

Artículo de investigación

The penal nature of the punishment and its purposeУГОЛОВНО-ИСПОЛНИТЕЛЬНАЯ ПРИРОДА НАКАЗАНИЯ И
ЕГО ПРЕДНАЗНАЧЕНИЕ

Finalidad de la naturaleza penal y del castigo

Recibido: 29 de mayo del 2019

Aceptado: 6 de julio del 2019

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Nasirov N.I.⁸³**Abstract**

The paper formulates an understanding of the penal nature of the punishment, based on the essential aspect of the subject of the penal law and its positive impact on it. It is proved that the defining property of its subject is the public danger, serving the sentence of the convicted person. The provisions and norms of the penitentiary law, by means of which the convict is influenced, are corrective in nature. The proposed content of the legal nature allowed us to reveal the criterion of the system, the branch of law under consideration, the organic interrelation of its provisions and norms with solving problems and achieving goals. Such a criterion is the degree of public danger of a person serving a sentence imposed by the court, executed by the relevant criminal enforcement agencies. On the one hand, it materially "connects" the branch of law under consideration with criminal law, on the other, it gives them independence. The study of the problem of the penitentiary function of punishment, taking into account the revealed nature of its penitentiary, has made it possible to state that punishment is valuable in the system of provisions and norms of criminal executive law. All of this is aimed not at punishment, but at ensuring its serving and execution, within the framework of criminal-executive legal relations. At the same time, it is not punishment, but its essence in the form of a good, specified by the court's verdict by type, volume, time, is served and executed. The content of this process, its focus form a criminal-executive function, based on a certain degree of social danger of the convict.

Аннотация

В работе сформулировано понимание уголовно-исполнительной природы наказания, основывающееся на сущностном аспекте предмета уголовно-исполнительного права и позитивном воздействии на него. Доказывается, что определяющим свойством ее предмета выступает общественная опасность, отбывающего наказания осужденного. Положения и нормы уголовно-исполнительного права, посредством которых осуществляется воздействие на осужденного, по своему характеру являются исправительными. Предложенное содержание правовой природы позволило выявить критерий системности, рассматриваемой отрасли права, органическую взаимосвязь ее положений и норм с решением задач и достижения целей. Таким критерием выступает степень общественной опасности лица, отбывающего назначенное ему судом наказание, исполняемое соответствующими уголовно-исполнительными структурами. Он, с одной стороны, материально «соединяет» рассматриваемую отрасль права с правом уголовным, с другой, придает им самостоятельность. Исследование проблемы уголовно-исполнительного предназначения наказания, с учетом выявленной его уголовно-исполнительной природы, позволило констатировать, что наказание ценно не само по себе, а в системе положений и норм уголовно-исполнительного права. Каждая из

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The "job" of the function is to stop the public danger of the convict as much as possible, creating the conditions for achieving the goal of the criminal executive legislation to correct the criminal.

Key words: The criminal - executive nature of the punishment, the purpose of the punishment, the degree of public danger of the convicted person, the criminal executive tools, the tasks, the goals of the criminal executive legislation, the prevention of crimes, the correction of the convicted person, the threat of punishment.

них и вся их совокупность направлены не на наказание как таковое, а на обеспечение его отбывание и исполнение, в рамках уголовно-исполнительных правоотношений. При этом отбывается и исполняется не наказание вообще, а его сущность в виде блага, конкретизированного приговором суда по виду, объему, времени. Содержание этого процесса, его направленность образуют уголовно-исполнительную функцию, основывающуюся на определенной степени общественной опасности осужденного. «Работа» функции- максимально купировать общественную опасность осужденного. Создавая, таким образом, условия достижения цели уголовно-исполнительного законодательства по исправлению преступника.

Ключевые слова: уголовно-исполнительная природа наказания, предназначение наказания, степень общественной опасности осужденного, уголовно-исполнительный инструментарий, задачи, цели уголовно-исполнительного законодательства, предупреждение преступлений, исправление осужденного, угроза наказанием.

Resumen

El documento formula una comprensión de la naturaleza penal de la pena, basada en el aspecto esencial del tema de la ley penal y su impacto positivo en ella. Está comprobado que la propiedad definitoria de su sujeto es el peligro público, que cumple la sentencia de la persona condenada. Las disposiciones y normas de la ley penitenciaria, por medio de las cuales el condenado es influenciado, son de naturaleza correctiva. El contenido propuesto de la naturaleza legal nos permitió revelar el criterio del sistema, la rama de la ley en cuestión, la interrelación orgánica de sus disposiciones y normas con la resolución de problemas y el logro de objetivos. Tal criterio es el grado de peligro público de que una persona cumpla una sentencia impuesta por el tribunal, ejecutada por los organismos de ejecución de la ley pertinentes. Por un lado, materialmente "conecta" la rama de la ley bajo consideración con el derecho penal, por el otro, les da independencia. El estudio del problema de la función penitenciaria del castigo, teniendo en cuenta la naturaleza revelada de su penitenciaría, ha permitido afirmar que el castigo es valioso en el sistema de disposiciones y normas del derecho penal ejecutivo. Todo esto no apunta al castigo, sino a garantizar su servicio y ejecución, en el marco de las relaciones legales criminal-ejecutivas. Al mismo tiempo, no es un castigo, pero su esencia en forma de un bien, especificado por el veredicto de la corte por tipo, volumen, tiempo, se cumple y se ejecuta. El contenido de este proceso, su enfoque, forma una función criminal-ejecutiva, basada en un cierto grado de peligro social del convicto. El "trabajo" de la función es detener el peligro público del condenado tanto como sea posible, creando las condiciones para lograr el objetivo de la legislación penal ejecutiva para corregir al criminal.

