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Prediction in lawmaking activity

Abstract: During studying of criminal punishment efficiency there is existed the needs in scientific prediction of remote consequences of its actions. However, nowadays an actual available result of criminal action's punishment is always considered to be obviously uncompleted. Then, forecasting of the future results of the actions of developed sanction seems to be necessary component of studying of criminal law efficiency.

With purpose of increasing of the judicial discretion a lawmaker should keep in mind an extension of the frames of imprisonment when criminal legal sanction is designed.

It seems to be reasonable foreseeing of mitigation of the punishment sanctions on account of reducing of maximum terms of all negligent crimes, and also in respect of the persons, who committed negligent crimes the first time and which are not a great social danger.

With considering of practical activity of penitential institutions is suggested to increase the terms of imprisonment for special grave crimes and for special dangerous criminals; it is given other suggestions.

Keywords: forecast; lawmaking; criminal legal sanction; crime; proportion; legal conscience.

In course of designing the criminal legal sanction a lawmaker gives not only specific assessment of a level of public danger of crime but also proceeds from what deterrent and preventive impact should be applied. This means that criminal legal sanction directed towards future.

Predicting aspect of criminal legal sanction designed by a lawmaker is just

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concluded in the latter point. Probabilistic elements come to determination of measures of punishment whereas a lawmaker, forming sanctions of criminal laws' norms, is aimed to achieve the practical goals with application of punishment. Y.V. Kudryavtsev notes that "forecasting information very clearly reflected in the sanctions of criminal legal norms" [7, p. 81].

There a need in scientific prediction of comparatively remote consequences of actions of criminal punishment is existed under studying of efficiency of it. But, at present time, an actual available result of actions of criminal punishment is always presented obviously uncompleted. If so, then prediction of future results of actions of working out sanction is turned to be necessary component of criminal law efficiency studying.

An issue of forecasting under construction of criminal legal sanction has got very important significance since a value of consequences from practical introduction of effective or negative sanction is a great. Indeed, whether one may design an effective criminal legal sanction, if a lawmaker does not know what common preventive impact it will have an effect after application? Response should be uniquely negative. Therefore, it is necessary to have appropriate information before application, i.e. under construction of specific criminal legal sanction in respect of future results of the sanction, in particular, in plan of achievement of the goals of common prevention. In other words, a lawmaker has to know a controlling force of criminal legal sanction before acceptance of it.

V.A. Trapeznikov notes: "Issuing a law, establishing this or that rule of behaviour one needs to foresee how a man will react to it… It would be naive to believe that everybody will exactly follow to each new rule, to forget about man's ability to be adapted. If so, then under working out of a new rule or a law a man's adaptation features should be taken into account" [12]. Therefore, when designing a criminal legal sanction one should predict social efficiency of it – those changes in social reality and public relationships, which may happen as soon as this sanction will start acting. It seems that prediction of criminal legal sanction's effectiveness will

allow avoiding those troubles under it construction, which is present under criminal punishment application. But, whether such forecasting is possible?

Subjective intentional nature of a process of preparation and acceptance of criminal legal sanctions does not exclude necessity its scientific prediction. The prediction is one of the essential important moments of all processes on projecting, preparation and acceptance of criminal legal sanctions. It is justly noted in juridical literature that "forecasting, which is carried out in process of lawmaking, should be attributed to one of the forms of realization of predicting function of soviet juridical science" [9, p. 185].

Forecasting under construction of criminal legal sanctions is a process, which based on application of special scientific methods and means, of receiving of predicting information in respect of efficiency of achievement of the goals of criminal punishment. In other words, the goal of this forecasting is to discover the needs in effective criminal legal sanctions, scientific prediction of nearest and remote consequences of applied criminal legal sanctions.

Prediction under designing of criminal legal sanctions is one of the forms of scientific cognition. At the same time, the form of scientific cognition is sufficiently specific one. There is talking about cognition such social phenomena and public relations, which are not available in present time, but which may or should be existed in future.

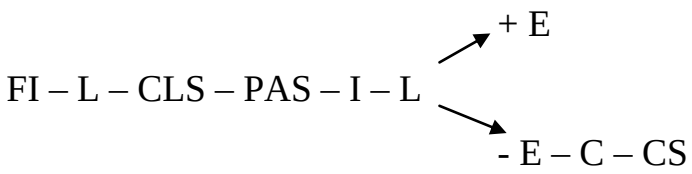
V.S. Gorban notes that "… one of the main philosophic and legal issues is an issue about ability of scientific theory, doctrine, conception to predict, forecast the facts. This feature - an ability of legal theory, conception or doctrine to predict new facts is the best sign that the specific law will be stable instrument of normatively ordered influence onto public relations" [3, p. 25].

