IMPROVEMENT OF THE CONSTRUCTIVE IMPLEMENTATION OF THE CRIMINAL LAW PROVISIONS' PUNITIVE PART OF THE CRIMINAL CODE AS ONE OF THE AREAS OF COMBATING CRIME

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ABSTRACT

Criminally-legal regulation is a process and the result of social relations' regulation, disorganized by the fact of the commission of a criminal or outwardly similar to it deed. In terms of its functional nature, such regulation is nothing more than a specific impact on the consciousness, will, feelings and behaviour of subjects caught up in the sphere of criminal law politics.

The structure of the said impact is not only criminal liability, but also exemption from criminal responsibility and punishment, compulsory medical and educational measures, compulsory treatment, encouragement for efforts aimed at protecting the individual, society and the state by malefactor causing harm.

These measures of a criminal-legal nature find their external expression in the corresponding criminal-legal norm. In the legal literature, as is known, there is no unity of opinion as to the definition of its structural elements. Moreover, this issue remains controversial in the general theory of law.

The purpose of this article is to analyse the doctrinal points of view concerning the structural elements of the criminal law norm and formulate its own generalizing conclusions on its basis.

Keywords: Fight against Crime, Constructive Execution, Punitive Part, Criminal Norms, Criminal Legislation.

INTRODUCTION

The problem of crime and the fight against it has always attracted the attention of a large number of specialists. This topic, directly affecting various spheres of political and economic activity of the state, has become one of the most acute practical problems that excite scientists and practitioners dealing with the problem of law and order in the country.

Crime in Russia should be regarded as a nation-wide problem. It is due to a number of reasons that have political, economic, social and demographic roots. Quantitative and qualitative characteristics are inherent to the criminality (Petukhov, 2017; De Hert & Boulet, 2016; Ho, 2016).

Compliance with criminally-legal principles obliges the legislator at the stage of preparation and adoption of the criminal law to decide questions of the types and sizes'

conformity of punishment to the nature and degree of public danger of the crimes for which they are provided. But not always, as studies show, these principles are observed (Klimek, 2017).

Having determined the notion of punitive part of the special criminal law norm in previous publications and also having been oriented in the issues of their classification and the spectrum of species, it is necessary to state their position on the problems of applying criminal sanctions in them.

LITERATURE REVIEW

Traditionally, the structure of any legal norm includes the hypothesis (in which specifies under what circumstances the rule will come into effect), disposition (in which the rule of conduct, rights and obligations are formulated) and sanction (in which state enforcement measures are applied when it is violated). Consequently, any legal norm, including criminal law, contains three necessary components: a hypothesis (which describes the conditions under which the conduct of the subject will be of criminal law significance and criminal consequences may occur), disposition (the model of necessary, permitted or prohibited behaviour) and sanction (containing an indication of the criminal consequences stated in the behaviour's dispositions).

Dagldiyan emphasizes that in criminal law, hypotheses are mostly included in the dispositions of legal norms, simultaneously being their constituents (Dagldiyan, 2017). The general hypothesis for each legal norm of the Special Part of the Criminal Code is the norm, which establishes the general grounds for criminal liability. A similar view is shared by other scientists.

But, according to Faure (2016), the structure of the legal norm is twofold and consists of a hypothesis and a disposition. In this regard, some scholars assert that the structure of the criminal law norm consists of a hypothesis and a disposition, which is sometimes called sanction. The hypothesis provides for a legal fact, which generates criminal-legal relations, namely: signs of crime as the basis of criminal liability. The disposition prescribes the power authority of the court with regard to the restriction of the rights and freedoms of the person who committed the crime that is, regarding the imposition or release or mitigation of criminal responsibility on the perpetrator. In this sense, the signs and hypotheses and sanctions find their consolidation not only in the articles of the Special Part of the Criminal Code, but also in the relevant articles of the General Part. A similar opinion is shared by Terracina (2016). In particular, the author notes that the norm of criminal law is unique in its being. The norm of the Special Part of the Criminal Law is valid and applies only in unity and in the aggregate with the norms of the General Part and vice versa. In the light of this, supporters of the two-element structure of the rule of criminal law should not, in principle, ostensibly be justified, seeking specificity or forcibly withdrawing the missing elements of the norms of the criminal legislation's General Part. There are no such norms, as well as the norms of its Special Part of the Criminal Law. The provisions of the General Part of the Criminal Law supplement the content of the relevant articles of its Special Part, forming an integral regulator of public relations the norm of criminal law. And at the same time one should not consider, as sometimes happens that the role of the hypothesis for the Special Part's norms is fulfilled by all articles of the Criminal Code's General Part. This, of course, is a big exaggeration. Many prescriptions of the General part of the criminal law still apply to the sanction of the norm. In this regard, all the rules of criminal law have a two-element structure: a hypothesis and sanction.