Palabras clave: La naturaleza penal - ejecutiva del castigo, el propósito de la pena, el grado de peligro público de la persona condenada, las herramientas ejecutivas criminales, las tareas, los objetivos de la legislación ejecutiva penal, la prevención de delitos, la Corrección del condenado, la amenaza de castigo.

Introduction

Criminal-executive theory, as applied to punishment, is traditionally operated with categories, mostly developed in the theory of criminal law; the nature and purpose of punishment. They have been extensively and thoroughly studied and continue to be studied in the theory of criminal and criminal executive law.

Despite the involvement of a significant number of scientists, both classics and modernists in this process, doctrinal unity was not achieved either in terms of the nature of punishment or in its goals (Grishko, 2017; Tagantsev, 1902; Poznyshchev, 1904; Dementiev, 1981; Zubkova, 2002; Sundurov, 2005; Ragimov, 2013). To a certain extent, this situation is explainable, since their content must be filled with the branch of criminal law, which is formed taking into account the nature and objectives of punishment, and criminal executive law is created on their basis (Seliverstova, 2017). In this connection, without an understanding of their criminal law content, it is not possible to understand the essence of criminal executive law, the mechanism for its implementation in order to solve criminal executive tasks and achieve goals. Criminal law properties of punishment, its goals (Beccaria, 2008; Karpets, 1961; Baranova, 2014; Belyaev, 1963; Maltsev, 2007; Noy, 1962; Ignatov et al., 1970; Belyaev, 1970; Naumov, 1996; Nikiforov, Shlyapochnikov, 1962; Remenson, 1965; Struchkov, 1978; Verina, 2015) determine the direction of serving a convicted sentence, carried out by the penitentiary system of Russia.

It turns out that the criminal law properties of punishment and its purpose, with reference to criminal-executive law, form one phenomenon. Legal properties of punishment without goals do not have their own penitentiary essence, and goals without criminal law properties of punishment are not essential (Stanford Encyclopedia of Philosophy...). The content of the presented thesis forms one of the circumstances of the relevance of identifying the criminal-executive nature of the punishment and establishing its purpose.

Research methodology

The research methodology is primarily based on dialectics, the basis of which consists of categories: unity and struggle of opposites, quantity and quality. The essence of the first category (unity) is expressed, on the one hand, inherent to the convicted person, serving a

sentence, the dignity of the person, on the other hand, the public danger. At the same time, they are in a state of contradiction, and depending on the quantity of one or another property, a new quality is formed: either the convict becomes even more socially dangerous, or the content of his dignity in one way or another "crowds out" his public danger. Other methods were widely used: system analysis and synthesis; induction and deduction; formal-logical and system-structural; comparative legal. The operation of these methods allowed to consider criminal and criminal - executive law as independent branches of law. However, in terms of the implementation of the goals of punishment and the criminal-executive legislation of Russia, they form a single toolkit of positive impact on the convict. In addition, their implementation revealed the possibility of correlating the developed understanding of the criminal executive punishment purpose with the existing penitentiary theory of a number of foreign researchers.

Results

The category "legal nature" is known to legal science. Substantially, it is filled with properties that allow to distinguish the essential aspects of one legal phenomenon from others. With regard to individual branches of law, the legal nature makes it possible to assess the social and legal identity of the provisions, norms, identify the mechanism by which tasks are solved, the goals of the branches of law are achieved. It is necessary to take into account that some industries that are in system interaction with other industries often operate with the same toolkit. This gives rise to the appearance of the identity of their legal nature, but it is not. Their legal nature is different and is determined by the legal nature of each of the branches of law that use them. For example, the punishment is a part of criminal law and at the same time, it operates with the penal law. However, interacting with each other, they are independent. This suggests that the legal nature of the punishment of each branch is specific.

In the theory of criminal law, the issues of the legal nature of punishment have been investigated (Razgildiev, 2017), but so far, there are no works devoted to the study of the criminal executive nature of punishment.

In the second half of the twentieth century, this phenomenon became the subject of reflection.

Thus, in particular, N. A. Podrukov, the largest theoretician of the considered branch of law, set himself the goal of clarifying the legal nature (Struchkov, 1984) of the provisions on the procedure and conditions for the execution of criminal penalties not related to corrective labor measures on convicts (*Ukaz Prezidiuma Verhovnogo Soveta SSSR...*). At that time, it was not included in the structure of the Fundamentals of the USSR Corrective Labor Legislation, or in the Union Republics' corrective labor codes, and acted independently. This gave him a certain theoretical and enforcement ambiguity, it seems that for its removal the scientist turned to clarifying its legal nature. The author did not formally present his own understanding of the legal nature, and the mechanism by which it is established is absent in the work. However, the author's appeal to its identification, the subsequent assessment of the above-mentioned documents give grounds for concluding that N. A. Struchkov represented significant aspects of the legal nature of the corrective-labor legislation of the country.

These considerations actualize the study of the named phenomenon, including in terms of its understanding, the mechanism of detection.

What is the concept of the legal nature of any branch of law? We believe that the legal nature is the content of the provisions and norms, determined by the essential aspect of the subject matter of the relevant branch of law, forming its part of the mechanism for solving the problems of the legal branch in order to achieve its goals.

The presented shows that any branch of law, which is part of the legal system of the state, must be filled with provisions and norms, each of which and their entire set are characterized by a single legal nature. Considering this circumstance, the industry is set with the corresponding tasks, and goals are formed that are ensured only by those provisions and norms that are determined by the essential aspect (property) of the subject of the industry.