Forecasting under designing of criminal legal sanctions demands the development of predicting research, formation of notional and categorical apparatus, various variants and models of approach to future [9, p. 188].

Theory of forecasting gives a great methodic significance to correct determination of a prediction subject. Development and way of forecasting research

of its efficiency, scientific value of received results depends on how successful have been solved this creative task [8, p. 38-85]. Effectiveness of criminal legal sanctions, i.e. a level and positive results of influence of this criminal legal sanction onto social environment in desired direction, is an object of prediction.

But, other elements (disposition and hypothesis) of criminal legal norms may be liable to the forecast. If on expiry of certain time a lawmaker receives appropriate information about insufficiency of acting criminal legal sanctions he should make correction in it. Therefore, process of receiving of information about criminal legal sanction and its correction is **permanent**. Schematically it looks as follows:



FI – forecasting information;

L – a lawmaker;

CLS – criminal legal sanction;

PAS – practical application of sanction;

I – information;

L – a lawmaker;

+E – efficiency of criminal legal sanction;

-E – inefficiency of criminal legal sanction;

C – correction of criminal legal sanction;

CS – corrected sanction of practice again.

So, a lawmaker receives appropriate forecasting information under designing of specific criminal legal sanction, which is later to be received with considering of this information.

Further, the sanction is applied at practice. After certain time (e.g. in 5 years) a lawmaker receives appropriate information about effectiveness of this criminal legal sanction. If the sanction is turned to be efficiency then it is continued to be applied. If no, then a lawmaker has to correct it. After certain time a lawmaker again receives

information about efficiency of this sanction and under ineffectiveness of it he has to correct it, etc.

From above stated we may do the following practical conclusions, which might be useful to a lawmaker under preparation of new criminal legislation (e.g. designing of the sanctions like imprisonment).

First. Under construction of criminal legal sanction a lawmaker needs to be oriented on expanding of frames of imprisonment with purpose of increasing of court examination.

Second. It is seemed to be reasonable to foresee common softening of the punishment measures due to reduction of maximal terms of imprisonment for all negligent crimes, and also in respect of persons who first time committed an intentional crime not having a great public danger.

Third. Bearing in mind of practice of activity of institutions on punishment execution, it is reasonable to increase terms of imprisonment for especial grave crime and for especial danger criminals-recidivists.

Fourth. It is insistently required to solve an issue on possibility and relevancy of use of social experiment like check way of effectiveness of various sizes of imprisonment in respect of different crimes' categories. It is seemed to be reasonable apart from deep studying of effectiveness of acting imprisonment punishment to pay much attention to preliminary experimental checking in order to minimize possible mistakes. If one may speak about certain experience of experiments in area of imprisonment execution, but sphere of lawmaking in designing of optimal sizes of imprisonment execution remained without very important researching instrument. In our view, such situation, especially in connection with preparation of new criminal legislation, cannot be confessed normal. Prediction in lawmaking will allow resolving other problem, to which we are met: determination of adequacy crime to punishment, stipulated in criminal legislation.

In practice an efficiency of punishment is usually reduced due to defects of designing of criminal legal sanctions. That is why, how a sanction is designed, what punishment is stipulated with a law, depends preventive force of punishment threat,

and also frames of judge's judgement under choosing and determination of kind and term of punishment. Right and fair sanction influences not only at law enforcement activity of judicial bodies and institutions executing punishment, but also assists to a development of sense of legal awareness of people in direction required for society. In other words, we are talking about adequacy between crimes and punishments that stipulated for that. Adherence to principle and significance of this matter is associated with that they usually believe that tightening of punishment is the simplest way to make people be law-abiding. But, history of punishment testifies that it cannot be required from punishment more than it is designed. Not severity, and duration of punishment produce more impact on man's mind, because we feel affecting of stable and repeated impressions; and strong impressions are passed faster. In this sense, it is completely testified replacing of death penalty with life imprisonment as in point of view of common prevention so and logical from humanism point of view. In order to hold back unstable persons from temptation to commit crime a punishment has to have common preventive feature, it should be rather repressive, i.e. as much as sensible in order to turn away from intention to commit crime. In principle, one should proceed from the fact that severity of punishment like end in itself is undesirable nowadays. Consequently, to achieve the common preventive goal, a punishment has not to be excessively strict and the same time it should produce impressive act through required repression. Undoubtedly, an effect of criminal punishment depends not only on a risk to be detected and brought to criminal liability, but also on severity of punishment, which has more significance when an issue is concerned to crimes being committed after careful weighing everything pros and cons than the crimes being committed under influence of emotions and inclinations, negligent crimes etc.

