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**SOME CONSIDERATIONS ON THEORIES OF PUNISHMENT IN
CRIMINAL LAW**

Annotation: The theory of punishment in criminal law has always been one of the central and topical issues in the general theory of state and law. The article analyzes the main theories and views on punishment, its historical development, goals and impact on the offender, and also defines the essence of other alternative criminal measures that are currently not punishable in criminal law. Opinions are expressed on the problem of their practical application.

Key words: criminal law, theories, punishment, opinions.

Unfortunately, to date, the existence of a stable understanding mechanism in the theory of punishment has not been resolved, that is, the institute of criminal theory has not been organized and studied as a separate discipline. Without this, no theory of punishment can exist. More than 25 years have passed since the entry into force of the Criminal and Criminal Executive Codes of the Republic of Uzbekistan. During this time, the development of science, practice, and legislation has not stopped, albeit for a moment. During this period, more than 50 laws on amendments and additions to the Criminal Code of the Republic of Uzbekistan and more than 20 amendments and additions to the Criminal Executive Code were adopted. The main part of the amendments to the Criminal Code deals with the issues of criminal punishment, mainly the system, types, content, grounds, conditions of application of punishment.

Also, the Resolution of the President of the Republic of Uzbekistan dated May 14, 2018 No PP-3723 "Concept of improving the criminal and criminal procedure

legislation of the Republic of Uzbekistan" was adopted. According to this concept, the main task is to review the system of penalties and mechanisms for their appointment, to eliminate outdated forms and types of penalties that do not meet modern requirements. [1, p.2]

In criminal law, the explanatory tools of the theory of punishment should serve to express the special laws of the emergence, application, development and prospects of criminal law events, in particular punishment. In his Address to the Oliy Majlis of December 22, 2017, the President of the Republic of Uzbekistan Shavkat Mirziyoyev rightly stated that "we must pay special attention to the liberalization of punishment, the change of criminal punishment from a humanitarian point of view." [2, p.3]

Article 42 of the Criminal Code of the Republic of Uzbekistan reads: "Punishment is a coercive measure applied by a court verdict on behalf of the state to a person found guilty of a crime, and consisting in deprivation or restriction of certain rights and freedoms provided for by law. Punishment is applied in order to correct the convict's morality, to prevent the continuation of his criminal activity, as well as to prevent the commission of new crimes by the convicted person and other persons".[3, p.17] Although the law defines punishment and lists its goals, the problem of the theory of punishment and its goals remains a topic of discussion for many scientists, criminologists, philosophers, psychologists and other scientists.

At the same time, most of the issue of criminal punishment and its application requires a deeper understanding, since legislation and law enforcement practice are still far from perfect. It is clear from human history that there is nothing more practical than a good and perfect theory. An important aspect of theories is that they should not be limited to theoretical coverage, but should focus on the technical problems of criminal penalties, the effectiveness of their appointment and application, and the prospects for improving penalties. Any theory arises on the basis of historical conditions. The institution of punishment also has historical roots, it arose with the formation of state and law. From the moment the state arose and began to perform its internal and external functions, the issues of crime, punishment and responsibility began to be applied, and from this period the state began to pursue a

criminal policy. The first statehood on the territory of the Republic of Uzbekistan is associated with the Amu Darya and Syrdarya rivers and their environs. The first elements of statehood in our region are determined by the IV-III millennia BC. It was from this period that the policy of combating crime was pursued, and the concept of punishment began to be reflected in the first legislative acts.

Since then, at each stage of historical development, various scientists, legislators, philosophers and practitioners have given different assessments of the institution of punishment, its concept, essence and purpose. Particular attention is paid to the goals of punishment, and at different times in different countries, scientists have put forward different goals of punishment. Such goals included revenge or retaliation, intimidation, warning, moral correction of the perpetrator, and reparations. All of these theories have some common features, and each has certain advantages and disadvantages. The original purpose of punishment was revenge, which was to respond to evil with evil. I. Kant, Hegel, Ulpian, Leibnitz and other famous thinkers left their explanations for this theory of punishment. Punishment was seen as revenge and justice. [4, p.8] However, revenge cannot be the only goal, because if it were allowed, people could take revenge on each other indefinitely, and revenge itself could become a crime. Revenge is not consistent with the principles of the current democratic rule of law.

The theory that the elimination of the consequences of a crime is the goal of punishment, that is, the structure of the theory of the usefulness of society, consisting of such subtheories as intimidation, prevention, correction and compensation for harm. This theory of punishment has a long history, and its origins go back centuries.