The stated understanding of the legal nature (hereinafter, the nature, unless otherwise specified) allows us to define the concept of the criminal executive nature of punishment. It can be represented by the following formula. The criminal executive nature of the punishment is due to the public danger of the convicted (criminal) serving a specific punishment imposed by the court: by type, amount, time during which it is executed by the institutions and bodies of the criminal executive system of Russia in the framework of solving the tasks penal legislation to achieve its goals. The formulated definition

consists of the following signs: the criminal is condemned by the court to punishment, specified by type, scope, time; the convict is serving a sentence and this is carried out by the institutions and bodies of the penitentiary system; the execution of punishment is carried out in the framework of solving the tasks of the criminal-executive legislation of Russia to achieve its goals; the conditionality of the listed signs, the public danger of the convict, recorded by the punishment imposed by the court.

Next, consider these signs. The offender is condemned by the court to punishment. The named sign forms the physical essence of the subject of the criminal-executive law. It is worth noting that in the theory of criminal-executive law, the subject is filled with various contents, and traditionally with a combination of social relations. In this capacity, this is called "relations aimed at the implementation of the relevant substantive norms of criminal law in accordance with the verdict (definition, decision) of the court, in the process of execution and serving of criminal penalties, other measures of a criminal law nature, as well as provision of correctional and resocial pressure on convicted persons and trial of convicts" (Kashuba et al., 2010). The position of the represented and other scientists on the issue under consideration (Koneger, Rybak, 2010) reflect the object of the penal law as it is based on public relations. The subject of the industry is a benefit, on the basis of which corresponding relations are formed between it and other people, relevant structures, society, and the state. In addition, we must understand that from the standpoint of the "work" of provisions, norms of the legal industry, the subject is primary, while the object is secondary. The object is a consequence of the impact of the provisions and norms on its subject. For example, consider the relationship of serving a convicted person, the punishment imposed on him by the court and its execution, which are recognized by scientists as part of the subject of criminal-executive law. These relations do not exist alone, they arise from the moment of the influence of the relevant provisions and norms of the criminal-executive legislation on the consciousness and will of the convict, who has a certain status: duties and rights. The primacy of the subject means that the social effectiveness of the impact of the criminal-executive law on the consciousness and will of the convict directly implies his behavioral act: positive or negative, more often both. Proceeding from which, the corresponding relations forming the object of the industry will be formed.

The subject is not just a convicted person, but a convicted person to a particular type of punishment, its scope and time. We are talking about the penalties stipulated by the criminal law of Russia. Most of them are differentiated by volume and time. They are designed for two categories of convicts: those who committed crimes of different nature and degree of public danger; crimes of the same nature as the public danger, but differing from each other by the degree of public danger of the persons who committed them.

Another sign is the serving of a sentence by a court sentenced to him and his execution by institutions and bodies of the penitentiary system of Russia (hereinafter, unless otherwise specified, its execution). Essentially, it is composed of two components: the serving of a sentence and its execution. The law does not fill them with content, does not relate them to each other, however, the law represents them in the reverse order: execution — serving punishment. It seems that they are not resolved by the penitentiary theory either. At least in theory there is no definition of serving the sentence, however, there is an understanding of its execution, which is associated, including with the implementation of the criminal law (Koneger, Rybak, 2010). The ratio of these phenomena is most often determined by a judgment about their organic connection in the provision of the penitentiary process. Claiming at the same time that the serving is addressed to convicts, and execution to representatives of the bodies and institutions that execute the punishment (Blinov, Nasirov, 2016). We believe that the establishment of their relationship is unlikely to be productive, without first filling the content of both components, since it reflects the essence and direction of the criminal-executive law.

What is the substantive essence of serving the sentence and its execution?

Departure is a physiological and psychological perception of a convicted person depriving part of his rights, freedoms, legitimate interests, forming the content of a particular type and amount, the punishment imposed by the court for the crime he committed. It is executed by the institutions and bodies of the Russian penitentiary system in order to correct it and prevent the commission of new crimes by solving the problems facing the criminal-executive legislation of Russia.

Execution of punishment is the real provision of deprivation of a convicted part of the specified

rights, freedoms, legitimate interests that form the content of the punishment imposed by the court for the crime, taking into account its public danger in order to correct it by solving the problems facing the criminal-executive legislation of Russia.

The formulated definitions of serving the sentence and execution of punishment show their similarities and differences. Similarity is seen in punishment. It is not just about the specific type and amount of the punishment imposed by the court, but what constitutes its content. In particular, we are talking about a partial, but specific, deprivation of the rights, freedoms, legitimate interests that belonged to the convict before the crime was committed. The named similarity objectively connects them into a whole, but does not yet form a single criminal-executive process. It is formed through various substantive features serving and execution. In order to serve the sentence, it is important to have a physiological and psychological attitude (perception) of the convict to the deprivation arising from the punishment that is carried out by the institutions and bodies of the penitentiary system. At the same time it is important to emphasize that the execution will comply with the criminal-executive principles only in cases when it is carried out in order to correct the convict. The basis for such execution is the maximum stopping of the public danger of the convicted person, carried out by solving the tasks facing the criminal-executive legislation of Russia. Which makes it possible to really provide the content, serving the convicted punishment, its correction.

