

The System of Criminal Penalties According to Legislations of Russia and Countries of the European Union: A Comparative Legal Aspect

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Abstract: *In this paper we consider the system of criminal penalties in the Criminal Code of the Russian Federation in comparison with the systems of criminal penalties under the criminal law of the European Union countries. The author touches upon some questions of the classification of types of punishments in the system of punishments, principles of the penal system as well as distinctive features of the system of penalties provided by the Article 44 of the Criminal Code of the Russian Federation.*

Key Words: *Criminal Law; Criminal Code; System of Punishment; Classification of Penalties; Main Punishment; Additional Punishment; Principles of Construction of Penal System; the European Union; the Russian Federation.*

Introduction

The institute of punishment is one of the basic institutes of the criminal law of any state. The question of the system and the types of punishment is solved in each country differently, according to its own historical traditions. But an effective system of punishment can only be based on the experience of developed foreign countries, including the countries of the European Union.

The criminal legislation of some states does not only establish a system of punishment, but it also establishes the system of other criminal law measures. These measures differ from punishment for its intended purpose and the reasons and purposes of use. For example, the Criminal Code of the Republic of Poland establishes the criminal law measures,¹ the Criminal Code of the Slovak Republic defines protective measures.²

¹ KUZNETSOVA, N. F. ed. *The Criminal Code of the Republic of Poland*. 1st ed. Minsk: Theseus, 1998, pp. 15-22. ISBN 985-6454-06-9 [КУЗНЕЦОВА, Н. Ф. ред. *Уголовный кодекс Республики Польша*. 1. изд. Минск: Тесей, 1998, с. 15-22. ISBN 985-6454-06-9].

² *Act No. 300/2005 Coll. of 20 May 2005 the Criminal Code* [The Criminal Code of the Slovak Republic] [online]. 2015. 220 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/3763/file/Slovakia_CC_2005_en.pdf.

The criminal legislation of England, Greece, Spain, Germany, Italy, Romania, and some other countries of the European Union provides for security measures.³ The Criminal Code of the Russian Federation provides for other measures of a criminal-law nature. The Russian system of other measures of criminal-law nature includes only two types of measures – compulsory medical measures and confiscation of property, and thus it is not extensive.

As a rule, these measures are provided by the Criminal Code for insane individuals, alcoholics and drug addicts, minors, and other categories of persons who have committed socially dangerous acts. They can be connected with the imprisonment (restriction of freedom) or not. For example, according to the Article 96 of the Criminal Code of Spain there are following measures involving the deprivation of freedom: a) internment in a psychiatric institution, b) internment in a detoxification center, c) internment in a special education center; the following are measures not involving deprivation of freedom: a) barring from a profession, b) deportation of aliens not legally resident in Spain, c) probation, d) family custody – the person subject to this measure shall be subject to care and surveillance by a relative so appointed, who accepts custody, who shall implement this in liaison with the Penitentiary Parole Board Judge and without detriment to the schooling or working activities of the individual under custody, e) deprivation of right to drive motor vehicles and mopeds, and f) deprivation of right to own and carry weapons.⁴ According to § 61 of the German Criminal Code the measures of rehabilitation and incapacitation are: a) mental hospital orders, b) custodial addiction treatment orders, c) detention for the purpose of incapacitation, d) supervision orders, e) disqualification from driving, and f) disqualification from exercising a profession. The first three of these measures are related to

³ KOZOCHKIN, I. D. ed. *Criminal Law of Foreign Countries: General Part*. 1st ed. Moscow: A. S. Griboedov Institute of International Law and Economics, 2001, pp.104-564. ISBN 5-88774-057-4 [КОЗОЧКИН, И. Д. ред. *Уголовное право зарубежных государств: Общая часть*. 1. изд. Москва: Институт международного права и экономики имени А. С. Грибоедова, 2001, с. 104-564. ISBN 5-88774-057-4]; and DODONOV, V. N. *Comparative Criminal Law: General Part*. 1st ed. Moscow: Yurлитinform, 2009, p.271. ISBN 978-5-93295-470-6 [ДОДОНОВ, В. Н. *Сравнительное уголовное право: Общая часть*. 1. изд. Москва: Юрлитинформ, 2009, с. 271. ISBN 978-5-93295-470-6].