In the 5th century BC, Protagoras approached the theory of punishment from a philosophical point of view, stating that its appearance is inextricably linked with the branches of knowledge about society, state and law, the need for punishment in society, for these purposes, he stated that punishment was originally aimed at revenge and utilitarian purposes, and that punishments such as expulsion and the death penalty were necessary in their day. [5, p.9]

Almost all ancient philosophers described punishment differently in their imaginations. In his works, Platon focuses on the problem of punishment and recognizes it as revenge. In particular, the fearsome principles of punishment are emphasized. Recognizing the nature of punishment as revenge, Aristotle argued that "people must avenge evil with evil, and if such punishment is impossible, then such a state is a state based on slavery." However, Aristotle in his works tried to substantiate the difference between state punishment and revenge. In his opinion, revenge and retribution served as punishment before the emergence of the state. Similar ideas were later reflected in the writings of the ancient Roman philosophers Cicero and Seneca. However, in the writings of Roman philosophers, no holistic concept of punishment was found. Because the Roman legal doctrine traditionally developed primarily in the field of private law, and not in the field of public law.

Information about secular books on the theory of punishment in the early Middle Ages is very rare, because during this period the area of punishment belonged to the area of religious teachings. At that time, only G.Grotius and T.Hobbes expressed their theoretical views on the doctrine of secular "punishment-revenge".

In the early Middle Ages, in Islamic, Christian and Buddhist religious sources, the concepts and ideas about crime and punishment were deified as created by God, and not by man. The Bible, the main source of Christianity, provides a wealth of information about the concepts of crime and punishment, and the principle of "eye to eye, tooth to tooth" not only triggers revenge for a crime, but also defines it as a procedure for revenge for committing a crime.

Among other branches of Shariat law, norms directly related to criminal law are reflected in its four sources: the Koran, Sunnah, Ijme and Qiyas.

All crimes mentioned in the Quran are divided into two groups: clearly punishable and not punishable. The Sunnah also mentions the imposition of punishment for certain types of crimes, as well as mitigating and aggravating circumstances, necessary protection and other issues of criminal law, and similar rules are reflected in our current criminal law.

During this period, orientalists also had different views on the theory of punishment, the most important of which is more clearly indicated in the work of Burkhanuddin Marginoni "Hidoia". "Crime and punishment," says Hidoia, is a measure against a person or property that is prohibited by law. [6, p.17]

The judges used the work "Hidoia" as a source when sentencing to the end of the "red empire" in our country. In addition, when studying authentic hadiths in the collection of hadiths of Imam al-Bukhari "Al-Jami al-Sahih", which deal with the issues of crime and punishment in criminal law, volumes 3 and 4 of the hadith collections contain the number of hadiths describing the types of crimes and punishments. In particular, in the book about Khad, there are a number of hadiths about the punishments imposed by the Prophet (peace and blessings of Allaah be upon him) in the form of hadd for drunkenness and theft from the Shariat legal system. [7, p.388] It is said that a drunken man was beaten by the Prophet with a palm branch and slippers, and later the Caliph Abu Bakr sentenced the man accused of drunkenness to 40 lashes.

After that, according to the western philosopher I.Bentham, who lived and worked in the XVIII-XIX centuries, the prevention and punishment of crimes always followed each other, and he also supported the individualization of punishment. According to him, punishment is imprisonment or a sense of responsibility through suffering. I.Bentham implies that the question of punishment for a crime is not about the relationship between people or between the perpetrator and society, but between the perpetrator and the state. But the state seeks to influence the fate of the accused and those allegedly prone to committing a crime by imposing criminal sanctions on the accused. The public figure of the XVIII century J.Howard emphasized the need for humane treatment of criminals and rational organization of the execution of punishment, the need to educate (treat) a criminal, and not just punish him for a crime. In theory, he argued that labor and training of prisoners were more effective than punishment. [4, p.8]

The views of the famous Italian educator C.Beccaria were not only progressive for their time, but still retain their significance to this day. In his work "On Crimes

and Punishments" (1784), the main philosophical ideas in the field of punishment were systematized, the preventive value of punishment, the need for a balance between crime and punishment, the purpose of punishment and the humane principles of its application were revealed.

To prevent crime, Beccaria said, it is important that the inevitability of punishment prevails over the cruelty of punishment. Later, his ideas were met by the legislators of many European countries and were widely used in practice. [4, p.9]

In the same way, in the Address of the President of the Republic of Uzbekistan to the Parliament on the most important priorities for the development of our country in 2019, no matter how difficult it is, we must introduce the principle of "criminal truth and justice" in a remote area our republic. That is, the crime must be unconditionally solved, and the perpetrators must be punished. Despite the fact that this is not only the task of law enforcement agencies, our entire society must unite and fight with all our might".[8, p.2]

Modern (synthetic) theories of punishment combine elements of all the above theories in different proportions. As a rule, punishment means revenge for a crime, compensation for damage to the individual and society (restoration of social justice), a means of deterring the offender from committing new crimes (both by eliminating this possibility and by correcting it). N.S.Tagantsev divides authors who deny the right to punishment into three categories: denial of free will, denial of the existing penal system, and denial of the state's right to punishment. At the same time, determinists do not completely deny punishment, do not recognize its role as a means of public protection and do not consider it as something predetermined. [5, p.201]