It turns out that the core of punishment serving is the physiological-psychological attitude (perception) of the convict. The physiological aspect of perception reflects the process of a convicted person's life without those rights, freedoms, legitimate interests of which he is deprived. The psychological aspect of perception is based on the consciousness and will of the convict. The essence of consciousness is expressed in the assessment of proportionality: deprivation arising from the punishment imposed to him by the court; criminal executive measures ensuring the deprivation of a convicted person of his rights, freedoms and legitimate interests. Evaluation of their focus on correcting it by solving criminal-executive tasks. The willful moment is determined by the desire of the convicted person to support the execution of the punishment served by him, not by the desire to do this, by indifferent attitude to this process.

The stated understanding of the substantive aspects of serving and executing punishment allows us to consider them, on the one hand, as independent sides of a single criminal-executive process, each of which is filled with "its" content, on the other, as phenomena causing each other. Consideration of these circumstances, in our opinion, forms the methodological basis of fruitful serving-execution of punishment.

The object of research of this work does not allow to evaluate other scientific positions existing in the theory of criminal-executive law regarding the serving-execution of punishment. Nevertheless, we will speak out one by one; it seems to be a fundamental aspect. In theory, many authors characterize the execution, the serving of punishment through the prism of punishment (Koneger, Rybak, 2010). Often the punishment itself is associated with punishment (Seliverstova, 2017). We believe, regardless of the content of the socio-economic, political model of a democratic state, it is unacceptable to consider punishment through the prism of punishment, including through the goals of intimidation and retribution (Michael, 2017). It does not matter how the modern theory interprets these goals, since their content was filled for centuries, and it was negative for humans. To a certain extent, we share the position of some foreign researchers, stating that the goals of punishment cannot be torture and torment (Materni, 2013).

Kara is the punishment of bygone eras; at one time, it acted as the measure to the greatest extent, reflecting the attitude of the state towards the person in general and towards the person who committed the crime. The current criminal, criminal procedure, criminal executive legislation of Russia does not operate with this category. Moreover, the criminal correctional legislation of Russia by its form, name, content a priori excludes punishment. This is completely justified, since the Constitution of Russia, on the basis of which branches of law, including the criminal executive, are formed, postulates that a person, his rights and freedoms have the highest value. The state is obliged to recognize, respect and protect these values (*Konstituciya Rossijskoj Federacii...*). Many authors, including foreign ones, support this thesis (Spehnyak, 2017; Aleida, 2018).

The next sign is the solution of the tasks facing the criminal-executive legislation to achieve the goals of punishment. Two aspects characterize presented feature. On the one hand, it reflects the objectives of the penal legislation, on the other

hand, its objectives. Both aspects are realized in time, have a strictly defined direction. At the same time, neither the tasks nor the goals result in a specific result. The focus of the tasks to be accomplished and the goals achieved is the positive result of the "work" of the penal legislation. The validity of this judgment is that the law, regardless of the industry, can provide only legal regulation or legal protection of the relevant relations in the areas approved by the society, the government. The effectiveness of legal regulation and protection does not depend so much on the content of a particular branch of law, but on the socio-economic characteristics of the state, its focus on social morality, the physiological and psychological characteristics of an individual, its attitude to values shared by society.

The correlation of tasks and goals should be considered as a single process: tasks to be solved should always be aimed at achieving goals. In accordance with Part 2, Article 1 "Purposes and tasks of the criminal executive legislation of the Russian Federation" of the PEC RF, the tasks are: regulation of the procedure and conditions for the execution and serving of sentences, determination of remedies for convicts, protection of their rights, freedoms, legal interests, rendering them assistance in social adaptation (*Ugolovno-ispolnitel'nyj kodeks...*). We do not think that the definition of remedies for convicts can be viewed as a task. This is one of the mandatory institutions considered the field of law. This and other institutions alone can not be tasks. In our opinion, the implementation of institutions, including the institution of remedies, are elements of the task of regulating the order and conditions of serving and executing sentences.

In the theory of criminal and penal law, there is no single judgment on the relationship of criminal executive legislation with criminal legislation in terms of criminal punishment. Although the importance of its establishment, in our opinion, is extremely high. N.A. Struchkov expressed the opinion that punishment as a phenomenon is filled with criminal law; it also fills with the main features the content of its specific types necessary for the appointment or release from punishment. While labor legislation develops the content of specific punishments (Struchkov, 1984; Remenson, 1980) position of N.A. Struchkov reflected the criminal law in force at the time. It did not operate with the specific essence of criminal punishment; it recognized it as a punishment for the crime committed, but with the aim of correcting and

rehabilitating convicts, preventing the commission of new crimes by convicts and others (*Ugolovnyj kodeks Rossijskoj Federacii...*). The criminal legislation of that period, recognizing punishment as a punishment, proceeded not only from the punishment imposed by the court to the guilty, but also the possibility of its “development” during the execution of the punishment by the relevant authorities (Noy, 1962). However, some scientists, for example, A.E. Natashev limited the content of the punishment only to criminal law (Natashev, 1962). The current criminal legislation of Russia includes in the concept of criminal punishment its essence, fills with the criminal law content most of the types of punishments that form the punitive system. In this case, the legislator does not include in the general concept of punishment, in some of its types of punishment. This is another evidence of the absence of punishment in it. In addition, we must understand that in terms of its content, punishment can only be criminal law. It is appointed by the court, taking into account, including the public danger of the convicted person. The type of punishment, its content, scope, time of its serving and execution by the penal system of Russia are determined by the court based on the public danger of the act and the person who committed it. The court considers that the assigned type of punishment, its scope, time of serving and execution is minimally enough to relieve the public danger of the convicted person.

This allows us to conclude that the criminal legislation with the legislation of the criminal executive are correlated as independent, including in relation to each other, branches of substantive law.