⁴ *Organic Act No. 10/1995, Dated 23rd November, on the Criminal Code* [The Criminal Code of Spain] [online]. 2011. 197 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/5160/file/Spain_Criminal_Code_Codigo_Penal.pdf.

deprivation of liberty, the rest is not connected with deprivation of liberty.⁵

Such measures are in the legislation of different countries of the European Union similar. In contrast to the penalties, these measures are aimed at neutralizing the persons those have committed socially dangerous acts as well as at prevention of illegal behavior in the future.

It should be noted that the criminal legislation of some states of the European Union provides for a system of penalties for natural and legal persons (legislation of the Netherlands, France, Lithuania, and some other countries). The system of penalties for legal entities usually establishes fine and other penalties affecting property interests of legal entities. For example, according to the Article 131 (37) – 131 (39) of the Criminal Code of France, penalties for felonies and misdemeanors incurred by legal persons are: fine, dissolution, prohibition to exercise directly or indirectly one or more social or professional activities, placement under judicial supervision, permanent closure or closure, disqualification from public tenders, etc.⁶

The system of penalties for individuals in Russia and in the European Union will be reviewed in more detail.

The presence of a system (list of types) of punishment

The main element of the penal system is the list of penalties established by law. But there is no system or list of punishments in the criminal law of some states of the European Union. Criminal penalties are established in separate articles of the legislative acts (laws of England, the Criminal Code of Austria, the German Criminal Code, the Swedish Penal Code, etc.).

The Criminal Code of the Russian Federation as well as most of the sources of criminal law in the European Union countries create a system of penalties. It's just a list of the types of penalties (the Criminal Code of Russia, the Criminal Code of the Republic of Poland, the Criminal Code of the Czech Republic, the Criminal Code of the Republic of Hungary, the Criminal Code of the Republic of Bulgaria, the Criminal Code of the Slovak

⁵ *The German Criminal Code* [online]. 2015. 163 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/3235/file/Germany_CC_1971_a_mended_2009_en.pdf.

⁶ *The Penal Code* [The Criminal Code of France] [online]. 2005-10-12. 132 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/3316/file/France_Criminal%20Code%20updated%20on%2012-10-2005.pdf.

Republic, the Criminal Code of the Republic of Slovenia, etc.) or a list which defines a classification of sentences on various grounds.

Classification of the types of punishments

One of the most common classifications presents division of all kinds of punishments on primary and secondary (the Criminal Code of Finland, the Penal Code of the Republic of Estonia, the Criminal Code of the Republic of Latvia, the Criminal Code of the Republic of Romania, etc.). For example, the Article 36 of the Criminal Code of the Republic Latvia “Forms of Punishment” states that one of the following basic punishments may be adjudged against a person who has committed a criminal offence: deprivation of liberty, community service, or a fine. In addition to the basic punishment, following additional punishments may be adjudged: confiscation of property, deportation from the Republic of Latvia, community service, fine, restriction of rights, and probationary supervision.⁷

It should be noticed that if penalties in articles are not divided into basic and advanced, these penalties are divided into primary and secondary. For example, the system of penalties is established in the Article 44 of the Criminal Code of the Russian Federation and in the Article 45 “Basic and Additional Penalties” it is fixed that compulsory work, corrective labour, restriction of military service, compulsory labour, arrest, service in a disciplinary military unit, deprivation of liberty for a fixed term, deprivation of liberty for life, and capital punishment shall be applicable as basic penalties alone. Fines, deprivation of right to hold specific offices or to engage in specific activities, and restriction of liberty shall be applicable both as basic and additional penalties. Deprivation of special or military rank, honorary title, class rank, or government decoration shall be applicable as additional penalties alone. The system of punishments is presented in the Article 43 of the Criminal Code of the Republic of Slovenia and in the Article 44 “Principal and Accessory Sentences” it is fixed that a term of imprisonment may only be imposed as a principal

⁷ *The Criminal Law* [The Criminal Code of the Republic of Latvia] [online]. 2015. 129 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/4795/file/Latvia_CC_am2013_en.pdf.

sentence. A fine may be imposed both as a principal as well as an accessory sentence.⁸

Besides the classification of all kinds of punishments as primary and secondary, the systems of the criminal punishment of individual states in the European Union include also other classifications of criminal penalties. For example, according to the Article 33 of the Criminal Code of Spain, pursuant to their nature and duration, the punishments shall be classified as serious, less serious, and minor.

