



THE APPLICATION OF THE PRINCIPLE OF JUSTICE TO CRIMINAL LAW

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Annotation. This article is devoted to the analysis of the application of the principle of justice to criminal law. Based on the study of foreign experience and scientific and theoretical views, the main problems of applying the principle of justice to criminal law were investigated. Based on the results of the analysis, relevant conclusions were drawn and proposals were developed.

Keywords: the principle of justice, criminal law, sentencing, law, sanction

The principle of justice, enshrined in the norms of criminal law, is especially clearly manifested in judicial practice in the process of sentencing for a crime. In this sense, when imposing punishment, it is of extremely important practical importance to establish its values and intervals based on the principle of justice.

It goes without saying that “liability, criminal liability under the SER is unacceptable and disproportionate” [1], “it is carried out only on the grounds established within the framework of criminal law” [2]. “The activity of the sentencing court is an activity based on the law. Strict observance of criminal law, i.e. the requirements of the general and special part of criminal law, an accurate assessment of the criminal actions of the accused and strict observance of the sanctions established by law is a prerequisite necessary for the court to properly impose punishment” [3].

The fair establishment of the limits of the amounts of punishments is understood as the establishment of the amount of punishment provided for by the sanctions of the criminal law in respect of a person found guilty by a court, based on the requirements of the principle of justice enshrined in Article 8 of the Criminal Code of the Republic of Uzbekistan.

“The imposition of fair punishment is the main tool in the fight against crime and serves to correct the accused, prevent them from committing crimes, as well as for general and special prevention. In addition, it should be noted that unconditional compliance with the requirements of the law in the application of criminal penalties is one of the most important tasks of justice, and only the fair application of punishment serves as a guarantee of the development of democratic institutions in the field of human rights” [4].

With regard to the implementation of the principle of justice in setting the limit on the amount of penalties for a crime, it can be said that “when drafting and applying criminal sanctions, justice must perform two functions: a) set an upper limit of punishment that can be recognized as appropriate to the crime; b) influence the establishment of a lower limit of sanctions” [5].

Fair coordination of the boundaries of the amount of punishment should be carried out taking into account the nature and degree of public danger of the crime, the circumstances of its commission and the identity of the perpetrator [6].

Ensuring consistency between crime and punishment some authors completely reject both the possibility of coordinating the nature and degree of public danger of unrelated crimes, and the possibility of a comparative assessment of crime and punishment. As a result, it is concluded that a just punishment is an appropriate punishment [7].

In our opinion, it is inappropriate to compare the complexity of cognition of certain phenomena and the impossibility of their full comprehension and comparison. There is no exact data on the degree of comparative severity of various crimes, on the required ratio between the relevant crime and the amount of punishment imposed for it. In general, such assessments and comparisons are carried out in one way or another both in criminal law and in judicial practice.

Firstly, in the current criminal legislation, all crimes are classified by severity (Article 15 of the Criminal Code of the Republic of Uzbekistan). This classification was created by the legislator for a reason, it is based on ideas about the value system in society.

Secondly, the types of punishments are also classified in the system of punishments in the law according to their severity (Article 43 of the Criminal Code of the Republic of Uzbekistan).

Thirdly, with an increase in the level of public danger of crime, the amount of punishment should also undoubtedly be increased.

Here the question arises to what extent the size of punishments should be increased and reduced, as well as what is the ratio between the size of punishments for various crimes.

First of all, the legislator, based on the general features of the nature and degree of public danger of the corresponding type of encroachment, must determine the most serious type and the maximum amount of punishment (in other words, the upper limit) that can be recognized as appropriate for this type of crime. In accordance with this, the upper limits of the amounts of penalties for other crimes are established. After that, the second task is set – to determine the minimum amount of punishment, its lower limit.

It is also necessary to consider the issue of determining the average amount of penalties when achieving the intended purpose of the study.

In this case, it means measuring the degree of public danger of a particular crime and, accordingly, establishing an average coefficient of the size of a particular type of punishment in the sanction. The average amount of punishment is already an indicator of the average level of public danger of a crime, while each crime is determined by law taking into account the average, general level of public danger [8].

The determination of the average amount of punishment in the sanction is necessary in order that 1) it acts as a legal criterion of the nature and degree of public danger of a particular type of crime in the sanction; 2) helps to assess the significance of the typical signs characterizing the type of crime and compare them; 3) it is presented by the court as an approximate amount of punishment for which It should be based on the individualization of punishment.