We suppose that the criminal and penal law “work” within the framework of their subject and method, solve their tasks in order to achieve “their” parts of goals. Criminal legislation, as is known, has two tasks: the protection of the individual, society, state, peace and the security of mankind from criminal encroachment; prevention of new crimes. Both tasks are accomplished through criminal law restraining individuals from committing crimes. Protection is carried out by non-personified withholding of individuals who are obliged to refrain from committing crimes under threat of criminal punishment.

In domestic and foreign literature, crime prevention is considered in two directions: General crime prevention and special

(individual) crime prevention (Yakushin, 2018; 29. Michael, 2017).

In our opinion, the prevention of crimes is solved by a personalized deduction from the commission of a new crime by accused persons, convicts, persons with a conviction that has not been lifted or not canceled by means of the threat of punishment. The warning is differentiated into types: in relation to persons who have committed crimes but are exempted from criminal liability; who is sentenced, who is serving it real or conditional, in whole or in part; having not removed or not canceled criminal record (Razgildiev, 2004).

The presented understanding of the task of preventing the commission of crimes shows that it is mainly carried out by criminal-legal relations, while its individual types can be realized simultaneously with criminal-executive relations. In this regard, the following question may arise: Does this not contradict the goals of criminal punishment and the goals of criminal-executive legislation? We believe that does not contradict. Criminal legislation has formulated three goals before punishment: the restoration of social justice, the correction of the convict, the prevention of the commission of new crimes. Unlike the objectives, the goals are set not for the criminal law in general, but only for the punishment, which indicates that all three goals are directly tied to the punishment. However, this does not mean that the criminal law fully has the necessary mechanisms to achieve the goals set before the punishment.

We believe that the restoration of social justice is carried out by mechanisms of both criminal and penal legislation, the prevention of crimes is mainly criminal law, while the correction of the criminal is mainly criminal law.

Formally, it can be assumed that the purpose of punishment is the restoration of social justice is ensured by the fact that the guilty person was sentenced. This is to a certain extent confirmed by the absence of this goal in the criminal executive legislation of Russia. This suggests that the criminal-executive legislation does not have a mechanism to achieve this goal, it is laid down in criminal legislation. This, in particular, may be about the principle of justice (Article 6 of the Criminal Code of the Russian Federation) and the provisions of Chapter 10 “Purpose of punishment” of the Criminal Code of the Russian Federation.

The named mechanism creates the impression that only it guarantees the provision of the target in question. In fact, it is not. After all, nothing would have changed without this goal. Since, the principle of justice and the provisions of Chapter 10 of the Criminal Code of the Russian Federation are focused on justice, including the sentencing.

The foregoing suggests that the restoration of social justice as one of the goals of punishment is substantially broader in content. It is not limited to the appointment of a fair punishment. For example, the question remains of the "dividends" received by the perpetrators of the crime he committed. Social justice implies their removal to the state budget, the restoration of the status of the person who has suffered from the crime committed. Their implementation may well be carried out while the convicted person is serving a sentence and will largely depend both on the convicted person serving the sentence and, on the authorities, and institutions that carry it out.

The considered goal, in our opinion, has another direction, its essence is to exclude punishment from the understanding of punishment. Punishment is depriving a criminal of the rights, freedoms and legitimate interests that belong to him forever or for a certain time. Such content of punishment supplants the traditional understanding of punishment in the form of a punishment, which gave punishment upon its appointment, execution, the generally accepted punitive sense. Justice also implies not only the appointment of punishment, its serving, execution based on a single criterion that determines, on the one hand, the criminal law nature, and on the other, the criminal executive nature of the punishment. Criminal legal nature is manifested on two levels: in the definition of the concept of punishment; upon appointment of the perpetrators. Criminal executive nature is reflected in serving and execution of punishment.

The first two levels are material and are carried out under criminal law. The third level is also material and is provided by the criminal-executive legislation. The implementation of the goals of punishment and the criminal-executive legislation presupposes both the criminal law and criminal-executive nature.

It is interesting to note that the authors who developed the scientific-theoretical model of the General Part of the new criminal-executive code of Russia under the leadership of V.I. Seliverstova include the goal of restoring social

justice in the goals of the penal legislation (Seliverstova, 2017).

The presented content of social justice as the purpose of punishment naturally substantiates the presence in criminal law not only of the institution of sentencing, but also of the institution of exemption (full or partial) from punishment, and even of the institution of exemption from criminal liability. The current interpretation, the considered objective, gives the purpose of punishment, which means that it is fully served and executed as the only socially just one, which can be interpreted as a punishment.

The second goal, set before the punishment by the criminal law in the form of the correction of the convict, cannot be achieved within the framework of the criminal law relations. There is no mechanism in criminal law by which it could be implemented. However, to achieve this goal, it is extremely important that the punishment imposed, subject to serving by the convicted person and enforcing it by the bodies and institutions of the penitentiary system, is fair (ch.1st.60 "Common beginnings of sentencing" of the Criminal Code). Only a justly appointed punishment within the framework of the principle of justice (Article 6 "Principle of Justice" of the Criminal Code of the Russian Federation) creates the basis for a positive impact on the convicted person, including in the part of his subsequent correction. Thus, the criminal law stage of ensuring social justice is being implemented.

The next goal is to prevent the commission of new crimes. It was noted above that the prevention of new crimes is carried out by the criminal law mechanism by solving the criminal problem of the same name. The foregoing gives grounds for the conclusion that the prevention of new crimes by convicts serving sentences is relevant for both criminal and criminal executive legislation. This means that keeping a convict from committing new crimes is carried out by solving the corresponding criminal law task and is performed by a personified threat of punishment to the convict.