The number of types of punishments in the system

Currently, the system of criminal penalties is prescribed by the Article 44 of the Criminal Code of the Russian Federation and establishes 13 types of punishment:⁹

- a) fines;
- b) deprivation of right to hold specific offices or to engage in specific activities;
- c) deprivation of special or military rank or honorary title, class rank, or government decoration;
- d) compulsory works;
- e) corrective labour;
- f) restriction of military service;
- g) abolition;
- h) restricted liberty;
- h.1) compulsory labour;
- i) arrest;
- j) service in a disciplinary military unit;
- k) deprivation of liberty for a fixed period;
- l) deprivation of liberty for life;
- m) capital punishment.

It is important to note that the system of penalties in the Criminal Code of the Russian Federation provides much more punishments than the systems of penalties in the Criminal Codes of the majority of the Eu-

⁸ *The Criminal Code of the Republic of Slovenia* [online]. 2015. 152 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/3773/file/Slovenia_CC_2008_en.pdf.

⁹ *The Criminal Code of the Russian Federation* [No. 63-Fz of June 13, 1996] [online]. 2015. 170 p. [cit. 2015-03-30]. Available at: http://www.legislationline.org/download/action/download/id/4247/file/RF_CC_1996_am03.2012_en.pdf.

ropean Union countries. For example, the Danish Criminal Code establishes two types of penalties, the Criminal Code of the Republic of Slovenia three types of punishment, the Criminal Code of the Republic of Romania three main and two additional punishments, the Penal Code of the Republic of Estonia four main and one additional punishments, the German Criminal Code four main and two additional punishments, etc.

It should be mentioned that in practice most of the above-listed 13 types of penalties under the Article 44 of the Russian Federation Criminal Code are rarely applied by the courts. Approximately every third convicted in the Russian Federation is sentenced to imprisonment. For example, 28.5 % of the total number of prisoners in the Russian Federation were sentenced to imprisonment in year 2013. Punishments which are not connected with imprisonment are rarely applied by the courts. Probation is an alternative to imprisonment. In year 2013, a fine as the main penalty was applied by 15.8 % of the total number of prisoners in the Russian Federation, compulsory labor by 0.9 %, corrective labor by 10.3 %, restrictions on freedom by 4.3 %, the deprivation of right to hold certain positions or to engage in certain activities by 0.03 %, and a conditional sentence was imposed to 30.3 % of the total number of prisoners in the Russian Federation.¹⁰

These trends in punitive practice are due to problems caused by socio-economic, legal, and organizational reasons. But, of course, the system of criminal penalties prescribed by the Article 44 of the Criminal Code of the Russian Federation currently requires certain adjustments. In addition, there is a need for changes in the legal regulation of the certain types of punishments.

The hierarchy of types of punishments in the system

It is also necessary to consider the hierarchy of punishments in the system. The order of placement of punishment forms in the system has not got only theoretical, but also practical importance. According to the Part 3 of the Article 80 of the Criminal Code of the Russian Federation, in case of the replacement of the remaining term of the punishment, the court may choose any milder penalty in keeping with the penalties referred in the Article 44 of this Code, within the limits prescribed by this

¹⁰ *Report on the Work of Courts of General Jurisdiction Considering Criminal Affairs of the First Instance for 12 Months 2013* [online]. 2015 [cit. 2015-03-30]. Available at: <http://www.cdep.ru/index.php?id=79&item=2362>.

Code for each penalty; according to Part 1 of the Article 60 of the Russian Federation Criminal Code a stricter penalty from among several penalties provided for one crime shall be imposed only if a milder penalty cannot ensure the achievement of the purpose of punishment.

