (and to some extent limited) role of punishment in maintaining law and order and its dependence on protected legal relations, and offenses entailing legal responsibility. The reduction in the number of erroneous and unfair cases of imposing penalties refers to one of the indicators of the effectiveness of the punitive system, which must be based on the principle of legal certainty.

The current law-making and law enforcement trends in the development of the punitive system in the Russian Federation, which need a general theoretical analysis, are mainly reduced to the following:

— tougher penalties in the field of state and municipal administration, as well as in the field of public order and security,

— further differentiation of penalties related to subtypes,

— extended number of illegal acts as factual grounds for imposing penalties, coupled with a greater abstractness of their formulations,

— consideration of recidivism for tougher penalties, including intersectoral links of responsibility (for example, cases where repeated administrative offenses are qualified as a crime and entail criminal liability).

[13] Guide to sanctions and restrictions against the Russian Federation (after February 22, 2022). Reference legal system "Garant". Available at: https://base.garant.ru/57750632/ [Accessed 04th July 2022].

From the standpoint of the general theory of law, it is necessary to develop universal criteria for differentiation of punishment and create, on this basis, a general theoretical model of the punishment system. The need for this kind of legal construction has been overdue for a long time and finds its factual confirmation in the practice of legal regulation of relations in national and international law.

Impunity and its impact on the legal institution of punishment

Punishment in law involves the imposition of certain deprivations on the offender. Adversely, impunity in law means lack or non-imposition of punishment on the offender, who must be subjected to it. Impunity is the antipode of punishment, which has its own legal content with objective (external) and subjective (internal) factors. The external factor of impunity characterizes situations where the mechanism for implementing legal responsibility does not work, or works ineffectively; as a result, some offenders receive milder punishments that do not correspond to the degree of social harmfulness of the acts they committed or avoid punishment in circumstances where this should not have happened. In a subjective sense, impunity means certain property of legal consciousness that allows a person to acquire confidence in the possibility of committing illegal actions (entailing liability under the law) without negative legal consequences for themselves. As K.A. Helvetius correctly notes in his treatise On the Mind, "the hope for impunity increases the number of crimes… leniency shown to a criminal is an unfair act towards society" (Helvetius, 1938:46). According to the philosopher, we are vain, arrogant and unfair whenever we can do it with impunity, plunging into the illusion of our exclusivity (Helvetius, 1938:63).

According to the opinion set out in the Guidelines of the Committee of Ministers of the Council of Europe on Eradicating Impunity for Serious Human Rights Violations of March 30, 2011, the facts of impunity for committed human rights violations cause additional suffering to victims, and combatting them relates to issues of justice for victims and prevention of new violations. Each State, represented by all its bodies and organizations, must eliminate loopholes in laws and gaps in legislation that contribute to impunity. Emphasis is placed on the mechanism of applying criminal and disciplinary measures, eradicating the culture of impunity by establishing appropriate liability, developing plans to combat discrimination that generates impunity and conducting effective investigations of cases of serious human rights violations.

Earlier, the UN Commission on Human Rights, in its resolution No. 2022/79 of 25.04.2002 Impunity established that persons who committed war crimes should be prosecuted or extradited.

The Constitutional Court of the Russian Federation describes impunity as a special legal circumstance, preservation of which casts doubt on the compulsory state-legal ensuring of proper order in various relations; moreover, it violates the principle of the inevitability of punishment, which requires a balanced law enforcement approach, for example, regarding recognition of violation as

insignificant (resolutions of the Constitutional Court of the Russian Federation No. 10 of April 06, 2021-P and No. 5 of February 17, 2016).