Once this threat is personified, it implies legal control over the behavior of the convict during the period of serving his sentence. This control is carried out, including the penitentiary system, the legal basis of which is the penitentiary status of the convict. Penal control is part of the process of serving a sentence executed by the penitentiary system. It turns out that the goal of crime prevention is implemented by the criminal law mechanism, which is formed mainly by the

criminal and partly by the criminal executive legislation. The duty of the convicted person to abstain from committing a new crime under threat of punishment is ensured by criminal law, and the duty to control the behavior of the convicted person is implemented by the criminal executive law. That is, each of the industries fulfills its part of the goal of preventing new crimes.

Other persons carry out the prevention of crimes under the criminal-executive legislation in two directions: the prevention of the commission of new crimes by convicts; prevention of the commission of crimes. As noted, the penal legislation serves the purpose of crime prevention through legal control over the behavior of the convict. It is carried out, taking into account the criminal executive status of the convict. Control implies a positive impact of the penitentiary system on the convict. It involves taking into account the physiological and psychological attitude of the convict to serving the sentence and its execution, identifying its negative and positive behavioral acts, their relief and development. Such a situation, based on the public danger of the convicted person, raises or lowers the degree of his readiness to commit a new crime, and serves as a basis for mitigating or strengthening the status of the convicted person. It should be assumed that the status enhancement cannot go beyond the status that the convict is endowed with in accordance with the penalty imposed by the court. The status is enhanced in order to reduce the risks of a new crime and to continue the process of positive impact on the convicted person.

In our opinion, the purpose of preventing the commission of crimes by other, not convicted persons is not justified. Restraining such persons from committing crimes is accomplished by solving the criminal law task of protecting the individual, society, state, peace and security of mankind from criminal encroachment. It is carried out by a non-personified threat of punishment to persons who have not committed crimes, part of which are persons whose conviction is lifted or canceled. A non-personalized threat keeps individuals from committing crimes, thus solving the criminal law task of protecting the relevant legal benefits.

Correction of the convicted person is the goal of both criminal punishment and criminal executive legislation of Russia. The presence of the stated purpose in the criminal-executive legislation is explicable. A criminal serving a sentence for a crime is socially dangerous, which requires a

positive impact on him in order to neutralize him as much as possible, thereby bringing his consciousness and will to the level of a moderately statistical law-abiding person. It is more difficult to understand the existence of this goal in criminal law, which does not directly form the legal mechanism for regulating the procedure for the execution and serving of sentences.

We believe that the presence of the considered purpose in criminal punishment is of a fundamental nature. It testifies that the criminal law, including the institution of punishment, as a whole, and its separate types do not possess punitive properties. On the contrary, in order to exclude the possibility of imparting punishment to the nature of punishment, the legislator in criminal law explicitly stated the goal - the correction of convicts. Thus, the criminal law, excluding punishment from punishment, recognizes the correction as a mandatory requirement for a convicted person who is serving an executed sentence. Consequently, the purpose of the correction directly determines the content of the criminal punishment, which is mandatory for the penal system.

Correction of a convicted person is a goal solved by serving a convicted person of a punishment executed by the penitentiary system, taking into account all the criminal executive legislation of Russia. All its provisions and norms in their content should be aimed at achieving this goal, which is confirmed by law. Part 2 of Art. 9 "Correction of convicts and its fixed assets" of the PEC of the Russian Federation states: "The main means of correction of convicts are: the established procedure for the execution and serving of punishment (regime), educational work, socially useful work, general education, vocational training and social impact". The correction is the material essence of the entire penal legislation. If we consider the penitentiary function as an obligation to serve a convicted sentence to be executed by the penitentiary system, then its organic part will be the correction of the convict. Other goals, including the prevention of crimes, are automatically included in it, but in terms of their content and focus, other goals should "work" on the correction of the convict. In this regard, it is difficult to agree with the position of A.Ya. Grishko, who claims that the goals of correction and prevention of crimes are identical (Grishko, 2017).

And finally, the last sign-conditionality, the purpose of punishment, his serving and

execution, their focus on correcting the convict and preventing them from committing new crimes, by solving the problems facing the criminal-executive legislation of Russia, the public danger of the convict.

The named sign suggests disclosing an understanding of the social danger of the convict. In the criminal law theory, the public danger of a person who committed a crime is considered as harm done by a person who is obliged to refrain from causing it, reflecting its malignancy and creating the danger of them doing new harm, legal goods protected by criminal law (Razgildiev, 2008). The threat of a criminal committing a new crime and forms the "own" content of public danger. This conclusion does not seem to require detailed evidence. It suffices in this regard to refer to the purpose of punishment. It remains true in cases where no goals are set before the punishment, or goals are set that are not formally related to the correction of the convicted person and the prevention of the commission of new crimes. In addition, in these situations, objectively punishment should deter the offender from committing a new crime.

Where does the social danger of the convict flow from? Its carrier is a specific crime committed by a specific person, characterized by specific mitigating and aggravating circumstances, other personal characteristics of the convicted person. These circumstances, when sentencing him, are investigated by the court from the standpoint of the nature and extent of the harm caused by the act constituting the specific *corpus delicti*, of the "dividends" obtained by the perpetrator. These and other circumstances, it seems, allows the court to decide on the degree of public danger of the convict, expressing his readiness to commit new crimes. The measure of this readiness is the specific punishment imposed by the court. At the same time, the concreteness of the punishment imposed on the convicted person is expressed by the type of depriving him of certain rights and freedoms (Garner, 1999), legitimate interests, their scope and time during which these deprivations must be performed. As William Glanville rightly wrote about this, punishment in all its forms is a loss of rights or advantages as a result of a violation of the law.