V.L.Chubarev contributed to the theory of measuring the correspondence of the level of public danger of crimes to the sum of punishments by suggesting the use of quantitative research methods for this. “Only the use of quantitative assessment methods is able to keep the “stone scales” in the hands of the legislator, which make it possible to approximately assess the severity of prohibited acts and impose punishment for their commission within reasonable and fair limits” [9]. This legal scholar developed a methodology for measuring the

level of public danger of crimes based on data on the identity of their perpetrators, and then, based on a much larger set of criminal cases, compared the measurement results with punishments imposed by the courts. At the same time, this method does not proceed from the establishment of punishment in the criminal law, but from its purpose.

V.L. Chubarev uses the concept of “average sanction” in his research. “The average sanction” is determined by an intermediate value between the lower and upper limits of the amount of punishment established by criminal law. For example, if the punishment in the form of imprisonment is set for a period of two to six years, then the average sanction (in annual terms) will be four years. For this reason, it is probably more correct to talk about the average amount of the fine.

Thus, the indicator of the average amount of punishment helps in calculations to determine the amount of the established punishment in terms of its severity.

D.O. Khan-Magomedov proposed using exposure to quantify the degree of public danger of various types of crimes and, thus, to find the optimal amounts of sanctions for them [10].

S.V. Borodin also suggests making the most of the possibilities of computer technology for structuring and systematizing sanctions, noting that this allows to some extent reduce the influence of the subjective factor in establishing sanctions in the law [11].

In agreement with these authors, we want to emphasize that computer tools cannot fully cover all the information and circumstances related to the work and the perpetrator in each particular case, that the fate of a person is decided in this place, that each case may have separate and unique irreversible, colorful aspects. Also, computer tools are not able to assess the mental, moral and spiritual aspects of the issue in a criminal case. That is why we believe that when contacting a computer on this issue, it is necessary to determine in as much detail as possible the information necessary for the calculation.

Using the average values of the amounts of fines established by law allows you to get a general idea of the severity of the sanctions.

It should be noted that in cases specifically provided for by criminal law, the limits of sanctions are changed.

The amount of punishment prescribed by law is influenced by:

- 1) the presence of certain circumstances mitigating punishment, in the absence of circumstances aggravating punishment (Articles 55 and 56 of the Criminal Code of the Republic of Uzbekistan);
- 2) the stage of an unfinished crime (Article 58 of the Criminal Code of the Republic of Uzbekistan);
- 3) repeated commission of a crime (Article 32 of the Criminal Code of the Republic of Uzbekistan). The proportionality of the amounts of various punishments in alternative sanctions is also one of the unavoidable conditions for a fair determination of the amounts of punishments.

That is, the problem of ensuring that the amounts of various punishments correspond to alternative sanctions must be solved at the level of criminal law lawmaking.

In particular, the amounts of fines and other types of punishments should be agreed upon – imprisonment, correctional labor, etc. Larger terms of more severe punishments should correspond to a larger fine, and vice versa.



A conditional ratio between different punishments can be established for a fair fine for crimes in a certain amount (for example, ten minimum wages correspond to one month of imprisonment, etc.). After all, Article 61 of the Criminal Code of the Republic of Uzbekistan establishes a conditional ratio of the terms of certain types of punishments with imprisonment to determine their duration by adding punishments.

Sanctions under the articles of the Criminal Code of the Republic of Uzbekistan can be drawn up taking into account the same approach. For example, the greater the maximum amount (term) of punishment in the sanction, the greater the amount of alternative punishment in proportion to this. In practice, this reduces the likelihood of equal punishment for crimes of varying severity.

It should also be noted that in order to fairly establish the type of economic punishment – a fine in criminal law, the correct calculation of its size is a very troublesome matter. In this regard, it is noteworthy that a proposal put forward in the scientific literature to supplement the article of the criminal law defining the penalty in the form of a fine with the amount of a fine, which specifies two types of this punishment: 1) a fine calculated in relation to the amount of damage caused by a crime; 2) a fine calculated in relation to the amount of income illegally obtained in as a result of the crime committed [12]. We believe that such measures would be fair in relation to economic crimes.

The question of the fair establishment of ranges of penalties is inextricably linked in criminal law with the question that a judge can consider cases at his discretion.

It should be noted that all sanctions of the Criminal Code of the Republic of Uzbekistan are relative-specific (with a certain interval in the amount of punishment). In order for the court to be able to take into account the degree of harmfulness of each attribute of a criminal act and a crime in general, all criminal law norms of the current legislation provide for relative-specific sanctions, the range of penalties of which is quite wide. This is not only a positive breakthrough, but also a disadvantage based on the processing of legislation. On the one hand, it allows for fair sentences, taking into account all the circumstances of the case, and on the other hand, it allows for unfair, lesser or greater punishment.

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