Sharing the position of the dual structure of the criminal law norm, individual scientists make certain clarifications. So, Denisenko (2017) notes that the norms of the General Part of the Criminal Code usually consist of a hypothesis and a disposition of the Special Part of the Criminal Code's norm from the dispositions and sanctions (except for the standard definitions ("explanatory") and the rules on the exemption from criminal liability for certain crimes ("encouraging"). Lopashenko, Kobzeva, Khutov & Dolotov (2017) note that the structure of the General and Special parts of the Criminal Code is different. Articles of the General Part of the criminal law as a rule consist of hypothesis and disposition, although they can be represented by one disposition, if the article is devoted to norm-principle; articles of the Special Part from the disposition and sanction (with the exception of Article 331 of the Criminal Code of the Russian Federation), which, like the articles of the General Part, includes the hypothesis and disposition. Finally, Zeegers (2016) notes that structural norms of criminal law differ from other legal norms and include a hypothesis, disposition and sanction. At the same time, the peculiarity of the norms of the General Part of the criminal law is the absence of sanctions; they include only a disposition or a hypothesis and disposition. The specificity of the norms of the Special Part of the criminal law lies in the fact that their structure can be determined in different ways, depending on the addressee of the norm. So, if the norm is addressed to an individual, it consists of dispositions and sanctions. If the norm is addressed to state authorities, then it consists of a hypothesis and a disposition.

Expressing their attitude to these points of view, we note that each of them deserves attention and has the right to exist. Preceding from this, in our earlier publications we, in particular, shared the views of those scientists who see the structure of any criminal law norm in its three elements. Meanwhile, today we are convinced that the answer to the question of what elements this or that criminal law consists of lies somewhat in a different plane. Joining any of these thoughts, unfortunately, does not solve it, but only indefinitely postpones it. In support of this thesis we have put forward the statement of the well-known theorist of law. So, according to the researcher, speaking about the structure of the rule of law, it is necessary to emphasize and distinguish the structure of the norm-prescription and the structure of the logical norm. The logical rule of law in most cases is in several articles of the normative act or even in articles of different normative legal acts. But the norm-prescription corresponds to the primary structural part of the normative act's text (article, paragraph, article's paragraph, etc.). The rule-prescription's "fragmentation" between different articles, paragraphs of the article is impossible. The structure of the logical norm is expressed in the connection of such elements, which collectively provide for the state-power regulation of social relations. Consequently, the "set" of elements of the logical norm must provide it with an "autonomous", relatively separate regulator. In this connection, the logical norm includes three basic elements: a hypothesis, a disposition, a sanction. These elements can be conditionally arranged according to this scheme: "if ..., then, but otherwise ..." (Fenwick, 2016).

The Punitive Part of the Criminal Punishment in the Areas of Combating Crime

Relapse. In its most general form, it can be defined as the commission of a second crime by a person who has previously committed a crime and is convicted of it. We do not see our task as research of legislative specifics in the design of relapse: what crimes, at what age, in what order should (or can be) committed for recognition in the actions of the person of this legal

institution. An impressive array of specialized literature is devoted to this and additional detailing of particulars is hardly necessary. Let us dwell only on two principal points: on the legal meaning of the criminal record and on the place of regulatory injunctions on the recurrence in the criminal law system (Malekian, 2017).