This, to a large extent, characterizes the social danger of the convict to punishment, which acts as a material property of the criminal-executive law.

The revealed and characterized substantial aspects of the signs forming the understanding of

the criminal executive nature of the punishment justifies the conclusion. Each provision and norm (in its own part) forms the penitentiary mechanism of the PEC of Russia regulating the serving of a convicted sentence by the bodies and institutions of the penitentiary system, taking into account its public danger, in order to correct it (loss of convict), carried out in the framework of the tasks of the PEC RF.

The essence of the penitentiary nature of the punishment can be expressed by the formula: the regulation of the serving, the executed punishment, is carried out in the direction of the loss of the public danger to the convicted person. The revealed penitentiary nature of the punishment makes it possible to determine the content of the subject, the branch of legislation under consideration. In this capacity, we believe that convicts serving sentences are executed by the Russian penitentiary system with regard to their public danger in order to correct them are carried out in the framework of solving the tasks of the PEC of the Russian Federation. The subject is structured into the following elements: the convict (individual); his public danger; the punishment he is serving; the system of bodies and institutions that executes the sentence served by the convicted person; direction of execution of punishment to the correction of the convict.

It seems that the subject of the PEC of the Russian Federation covers the types of punishments regulated by the criminal law and executed (unconditionally or conditionally) by the bodies and institutions of the penitentiary system. It should be borne in mind that not all types of criminal punishments are executed by the named system. There are two such types. This is a fine (art. 46) and deprivation of a special, military or honorary title, class rank and state awards (art. 48 of the Criminal Code of the Russian Federation). The first type of punishment is regulated by the criminal-executive legislation of Russia (Art. 31-32 PEC RF). Bailiffs who are not part of the system of institutions and bodies that execute criminal penalties execute the fine. The second - in terms of its execution is not regulated at all by the PEC of Russia. In this capacity, the court that issued the corresponding sentence is in favor, and the official who assigned the title, class rank, or awarded the state award fulfills the requirements. It turns out that the named types of punishments are not executed by the bodies and institutions of the penitentiary system. Only they, speaking as one of the subjects of criminal-executive relations, are endowed with the corresponding criminal-executive status, which allows to

implement the legislation on the correction of the convicted person in the framework of solving the tasks of the PEC of the RF. If the fine and deprivation of a special, military or honorary title, class rank and state awards are performed not by the penitentiary system, but by bodies and institutions not related to it, they are not covered by the subject matter of the branch of law.

We believe that are not covered by the subject of criminal executive law and compulsory medical measures. The conclusion is based on the fact that the penitentiary system, in terms of serving a convicted sentence, deals with socially dangerous persons who need social correction through a positive impact on them. This implies mentally disturbed consciousness and the will of the perpetrators. "Defective" consciousness and the will of socially dangerous persons, requiring compulsory medical measures, does not allow achieving goals within the framework of solving the tasks of the PEC of the RF. To a large extent, therefore, the legislator has formulated the special objectives of compulsory medical measures, achieved though compulsory, but still medical measures.

In our opinion, it is unreasonable to include in the subject in question a different measure of criminal law in the form of confiscation of property. Essentially Art. 104.1, 104.2 of the Criminal Code of the Russian Federation regulating the confiscation of property includes information on "criminal" property, by virtue of which it does not constitute the property of the person owning it. Confiscation is subject only to property owned by the person from whom it is confiscated. The transfer of such property is more correctly called a withdrawal and should be carried out by bailiffs.

Judicial fines are also not subject to penal law. It is not a punishment and is not directly related to it. This testifies that the person to whom the obligation to pay is imposed is not a carrier of public danger requiring punishment. Therefore, in this regard, there is no need to correct the convict and to prevent him from committing a new crime. In this situation, the prevention of the commission of new crimes is carried out by solving a criminal law task, within the framework of criminal relations. Practically for the same reasons, it is impossible to include in the named subject compulsory educational measures imposed on minors exempt from criminal responsibility or punishment in the framework of Part 1 of Article 92 (Exemption from punishment of minors) of the Criminal Code.

Conditional conviction, all types of postponement of the execution of punishment, conditional early release from punishment are part of the subject matter. Such persons are carriers of public danger, although it is reduced to less typical, nevertheless, the person needs correction and special control of the penitentiary system necessary to prevent him from committing new crimes. The convicted person is certainly not serving a sentence, he is serving another criminal-corrective measure imposed on him, which is carried out by the structural units of the criminal-executive system of Russia. The essence of this measure is to impose upon convicts a set of responsibilities through which their specific status is formed. It allows the penitentiary system to control their behavior both from the standpoint of reducing their public danger, that is, correcting, and from the position of preventing them from committing new crimes.

Having decided on the criminal executive nature of punishment, we turn to the study of the problems of the purpose of criminal punishment in the criminal executive legislation of Russia. In theory, this aspect is practically not comprehended. Often, it is represented in a simplified way: criminal-executive legislation implements criminal punishment. We think that this is not entirely true. Undoubtedly, the punishment, its types, including their content, (which covers itself and goals), the minimum and maximum amounts defined by criminal law.

However, they are indifferent to the penal legislation. The convicted person, who is serving, appointed by the court, the specific type of punishment, its specific scope, and the specific time of its serving, taking into account its public danger, is relevant for legislation. Is it possible to assess such a situation as the criminal execution of criminal punishment? We believe that it is impossible.