Practice shows that when a society is trying to reduce the growth any crime (e.g. hooliganism, robbery, embezzlement) then this is done with legislative tightening of punishment or judicial practice.

Whereas it is forgotten that severity of punishment is caused the consequences, which are not help, but opposite they contradict to common preventive goals of

punishment. Typically efficiency of strict punishment may be felt at the beginning of its practical application, and later it is reduced. At the same time, it is necessary to proceed from the following point. If historical practice of humanity shows that it is senseless to fight to criminality with strict punishments but it does not mean that one should fall down other extremity: to believe that punishments should be soft. This means only that punishment should be reasonable and purposeful.

Shang Yang noted: "if to apply severity punishments, to establish a system of mutual responsibility for crimes then people would not decide to test a force of the law on them" [15, p. 301].

Notion about measure and adequacy, compliancy, equality between caused damage and its compensation became a subject of discussion from the moment of establishing of agency custom in notion on atonement-harm-offence.

Today we have no certain indicators, criteria, which would be an instrument of co-measurement of criminal punishment and crime. Therefore, everybody and always suggested general principles, from which should proceed under determination of such proportionality. But, philosophers are often led away in area of fine, lofty, abstract, but not practical, and lawyers are not usually able to be a higher an acting law.

So, for example, Montesquieu believed that punishment had to provide rewards and security of a society, but it had not to be transferred to severity, to correspond crime and not to exceed level required. Thus, an author ignores neither interests of society nor interests of criminal.

A. Frank stated that "punishment has to correspond as seriousness of crime so and inner nature of it, or the nature of crime and nature of punishment have to be analogical" [14, p. 192].

Feuerbach, on contrary, being based on theory of psychological coercion, believed that punishment should be adequacy not to seriousness of offense done, but a level of its motives since the stronger motive the stronger counterbalance should be to it.

Speaking to juridical language, determination of equality between notions of offense and charge for it might be come with four ways: a) with mathematical one, at

that compared notions is considered like abstract values, which is subject to exact figure measurement; b) with dialectical one; c) with economic one; d) with using of categories of morality and moral. It is clear that theoretically it might be these forms of commensuration of crime and punishment are admissible, but their realization and application are impossible in lawmaking activity. Therefore, one should not judge those scientists, who considering "ensuring of commensuration between crime and punishment like "instinctive abstraction", "scholastic exercises", deny opportunity as commensuration of nature and level of public danger of different crimes so and comparative assessment of crime and punishment" [11, p. 100].

At the same time, it seems that a matter consists not only to prove impossibility of commensuration of crime and punishment and to direct a lawmaker and judicial practice in acceptance of utilitarian decisions, but in careful development of valuably and sociological criteria to transfer from intuitive to scientific approach under designing of criminal legal sanctions like juridical formed punishments, and practice of their application. We believe that initial beginnings of equation criteria of commensuration assessment of crime and punishment should be determined the principles, i.e. the basic beginnings of the equation between these concepts. Based on that, we believe that a **justice**, which has to act a twice function under determination of punishment, should be the criterion of evaluation of equality's correlation between value of an object protected by a society and range of punishment severity. First, principle of justice will be a limiter of upper frame of criminal legal sanction. Second, it will impact on establishing of minimal range of punishment, its low frame. This will allow us not to exceed a measure of severity and to apply such punishment, which will enable to exert impression to other persons and the same time to be as less sensitive as possible to whom it applied. One should proceed on the fact that a justice can be called that society, which confesses as unshakable beginnings a desire of people to expose themselves as less suffering, deprivation and limitations as possible. The main is that a principle of justice does not allow to a society often treating with people in such way in order it would be assisted to universal benefit for expense of separate individuals. Otherwise, a society will begin to use a man, who committed

crime, in order to reduce criminality since he is in society's disposal for achievement of prevention's goal.

Second principle, which should be applied under measuring of crime and punishment, is concluded in Cesare Beccaria's thesis: "Severity of punishments has to correspond to a nation's state" [1, p. 156].