Today the commonplace of almost all the arguments about the recurrence of crimes is the presence of an unexpunged or unspent conviction in the person. At the same time in science two approaches are clearly positioned, which justify the necessity of the criminal record and its inchoateness, respectively. The latter, as has been already noted, is vividly represented in the judgments of Vitruk according to the well-known Decree of the Constitutional Court of the Russian Federation of March 19, 2003 No. 3-P. Meanwhile, we are not inclined to see the legacy of the totalitarian past as a criminal record. With an adequate understanding of this phenomenon, it does not in the least contradict the democratic principles of the relationship between the state and the individual. The references of some experts to the lack of norms on conviction in the legislation of foreign countries cannot be taken into account in this case. And in this case, speech does not go about incorrect identification of democratic ideals exclusively with the western countries. It is exclusively about the criminal legal aspects of the issue. The fact is that the lack of norms on criminal record in the criminal legislation of foreign countries does not exclude the presence of mechanisms and structures that allow taking into account the fact of a person committing a crime in the past when assessing each subsequent crime committed by him and post-criminal behaviour in general. Suffice it to mention the National Sex Offender Public Registry, which since 2006 has been led and coordinated by the US Department of Justice, the federal and regional (state) "Megan Law" (USA), which provides for the creation of all sex offenders' database and compulsory registration of residence, a public register of punishments, which is coordinated by the Estonian Ministry of Justice. It is conducted on the basis of the Law "On Criminal Records" (2002), "preventive custody" for those who "are prone to commit crimes" in Germany and "habitual criminals" in Switzerland and others (Vélez Rodríguez, 2016; Ruggeri, 2017).

Thus, references to an anti-democratic and totalitarian nature or essence of a criminal record cannot be taken into account. In itself, the conviction is neutral with respect to human rights and the ideals of democracy and the need for it (or in other forms of control over persons who have served a criminal sentence) is primarily determined by objective needs for ensuring social control over a specific category of the population and preventing crimes (in this case, when evaluating a criminal record, we do not take into account possible abuses, including regulatory ones, in determining its legal consequences).

It is much more important to understand what actually a criminal record is. In the legal science, with all the existing differences in detail, there are two main approaches to understanding criminal record.

The first and most common (when conducting an expert survey in the preparation of the thesis supported by 92% of practicing lawyers surveyed) is to recognize the criminal record as a special legal condition of the person who committed the crime and is convicted for it. This is written by Rarog, Vetrov, Brilliantov, Grishko and other specialists. This is exactly how the Constitutional Court treats conviction in the mentioned act.

The second approach is less common (it was recognized by only 8% of the interviewed law enforcers), but deserves the closest attention. Malkov. Is its vivid representative. He writes: "According to its legal nature, conviction is not an officially certified fact of adjudgement, it is

not a form (or kind) of implementing criminal responsibility, but a security measure, the essence of which is the establishment and implementation of social and legal control over the convict's behaviour who has discovered his public danger by committing a crime". With the use of the "measure" category, conviction is determined by other specialists as well, in particular, by Kelina, Yegorov and Martynenko understanding a measure of criminal-legal nature under the criminal record.

Our task does not include a detailed analysis of these approaches themselves. However, in the light of the problems solved in the dissertation and taking into account the above-mentioned notion of plurality as a situation in which there is a need to determine the scope and procedure for the execution of several penalties, an understanding of the criminal record as a criminal law measure can substantially modify the theory that we are developing.

After all, if we proceed from the fact that conviction is a criminal-legal measure (the punishment is obviously one of such measures), then in the situation of relapse it will be natural to raise the question that when making the second crime there is a need to determine the size (volume) of the final state coercion, determined by the addition of two different measures of a criminal-legal nature: punishment and conviction. With a certain degree of certainty, this allows to qualify relapse precisely as the form of the crimes' multiplicity.

Meanwhile, despite some external attractiveness, this approach has enough "minuses": a) it is overlooked that conviction and punishment, if they are measures of a criminal-legal nature, are fundamentally different, the addition of which is impossible in principle and which can be executed (served) only independently; b) a conviction arises for both the first and the second offense and therefore if we talk about the addition of measures, we should add a conviction for the first crime, punishment and conviction for the second crime; c) if the criminal record is an independent measure of a criminal-legal nature, then it cannot influence the amount of punishment for a person who has a previous conviction for a crime (such an effect could have occurred if the conviction was a measure of a criminal nature for the first crime is completely absorbed by the punishment for the second crime and such absorption entails an increase in the punishment for the second crime, but this development of the criminal law is not provided for and it is hardly possible in principle).

It can be summarized that the approach to the definition of criminal record as a measure of a criminal-legal nature does not represent special prospects for understanding and improving the design of the recidivism of crimes. It is obvious that it is mistaken in its original premise: the criminal record cannot be considered a criminal-legal measure (if only because it arises from the conviction of any crime "automatically" and not imposed by the court on the convicted person, moreover, the conviction, unlike other measures of a criminal-legal nature, is not a subject to individualization) (Chiao, 2016).