According to Robert Owen, the most prominent representative of the third group, "the character of the lower classes of society emphasizes that the behavior that often forms under the influence of a situation that forces them to go down the path of extreme poverty and makes them corrupt and immoral, so that they cannot be punished. Since the state does not have the same social and economic opportunities for everyone, the son of a poor man steals because he has no money, and the son of a rich man does not steal because he has money, if the son of a poor man is provided

with money, bread, work or education, there is no need to punish him, ”said Robert Owen. Robert Owen believes that man should not be responsible for being the power of nature and society. He believes that "a criminal, that is, a member of society with the worst natural qualities and placed in the most harmful conditions, needs mercy on the part of all who are in the best condition, and their punishment is cruelty." [5, p.203]

The modern theory of criminal law also pays great attention to the issue of punishment. An important role in this is played by the question of defining the concept of punishment. Crime and punishment are closely related. Punishment is the natural reaction of the state to a crime committed. Without punishment, a person who has committed a socially dangerous act cannot be considered a criminal. Punishment is a mandatory feature of the concept of crime.

Professor N.S.Salaev, trying to give a definition of criminal punishment based on the essence of the Republic's Criminal Code, believes that "punishment is the natural attitude of the state towards a committed crime." In his opinion, regardless of the living conditions of society, punishment is necessary as a means of self-defense of society from offenses against them. [9, p.10]

M.Usmonaliev describes punishment as follows: "Criminal punishment is one of the most important institutions of criminal law and the main instrument for implementing the function of criminal law." [10, p.77]

Each of the theories presented in the list are similar to each other in their own way, but they differ in their purpose. Thus, intimidation cannot be the sole purpose of punishment, since it does not achieve the ultimate goal of rehabilitating, preventing and morally correcting the perpetrator. I consider it advisable to disclose the content of the purposes of punishment in the Criminal Code by separate articles or add a paragraph to the article defining the purpose of punishment and its goal, in particular, the restoration of social status. People should understand what the legislator means by the imposition of punishment. The introduction into our criminal law of a norm that reveals the meaning of the purpose of punishment may serve as a basis for ending disputes about the purpose of punishment.

The legislature, in order to restore justice, does not intend to inflict suffering on the offender, since a just state wins the trust of its citizens by being fair to them.

Such justice in our time is primarily reflected in the systematization of the Criminal Code of the Republic of Uzbekistan. The legislature introduced a system of penalties ranging from less severe to more severe, with sanctions regulated in sequence. Justice in relation to the person who committed a crime is expressed in minimizing coercive measures by the state by applying proportionate punishment for the crime, that is, the punishment must be proportionate to the nature and severity of the crime. Fair punishment also takes into account the personality of the offender, mitigating and aggravating circumstances, his marital status, the impact of the punishment on the offender's correction (one of these goals), and living conditions.

In the early years, it can be argued that the most common phenomenon is the ineffectiveness of imposing severe punishment, i.e. excessive use of penalties associated with deprivation of liberty. Thus, a negative change in the sentences convicted to imprisonment can lead to cases of mental disorder, cruelty, hatred upon release and "revenge" on those who imprisoned them. Therefore, in the Address of President Sh. Mirziyoyev to the Oliy Majlis and the people on December 29, 2020, he said: "Our reforms in the judicial sphere, including the liberalization of criminal punishment, are consistently continuing. As a result, it is no coincidence that in 2020, 74 percent of those convicted were sentenced to non-custodial sentences. [11, p.3]

Alternative forms of punishment or milder forms of punishment may be used instead of penalties associated with imprisonment. Such measures, as opposed to punishments associated with imprisonment, can better affect people, inducing feelings of shame, and also making them realize that they have been treated better than expected, despite the crimes they have committed. In addition, the strengthening of the influence of socially useful labor and education on the penitentiary system, in my opinion, will have a positive effect. In this regard, in the Address of President Sh. Mirziyoyev to the Oliy Majlis and our people on December 29, 2020, "work will be continued on the widespread application of the principle of humanity in the penitentiary system. In particular, according to international standards, 25 settlement

colonies will be gradually reduced. From now on, if the sentence passed to a person deprived of his liberty for the first time is replaced by a milder one, he will be placed on a direct probationary period without being transferred to a colony of a settlement. As a result of this assistance, 6000 people currently serving sentences will be able to be in the arms of their families under the supervision of their mahalla's" concluded correctly. It is clear that we are still in the early stages of scientific work in the field of criminal justice theory in criminal law in our new society. In modern literature, researchers discuss the theory of punishment not from the point of view of mentality, but from the point of view of punishment, which is not based on our national thinking. This suggests the need to improve the theory of punishment, based on a constant analysis and understanding of punishment as a key issue (regardless of its essence and roots) and analysis. In conclusion, it should be noted that the theory and concept of punishment are associated with the emergence, change and improvement and the essence of state and law. This means that the reform of state and law in society requires reform of punishment. We must strictly adhere to the general principles of democracy in creating and applying the principles of punishment. At the same time, while democratizing society, we must take into account the uniqueness of our people, tolerance and national thinking, and the fact that they lived for years under conditions of colonialism and oppression, are just beginning to regain their former economical and social gigantic power. Most importantly, the main goal of the ongoing reforms should be to ensure that all people, be they perpetrators or victims, are treated humanely.

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