The implementation of criminal legislation, including the provisions and norms on punishment, is carried out by the relevant criminal law mechanisms within the framework of criminal law relations. The same is true for the penal legislation. It has its own legal mechanisms, goals, tasks, implemented by criminal-executive relations. It does not implement the punishment, but fulfills the specific deprivation of a part of his rights, freedoms, and legitimate interests that the convicted person is serving in a certain amount for a certain period, taking into account his public danger.

The execution of the punishment serving implies that the convict is not only legally (by court sentence), but in fact deprived of a certain part of the values belonging to him. What is the use of the appropriate penitentiary toolkit, which forms the mechanism of the penitentiary function? Its defining element is the criminal-executive status of the convict, which extends to the regime, educational work, socially useful work, general education, vocational training and positive social impact. Their content is determined by the type of deprivation of the convicted rights, freedoms, legitimate interests established by the court, taking into account the public danger of the offender. At the same time, the deprivation of the guilty of specific values and the tools by which it is executed both as a whole and separately have a strictly defined direction, determined by the function of the criminal-executive law. Its essence is to oblige the convict to serve the sentence executed by the relevant structures of the penitentiary system in the direction of stopping his public danger.

Penitentiary tasks are solved through the function: in particular, regulating the procedure and conditions for the execution and serving of punishment, the implementation of remedies for the convict, the protection of their rights and freedoms, and the social adaptation of convicts. The listed tasks, both as a whole and separately, are aimed at correcting the offender, preventing the commission of new crimes. The goals of the criminal executive legislation are the social consequences of the execution of the deprivations that were imposed by the court as a punishment on the criminal. Their material basis is the public danger of the person punished by the court. Its maximum arrest also forms the process of its correction. Therefore, the very content of the deprivation of the guilty of specific values, the content of the criminal executive instrument, by means of which the punishment is being served, the upper and lower limits are oriented to the level of public danger of the criminal. In all cases, the punishment, the toolkit of its execution should be necessary and minimally sufficient for the implementation of the designated function. On the one hand, they should not cast doubt on the dignity of the convicted person (Kemmer, Wüst, 2017), that is, to proceed from the fact that every person is a carrier of creation, morality, and the rights and freedoms that are natural for him (Razgildiev, Nasirov, 2016).

On the other hand, they should allow for a real functional influence on the consciousness and will of the criminal in order to maximize his public danger.

At the same time, it should be understood that the toolkit used in the execution of the sentence to be served by the convicted person should not expand, narrow, increase or decrease the amount of deprivation directly implied in the punishment assigned to him. The explanation for this lies in the fact that the content of the type of punishment, its scope, and time of execution is differentiated by criminal law and is individualized by a court sentence, taking into account again the criminal law. For example, punishment in the form of correctional work involves serving the work performed and withholding part of the salary, established by a court sentence, but in the range from 5 to 20%.

The tools for the execution of this type of punishment, including the regime, cannot change the criminal law content of the works themselves. True, we must bear in mind that the criminal law allows for a change in the content of the punishment, the regime of its execution. This refers to the punishment of imprisonment. The law, as is known, has determined that deprivation of liberty, regardless of whether it is appointed for a fixed term or for life, is isolation of a convicted person from society by sending him to a colony: settlements, educational, medical-correctional facilities, correctional facilities, general, strict, special treatment, to jail. It turns out that the substantive essence of deprivation of liberty is manifested in the isolation of the convicted person from society and the time of this isolation. At the same time, law determines neither the nature of isolation nor its degree. The fact that in one degree or another they are taking place can be guessed from the position of the legislator on the direction of the person sentenced to imprisonment to a colony, medical correctional institution, prison. Isolation in them from society is differentiated by nature and degree. To some extent, this assumption follows from Article 58 (appointment of a type of correctional institution condemned to imprisonment) of the Criminal Code of the Russian Federation. It contains criminal law criteria, according to which such types are assigned to convicts of this kind. However, neither it nor the other criminal law provisions directly regulate the isolation of a convicted person from society by nature and degree. This situation gives rise to the conclusion that the isolation of a convicted person from society does not have his criminal law content, it is differentiated by the regime of execution, the sentence served by the convicted person in the form of imprisonment, established by the criminal-executive law. This is confirmed by the fact that the criminal law provides for the

procedure for setting types of punishment, including imprisonment (Article 60 “General beginnings of sentencing” of the Criminal Code of the Russian Federation), but does not regulate the order of differentiation of imprisonment into types, based on the nature and degree of isolation of the convict. These aspects are also not directly solved by the criminal law of Russia.

The foregoing suggests the need for legislative differentiation of the degree of isolation of the convicted person from society in relation to the punishment of imprisonment.

Conclusion

Thus, the purpose of the punishment in the criminal-executive law is expressed in the implementation of the criminal-executive function of the execution, the convicted person is deprived by the court sentence, in the form of a specific punishment, taking into account its public danger. The essence of the function being implemented is expressed in maximizing the social danger of the convicted person in order to obtain a social result in the form of his correction. In this regard, the position of some foreign scientists who see the function of social therapy in punishment is appropriate (Kett-Straub, Streng, 2016).

We believe that the criminal-executive legislation of Russia, formed taking into account the presented understanding of the criminal executive nature of punishment and its purpose, is able to more productively implement its part of the constitutional postulate about the highest value of a person, his rights and freedoms. In this regard, the scientific-theoretical model of the General Part of the New Criminal Executive Code of Russia, developed by members of the REC (Research and Education Center) of the Law Faculty of Lomonosov Moscow State University under the supervision of V. I. Seliverstov, is of theoretical and legislative interest (Seliverstova, 2017).

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