The conviction is a special legal status, the status of the person who committed the crime and who is convicted on the verdict of the court. This status, according to the provisions of Part 1 of Art. 86 of the Criminal Code of the Russian Federation, "is taken into account in the case of the relapse of crimes, the imposition of punishment and entails other legal consequences in cases and in the manner established by federal laws".

So, having a specific legal status, a person commits a new crime. The traditional view of the situation is that this second crime is considered more dangerous than a crime committed by a person who does not have this status. First of all, the legislator himself recognizes this, setting the rules for choosing the most severe type of punishment for the court and increasing its size for

a recidivist crime (this rule, as is known, was mandatory until 2003, after which it actually became alternative).

However, this thesis is very vulnerable. It is not confirmed by the realities of judicial practice, nor, in fact, by theoretical research. Analysis of the statistical data of the Supreme Court of the Russian Federation makes it possible to establish that there are no fundamental differences in the structure of general criminality and the structure of crime recidivism.

It should be noted that in the description of the social danger of recidivism (and the multiplicity of crimes in general), domestic science demonstrates two main approaches.

According to the first, the danger of recurrence is determined both by the specifics of the crimes committed and by the personality of the perpetrator. Well-known Russian lawyer Tagantsev wrote: "In each criminal act, we distinguish two essential elements: the modification produced in the external world and the separate criminal will express in this deed with all its characteristic features. But the fact that the perpetrators have committed the same or some other crime before, brings in special features in both of these elements: the modification of the world will not be the same, because repetition stirs up anxiety in society, strengthens the temptation of a bad example; the changes introduced into the subjective element are even stronger: we will meet both the strengthening of regularity and the habit in it...".

Modern authors write the same about the same thing, in particular, Rogova: "A person, who committed several crimes, is characterized by fairly stable antisocial views and attitudes. As a result of the commission of several crimes, physical, material or other damage to law-enforceable interests is, as a rule, more significant than the harm caused as a result of the commission of one crime".

However, it is difficult to fully agree with these judgments, primarily because of methodological guidelines. It seems that recidivism is a crime composed of recurrent crimes (exclusively!). The scope and structure of recidivism does not include primary crimes for which a person (a recidivist) suffers conviction. Because of this, it is hardly possible to link the danger of recidivism with the parameters of primary crimes. The danger of these primary crimes is "extinguished" by punishment and cannot be counted repeatedly (Johnson, 2016).

Much more accurate is the second approach to assessing the risk of recidivism and crime relapse. Here it is described in very specific words and expressions. Thus, Koroleva points out: "The increased social danger of recidivism is that it expresses such a quality of crime as its sustainability, indicating a persistent unwillingness of a number of individuals to behave according to the norms accepted in society, preferring criminal solutions to their problems, despite the measures taken". The words of other authors are similar in essence: "The special social danger of recidivism is that relapse is the first step towards a criminal way of life. A significant part of the recidivist crime is transformed into a professional crime and that, in turn, into an organized one".

It can be safely asserted that in criminology the danger of recidivism is not associated with the increased danger of each individual recidivist crime. There is much more reason to see the danger of recidivism in the specific properties and qualities of the criminal's personality, who is not amenable to socio-legal correction and potentially capable of repeating criminal acts. This is directly written by Malkov (extrapolating his conclusion not only to relapse, but to all forms of the multiplicity of crimes in general): "The social essence of the multiplicity of crimes is that it is a testimony, as a rule, of a greater public danger to the criminal's personality, his stable antisocial life position and often also the formation of his criminal professionalism". This is indicated by

the results of a survey of experts: 66% of practicing lawyers indicated that the relapse more characterizes the identity of the perpetrator than the crime committed by him; 20% noted that the recurrence increases the danger of a crime; another 14% admitted that a relapse testifies to a simultaneous increase in the public danger and personality of the offender and the crime committed by him.

Thus, there are enough arguments in favour of the thesis that a relapse does not increase the danger of a committed crime, but is a convincing evidence of an increase in the public danger of a person committing several crimes.

Against this background, the fact of recognition of a relapse as a form of plurality of crimes looks, at least, not entirely logical. Prior to the 2003 reform, the concept of "relapse – the form of plurality" was consistent enough in the law. But since 2003, it has been de facto rejected: the increase in punishment for relapse was determined not by law, but by the discretion of the court; the type of relapse has lost the importance of circumstances differentiating punishment; in the basis of the assessment of the deed committed during relapse, much more important was the data on the identity of the perpetrator, rather than the actual recidivist crime. This state of affairs with a high degree of credibility allows us to say that the legislator (perhaps unwittingly and without noticing and in any case without wide theoretical discussions) has returned (though not fully) to the officially rejected theory of "relapse is a property of the criminal's personality".