Scientific literature reflects the following author's approaches to the legal meaning of impunity:

— impunity as a negative result of legal regulation in the form of delinquency (R.A. Semenyuk),

— impunity is directly related to punishability and is opposed to it in a proportionate form corresponding to the principle of humanism (I.A. Podroikina,

— impunity is expressed in the non-involvement of a person to responsibility, his/her release from responsibility and can be fixed normatively arising in connection with the unreasonable expansion of the principles of humanism (A.M. Smirnov),

— impunity is a factor identified in legal practice and can manifest itself in relation to both specific cases and indefinite range of cases (P.V. Oskar),

— others.

The relevant reasoning leads us to the following ideas:

— impunity is the antipode to punishment and is in the same coordinate system as the categories of *legal responsibility* and *legal irresponsibility* (as discussed by A.S. Bondarev and D.A. Lipinsky in their works),

— impunity can manifest itself both in unjustified mitigation of punishment (including replacement of responsibility for a crime with responsibility for a misdemeanor), and in complete withdrawal of the offender from any negative deprivation,

— impunity is expressed in normative and individual legal senses that have a direct connection with the mechanism of implementation of legal responsibility and legal awareness,

— impunity is characterized by many forms of manifestation; combatting impunity requires not only law enforcement, but also law-making decisions, accompanied by qualitative normative and casual interpretation,

— impunity acts as a kind of indicator of defects in legislation and problems in law enforcement practice,

— impunity has a tendency to expand and narrow not only at the individual, but also at the social and mass levels,

— from the standpoint of criminology, legal statistics and sociology, impunity correlates with the crime (delinquency) rates,

— a comprehensive study of the problems of impunity requires addressing the issues of legal psychology in terms of formation and strengthening of the *sense of impunity*, which can cause contempt for mandatory principles and norms.

The primary approach and understanding of impunity in the general theory of law is seen by us in the context of private theory development of legal responsibility and punishment. It is obvious that the need to study the legal phenomenon of impunity exists objectively and is proportionate to the need for further study of punishment and punishability. It should be clear that any manifestation of the fact of impunity, regardless of the type and kind, should enter the zone of the closest attention of the subjects of law-making and law enforcement in order to overcome it. At the same

time, legislators and law enforcement officers at all levels need to be aware of the *boundaries of impunity*, above the limits of which punishment should inevitably occur, and below the limits — not to be applied at all. A good example of ignoring the lower limit can be the story of Curtis Wilkerson, who for stealing a pair of white socks from a store under the law of the state of California (taking into account two previous convictions) was sentenced to life imprisonment with a fine of $2,500[14]

D.K. Hadfield and B.R. Wangast see certain opportunities for the development of impunity in the traditional approach to exercising the state power. The researchers note that from this perspective, almost no attention is paid to the role of decentralized law enforcement measures in the form of collective punishment, when the latter is imposed by independent actions of persons who do not act in the official capacity. The refusal to recognize the effectiveness of the coercive mechanisms of reputation, boycott, retaliation and shame does not meet logic. It is necessary to seek and find legal ways to use appropriate decentralized punishment mechanisms for preventive actions before the direct use of state coercive forces, which may not be useful (Hadfield & Wangast, 2013:3—4).

The World Bank's 2017 report (World Development Report 2017[15]) consistently suggests that subjugation of people to the law without the threat of punishment is possible if they consider this law to be a product of a legitimate system. People can voluntarily follow the law also in the case when it establishes the rules of *neutral activity*, to which citizens do not have special regulatory attachments. A similar situation occurs when driving on the right or left side of the road, which is observed without fear of punishment and because it contributes to road safety.

The study of the legal content of the category of impunity meets the interests of the state, society and individual, contributes to clarifying the boundaries of illegal behavior and providing more accurate practice-oriented information about the principle of inevitability of punishment.

Prospects for the development of a general theory of punishment and the expected results (as a conclusion)

The theory of punishment is a promising for research element of the general theory of law, which is inherent to practice and having its own range of issues requiring a conceptual approach. As A.V. Malko justly notes, the general theory of punishment has not yet been developed (Malko, 2018:17). The sources of law at our disposal, materials of legal practice, doctrinal, reference, statistical and other sources clearly demonstrate keen interest in the category of *punishment*, as well as phenomena derived from it (legal punishment, impunity, etc.). The generalized information about the state of development of the theory of punishment prompts us to identify the most relevant prospects for its formation.

