

Infliction of Penalty

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Abstract

The article analyzed the the theoretical views of scholars on the general principles of sentencing and the circumstances in which they are taken into account, taking into account when sentencing, the provisions of the criminal law in this area, the decisions of the Plenum of the Supreme Court and developed proposals for improving the criminal law on the above issue.

Keywords: punishment, sentencing, form of guilt, aggravating and mitigating circumstances, act, damage, etc.

It is known that punishment imposed on a person who committed a crime is one of the main forms of criminal responsibility. When imposing a punishment on a person who has committed a crime, the court makes a legal assessment of the act he committed by qualifying it with the relevant article of the criminal law, summarizing the actions of the law enforcement agencies to uncover this act. It is for this reason that the institution of punishment is important in the theory of criminal law.

Sentencing is one of the important institutions of criminal law. The importance of this institution is that, through it, the courts usually assign to the defendant the most appropriate type and amount of punishment defined by the criminal law for committing a specific crime.

The peculiarity of sentencing is that it simultaneously follows the principles that exist in a number of areas of law. In particular, when imposing punishment, general law (legality, equality of all before the law), criminal law (humanitarianism, justice, democracy, responsibility for guilt, etc.) implementation on the basis of equality before the court, respect for the honor and dignity of the person, etc.) principles are applied.

Analyzing the category of "punishment" in criminal law, it is appropriate to pay attention to the fact that its main core is the term "punishment".

Analyzing the current legal documents, we can witness different approaches to the concept of "punishment". In particular, in Article 181 of the Labor Code, the concept of "disciplinary punishment" is defined as a type of punishment applied by the employer to an employee for violating labor discipline.

The concept of "administrative punishment" is used in Article 22 of the Code of Administrative Responsibility, and this concept includes educating the person who committed an administrative offense in the spirit of observing and respecting the laws, as well as preventing the same offender from committing a new offense, both by himself and by other persons. It is explained in the form of a

measure of accountability used for the purpose.

Importantly, the concept and purpose of "punishment" is defined in the current Article 42 of Chapter 10 of the Criminal Code, which deals directly with punishment. In this case, only the criminal law does not clarify what the punishment is, that is, whether it is a criminal punishment or another punishment.

This, in turn, can lead to misunderstandings or confusion regarding the application of the concept of "sentence" specific to criminal law. For example, it remains unclear what punishment (administrative, disciplinary or other) is meant.

In addition, the fact that the same punishments inherent in several laws are provided for in the legislation can also cause misunderstandings as to whether they belong to criminal law or another area of law. For example, in Article 23 of the Criminal Code, a fine is listed as a type of administrative punishment. Article 43 of the Criminal Code provides for such a punishment. At the same time, the penalty is defined in Article 181 of the Labor Code.

The lack of clarification of the concept of punishment and the absence of a uniform approach in this regard in the legislation may cause misunderstandings regarding the entities that apply them.

In particular, according to the criminal law, a fine can be imposed only by a court. In accordance with the Law on Administrative Responsibility, other relevant state bodies have the authority to impose fines in addition to the courts.

Therefore, it is not clear whether only courts or other state bodies should be understood when talking about bodies that impose fines as a punishment.

In our opinion, there are the following ways to eliminate such misunderstandings:

- a) abandon the concepts of "disciplinary punishment" in the labor law and "administrative punishment" in the law on administrative responsibility and replace these words with other alternative terms (for example, disciplinary measure, administrative measure or other);
- b) replacing the term "punishment" with the term "criminal punishment" in the criminal law.

Many theoretical views on the concept of punishment have been presented by national and foreign legal scholars. In addition, the current Criminal Code defines the concept of punishment. In particular, in accordance with Article 42 of the Criminal Code, punishment is a coercive measure applied by a court judgment on behalf of the state to a person found guilty of committing a crime and consists of depriving the prisoner of certain rights and freedoms provided for by law or limiting them.

Taking into account that the concept of punishment is clearly defined in the law, we will try to analyze the term of punishment without going into the theoretical analysis of this concept in detail.

Despite the fact that many studies have been conducted by legal scholars on the issue of sentencing, some issues related to the concept of sentencing are still controversial among researchers and law enforcement practitioners. This, in turn, puts before scientific researchers the task of a comprehensive study of issues related to punishment both theoretically and practically.

At this point, it should be noted that there is still no unified approach to the concept and structure of the institution of sentencing in criminal law. This is reflected in the following. While some scholars use the symbols characteristic of the term punishment in defining the concept of punishment, other scholars do not talk about the symbols of punishment at all. For example, the lawyer R.S.Burganov uses the main categories related to sentencing and special rules for sentencing when he defines sentencing.

A group of national scholars stated that sentencing is a complex socio-legal process, which is a form of responsibility for the committed crime, and it is a power that belongs only to the court.

Analyzing the opinions of legal scholars, it should be noted that we fully agree with the approach that the punishment should be imposed only by the court. After all, in Article 54 of the current Criminal Code, it is clearly established that the punishment for committing a crime can only be imposed by the court in accordance with the provisions of the General Part, within the framework specified in the Article of the Special Part of the Criminal Code.

At the same time, it should be noted that the above definition does not clarify the issue of what the complex socio-legal process of sentencing is manifested in.

In the works of other national scientists, we can find a different approach in their definitions of the concept of punishment. For example, some scientists emphasize that the concept of punishment is the application of the punishment (compulsory measure) provided for in the article of the Special Part of the Criminal Code against a person found guilty of committing a crime in accordance with the law.

Unlike the scholars mentioned above, these scholars do not pay attention to the fact that the punishment is a punishment directly imposed by the court. In addition, it should be noted that in our opinion, there is no need to use the words "according to the procedure established by law" in the mentioned definition. Because, in our opinion, the use of relative words when defining a certain theoretical concept not only fails to reveal the true nature of the explained term, but also causes difficulty in understanding this term for the student.

It is proposed to define the concept of criminal punishment as follows:

imposition of criminal punishment - application of a coercive measure provided for by the criminal law for the act of a person who has committed a crime, which has been formalized by the court in accordance with the procedure established by the criminal procedural legislation.

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