An essence of this principle was commented by an author himself: "Rough soul of the people, just released from a state of savagery, have to impact more powerful and more sensitive impressions. As soon as a soul of the people living in society, is softened, increase their sensitivity, and with a growth of the latter it should be reduced a power of punishment if they wish to keep a relationship between a subject and sensation" [1, p. 156].

It follows that each society determines a measure of punishment's severity based on a level of moral, cultural, legal and socio-economic development of the country. People, which being achieved a high development, realizing a dignity of freedom and respecting moral nature of man, is aspired to justice actions and is doubt in consistency of cruel, senseless punishments. Contrary, people, falling behind common development, depressing and depriving of political, economic, religious freedom, consider tightening as means for prevention of citizens from crimes. Just this principle has to be a base for adequacy crime and punishment.

Finally, the last principle is humanism principle, which is closely linked with requirement about examination of a personality under determination of punishment measure. Humaneness should be understood like certain mitigation of size and nature of punishment compared with that, which is required to define proceeding from principle of justice. This situation is such, when measure of punishment and nature of crime is not adequacy from ideas of reasonability. Humanism like a principle of legislative activity under determination of punishment measure means that an idea of man like a supreme value is at the centre of society attention.

In connection with this problem one should also point out the following circumstance, which should be mandatory considered: inevitability disclosure and punishment has a great significance to prevent people from crime's committing than

severity of punishment. This means that despite punishment has a function on crime prevention, but this is achieved with optimality but not cruelty of one.

Legal awareness of society, which linked with morality and moral views of people, influences on the laws' formation and the practice of their application. Therefore, under determination of punishment a lawmaker may not ignore this circumstance, though a mass legal awareness does not participate directly in it.

According to N.A. Belayev, "legal psychology of workers should be considered not only under resolution of specific cases but also under designing of legislation, i.e. at time, when is solving an issue on criminalization of deeds" [2, p. 79].

But, unfortunately, currently developed and accepted punishments are not an expression of mass legal awareness.

Some time, I.E. Farber rightly noted: "Any punishment induces various legal senses in public psychology: shame, fear, compassion, approval, reprobation and others. In process of designing of legislative norm one has to know under initiation or mass distribution on what legal sanctions should be oriented at first. This part of a case is at shame under carrying out punitive policy, and there is no much think for what psychological reaction induces this kind and measure of punishment in mass legal awareness. Therefore, theory of punishment, excluding analysis of psychological, emotional attitude of the citizens to punishment, deprives itself an opportunity of scientific substantiation of specific punishment's measures" [13, p. 94].

For education of mass comprehension and clarification of necessity this or that punishment at times one needs a long time and it would be wrong to wait until people realize this need, despite on objective necessity in punishment.

But, one should keep in mind that legal awareness in its socio-psychological part is developed spontaneously and at times may contain wrong views, moods, assessments, feelings etc, contradicting to the present interests and needs of public development. Therefore, a tie between legal awareness and determination of criminal punishment is not so easy that development of mass legal awareness might be directly involved in a process of lawmaking.

The results of sociological research show that belief and absolute omnipotence of criminal punishment are the most erroneous in legal awareness at any level. So, according to research data was hold with the Institute of State and Law of Academy of Sciences of the Ukrainian SSR, 38.7% of interviewed persons believed that punishment toughening was more effective means of fight to offenses [6, p. 132].

According to All-Union Scientific Research Institute of the MIA of the USSR, approximately each fourth from interviewed citizens had associated the successes of fight to criminality with toughening of criminal repression [4, p. 79].

The same results were received through studies conducted with All-Union Scientific Research Institute of Prosecutor's Office of the USSR [10, p. 20].

According to data of research made by V.M. Kogan, approximately each fifth man and each fourth woman considered that commission of crimes the most depended on insufficient severity of punishment [5, p. 48].

All these studies were conducted in period of Soviet power, when a regime had not allow "get going" of criminality. Therefore, we decided to conduct the same research in present Azerbaijan. 60% from 1200 questioned persons deeply have convinced that present laws, i.e. criminal punishments are too humane as result a criminality is become crueler and has got a wide spread. Almost the same number of interviewed have been opposed abolishment of death penalty.

So, we should confess that there are sufficient grounds, which testify about higher level of punitive claims of the people. In our view, from one side, in a basis of this idea is respect to law and intolerance of offenses, and other side – insufficient knowledge about opportunities of criminal punishment in fight to criminality. We should also take in account that an idea about severity of punishment associated with moral conscience, psychology and level of development of our people.

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