In our opinion, this theory allows us to better assess the danger of relapse and to build, in accordance with this assessment, a system of criminal legal means for recidivists. However, it is obvious that by many components of its content it goes back to the design of a particularly dangerous recidivist construction known to Soviet criminal law. And this fact naturally updates those critical considerations that were addressed to this design in due time.

Structurality of Criminal Law Norms as One of the Directions of Combating Crime

However, the validity of some of them is difficult to recognize. So, Bytko writes that the institution of a particularly dangerous recidivist contained elements of discrimination against criminals on the basis of special qualities of their personality and represented the official endorsement of the concept of a particularly dangerous state of personality. We believe that it is impossible to fully agree with this assertion. The difference between the concept of "discrimination" and "differentiation", in fact, consists only in assessing the differences. In our opinion, the establishment of a special legal status of a recidivist is not aimed at infringement of his rights and freedoms (discrimination), but on the creation of mechanisms for distinguishing the amount of responsibility and punishment for persons committing different amounts of crime (differentiation). This idea was largely confirmed by the Constitutional Court of the Russian Federation in the previously cited resolution. As for the proximity of the concept of a recidivist to the concept of a dangerous state of personality, then here again the reproach seems unfounded. The dangerous state of the individual made it possible to apply measures of legal effect to a person, regardless of whether he committed a criminal act or not ("in connection with the antisocial environment"). Unlike the "dangerous person", a recidivist is a person who committed a specific crime (besides, according to the norms in force, the court could not recognize the person who committed the crime as a recidivist). If one looks for features of the theory of the dangerous state of the individual in modern law, he should rather be seen in the criminal record

itself, rather than in the recidivism. At the same time, the conviction, with rare exceptions, is not subjected to a large-scale criticism in science.

Thus, it can be concluded that in assessing the situation of committing a new crime by a person who has a previous conviction for a crime (provided that it is not necessary to determine the size or order of serving the final sentence), the theory recognizing relapse not as a form of plurality of crimes, but a specific property of the person responsible has the greatest cognitive, explaining and regulating potential.

The transfer of the "centre of gravity" in the construction of a relapse from an act to an individual and the recognition of a relapse as a sign characterizing the identity of the perpetrator require additional coverage of some criminological and criminal legal problems. Given the limitations of this study, let us outline some of them:

- In the legislative characteristic of a recidivist, it is advisable to preserve some of the features inherent in the modern understanding of relapse as forms of plurality, namely: the age of the person at the time of the crime, the intentional nature of the crimes that give rise to the recognition of a person as a recidivist, classifying these crimes as not less than average, presence of unexpunged or unspent conviction.
- Since the relapse characterizes the identity of the perpetrator, the study of the crimes committed by these persons, their "recidivism dangerousness" becomes especially important. It seems that domestic specialists were right when they saw signs of relapse only in the event of the repetition of identical or homogeneous crimes. In particular, Foynitsky was inclined to "report a relapse of great importance only for those criminal acts that pose a danger to become a habit, where, consequently, it serves as evidence of an increased state of crime". In our opinion, one of the mandatory conditions for the recognition of a person as a recidivist should be to identify the similar nature of their crimes (45% of the polled law enforcement officers expressed their solidarity with this opinion). The commission of a non-identity crime by a person who has a previous conviction for a crime does not testify to his criminal specialization and increased danger. In these cases, in our opinion, the emerging situation should be resolved on the basis of the legislatively established rules for the imposition of punishment on a set of sentences or through the provisions of Art. 63 of the Criminal Code of the Russian Federation (in this case, it is necessary to amend the provisions of Article 63 § 1 (a) of the Criminal Code of the Russian Federation in order to allow the law enforcer to recognize as a circumstance aggravating punishment not only a relapse, but also having an unclear or unspent conviction in general).
- The recidivist-criminal-legal sign not of a crime subject, but the personality of the guilty. He should not be included in the system of signs of the crime and cannot lead to a change in the offense’s qualifications. Its purpose is to serve as a possible basis for toughening the punishment imposed on a person. The status of a recidivist should be placed on the person in the conviction of the court and removed simultaneously with the cancellation of a criminal record. At the same time, one should listen to the opinion about the need to introduce some procedural forms that inform the accused that he can be recognized as a recidivist into practice; as well as the inclusion in the subject of evidence in criminal cases of circumstances related to the previous conviction of the accused. We also believe that the possibility of recognizing a person as a recidivist should be considered, as was the case in Soviet criminal law, as a right and not as a court obligation. The court's

implementation of this right will determine the need for all other measures that can be applied to the recidivist.