The system of punishments in the Article 44 of the Criminal Code of the Russian Federation is built in accordance with the location of various types of punishments in a specific order depending on their severity. The system begins with the less severe punishment – a fine and finishes with the most severe – the death penalty. The same rule forms the basis of systems of penalties in the Criminal Code of the Republic of Lithuania, in the Criminal Code of the Republic of Poland, or in the Penal Code of the Republic of Estonia. Punishments in the Criminal Codes of Bulgaria, Denmark, Latvia, the Netherlands, or France range from more stringent to less stringent.

First of all, it should be noted that the fine is the softest criminal punishment form, because it is ranked as the first in the Article 44 of the Criminal Code of the Russian Federation. But the amount of the penalty shows that the fine is more severe punishment than the deprivation of right to occupy certain positions or to engage in certain activities, deprivation of special, military, or honorary title, class rank and state awards, community service, and correctional labor. But there is also another example – the content of such punishment as restriction of freedom does not allow this kind of the punishment to take place in the system of penalties which was given to it originally. This kind of the punishment is far more lenient than a fine, compulsory or corrective work, and deprivation of right to occupy certain positions or to engage in certain activities. But the legislator has not changed the position of restrictions of freedom in the system of penalties, despite the change in its essence. Thus, we can conclude a violation of the principle of building a system of penalties from the less severe to more severe forms of punishments in the Article 44 of the Russian Criminal Code.

Types of punishments in the system

The most common types of penalties in the systems of penalties in the Criminal Codes of the European Union states present different kinds of deprivation of liberty (for life and for a certain period), public works, and fine. Frequently systems provide a large number of additional penalties, mainly related to the restriction or deprivation of rights of the convicted

person. The confiscation of property, fines, and some other types of punishments can be additional penalties.

Restriction on military service, referral to a disciplinary military unit, correctional labor, or forced labor provided by the Criminal Codes are specific punishments. The criminal legislation of individual states of the European Union also provides for some specific kinds of punishments. For example, the Criminal Code of the Republic Poland defines deprivation of political rights, the Criminal Code of Spain the prohibition to reside or to stay in a particular area, and the Criminal Code of France the publication of the sentence.

According to the researchers, the question inevitably relates to the causes of the differences in the types of penalties. The main reason for this is the uniqueness of the legal culture and national traditions of one or another nation. Other factors are the features of the legal regulation of social relations in different legal systems, the historical development of the state and society, the uniqueness of the concrete historical moment, or the effect of the principles and norms of international law on the criminal law.¹¹

Conclusion

Analysis of systems of punishments allows us to conclude that systems (lists of punishments) under the law of the states of the European Union are very different from each other. At the same time, the best approach for the legislator is when a system of penalties (list of punishments) is provided. Meaning of the system of punishments is that this list is typically exhaustive and binding for the court and that all penalties are located in it in a certain order (depending on their severity, etc.). The system (a list of punishments) is provided in the majority of sources of criminal law of foreign countries.

Comparative legal analysis leads to the conclusion that one of the advantages the Russian Federation Criminal Code is binding in it is the system of criminal penalties. But unlikely the presence of 13 types of punishments in the Criminal Code of the Russian Federation is justified. There is no extensive system of penal consequences, other measures,

¹¹ MALINOWSKI, A. A. *Comparative Law in the Field of Criminal Law*. 1st ed. Moscow: International Relations, 2002, pp. 161-162. ISBN 5-7133-1141-4 [МАЛИНОВСКИЙ, А. А. *Сравнительное правоведение в сфере уголовного права*. 1. изд. Москва: Международные отношения, 2002, с. 161-162. ISBN 5-7133-1141-4].

safety measures, etc. as well as no system of penalties for legal persons in the Russian Federation Criminal Code in contrast to the Criminal Codes of some states of the European Union.

It should be emphasized that the system of penalties provided by the Article 44 of the Russian Federation Criminal Code is redundant. Hierarchy as one of its properties is not respected. As a consequence, it is not holistic, unified by education and it is a scattered list of punishments many of which are not applied. Reduction of the types of punishments (Article 44 of the Russian Federation Criminal Code), the number of measures associated with changes in the legislative regulation of punishments as well as non-custodial practices aimed at increasing of application of these types of punishments can become a way to resolve the situation. Special types of penalties imposed only on military personnel should not be provided in the general list of punishments.

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