[14] Taibbi M. Cruel and Unusual Punishment: The Shame of Three Strikes Laws. Rolling Stone. 2013. Available at: https://www.rollingstone.com/ [Accessed 04th July 2022].
[15] World Development Report 2017: Governance and the Law. Washington, DC, World Bank, 2017. Pp. 83—90. Available at: https://www.worldbank.org/en/publication/wdr2017 [Accessed 04th July 2022].

The trends in the development of the institution of punishment, outlined in the research, find their refractions in various spheres of social regulation, revealing various *facets* of the phenomenon of punishment. In general, the historical patterns of the development of punishment in global practice demonstrate common vectors that manifest themselves in the following *transitions*:

1) from the sacred to the social nature of punishment,
2) from groundless punishments to justified ones,
3) from irrational to rational form of punishment,
4) from inhumane to humane direction of punishment,
5) from punitive to law-restoring purpose in imposing punishment,
6) from political to legal grounds in imposing punishment,
7) from purely solitary punishments to basic and additional punishments,
8) other.

We are forced to assert that modern realities of life show a widespread weakening of the legal component of punishment, which often turns into an instrument of political, economic and ideological struggle, contrary to its main function of ensuring law and order, building a state governed by the rule of law and civil society. Thus, the genesis of punishment reverses, returning it to the *basic* sacred, groundless, irrational, inhumane, politically biased and punitive guidelines. There is a lack of system in the legal consolidation of the institution of punishment and lack of a unified and consistent understanding of it by law enforcement subjects, disparity in views on the principles and mechanisms of imposing punishment, as well as on many other issues requiring solutions at the general theoretical level.

It is expected to achieve the following outcome of the conceptual study of the above issues:

Firstly, the definition of general features of punishment and specifics of the methodology of its study. In this block, it is necessary to investigate the issues of philosophical and legal understanding of the phenomenon of punishment, as well as ambiguity of its interpretations in the general theory of law. Methodological approaches to the study of legal punishment should be formed considering the dialectical unity of punishment and offense.

Secondly, identifying the place and role of punishment in the process of legal regulation in the context of relationship with the main means of legal regulation and interaction with negative sanctions, state enforcement and security measures.

Thirdly, the definition of the features of the interaction of punishment and legal responsibility. In this section, it is necessary to examine punishment as an element of the system of legal responsibility, a means of preventing illegal behavior and criterion for differentiating responsibility in objective and subjective law. Additionally, attention should be paid to the ratio of punishment *dimensionality* with the principles of legal responsibility.

Fourth, formulation of the most important theoretical problems of building a system of punishments and approaches to their resolution. This block implies the study of the punishment system in terms of development of the theory of systems, assessment of the parameters of *adequacy* as a socio-legal criterion relevant for

effectiveness of the punishment system. In addition, it will be necessary to look at the systemic connections and contradictions of punishments in public and private, as well as substantive and procedural law.

Fifth, highlighting the issues of understanding punishment in international law, based on peculiarities of interstate relations, starting with the issues of unification of the system of punishments and their classification and ending with assessing the political goals of punishment in international law and development of indicators of permissibility and restrictions in imposing punishments in international relations.

Sixth, outlining a comprehensive description of the current state and prospects for consolidation and implementation of punishment in the context of state-legal reality. To this end, it will be necessary to identify the specific features of influence of law-making and law enforcement positions and decisions on reformation of the institution of punishment. It seems essential to study the issues of identifying, imposing and executing punishments in judicial and prosecutorial practice. Particular attention should be paid to the trends in the development of the institution of punishment in modern Russian law and the prospects for further improvement of the institution of punishment in conditions of social instability.

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