- Given that the recognition of a person as a recidivist should be understood as the right of the court, it is logical that by exercising this right, the court must be faced with the fact of mandatory tightening of punishment for the recidivist. In this regard, it should be noted that the implementation of the concept will require a revision of Art. 68 of the Criminal Code of the Russian Federation on the rules for the appointment of punishment for a relapse (recidivist). In particular, provisions on the admissibility of non-application of the rules on the increased lower limit of punishment and on the possibility of punishing the recidivist below the lower limit should be removed. The logic in this case is simple: the court can recognize or not recognize a person as a recidivist, but if recognizing a person as a recidivist, the court has no right not to toughen his punishment.
- Consistency in the implementation of policies aimed at differentiating the punishment of recidivists requires clarification of the legislative position with regard to determining the consequences of assigning a relapse to a particular species. Today, the classification of relapse is taken into account only when determining the type of correctional facility in which a convicted recidivist must serve a criminal sentence of imprisonment. The type of relapse does not affect the size of punishment (its minimum size). This, it seems, is a wrong position (68% of the interviewed law enforcers hold such a conclusion). The legislator has two options for correcting the situation. First, one can listen to the suggestions made in the 60-70s of the last century that along with the notion of a "particularly dangerous recidivist", the law should have the concepts of "dangerous recidivist" and "recidivist". In this case, it is necessary to return to a differentiated definition of the minimum amount of punishment for various types of relapse and to keep the revision of Art. 58 of the Criminal Code (of course, with due regard to terminological clarifications). The second option may consist in the exclusion of the classification of recidivism (recidivists) from the Criminal Code of the Russian Federation, the preservation of a single limit of the minimum amount of punishment for a relapse (recidivist). Classification of recidivists in this case is not in principle excluded, but it should have only criminal-executive significance. This decision will be more in line with the recommendations of the Standard Minimum Rules for the Treatment of Prisoners adopted by the UN Congress on August 30, 1955, according to which a person's past conviction can be taken into account in the execution of a sentence of imprisonment for the sole purpose of grouping prisoners for their separate allowance.

Summarizing the analysis of issues related to the recidivism assessment, we consider it possible to formulate the following directions as the prospects for the development of criminal legislation: to return to the concept of a recidivist, since a relapse testifies to an increase in the level of the public danger of the perpetrator’s personality rather than the crime committed by him; recognize a person who commits an intentional crime, except for a crime of minor gravity, having a criminal record for an intentional crime committed earlier in the age of eighteen years, provided that the crimes committed are provided for by one article or part of the article of the Special Part of the Criminal Code of the Russian Federation as a recidivist; give the court the right to recognize (or not) a person as a recidivist; conduct a classification of recidivists in the penal enforcement legislation, depending on the degree of their public danger, which should be

determined by the danger and the number of crimes committed; establish a unified approach to determining the minimum sentence for recidivists of different groups; establish a rule according to which the status of a recidivist is an integral part of the criminal record of a person recognized as a recidivist and annihilated simultaneously with the cancellation of a criminal record. In our opinion, the implementation of these proposals is capable, on one hand, of strengthening and therefore, optimizing the fight against professional crime; and on the other to avoid unreasonable toughening of repression in situations when the crime only formally contains signs of relapse, but does not indicate an increase in the public danger of the person who committed it.

Set of crimes. As is known, the current Criminal Code of the Russian Federation (Article 17) defines the totality of crimes as committing two or more crimes, for none of which the person was convicted, except for cases when the commission of two or more crimes is stipulated in articles of the Special Part of the Criminal Code of the Russian Federation as a circumstance, involving a more severe punishment. Let us, for the time being, leave aside the question of circumstances excluding the aggregate of crimes and turn to an analysis of the key parameters of this form of plurality.

One of the most important features of the aggregate, predetermined by the requirements of the principles of criminal law, is the fact that a person is brought to account once for all the crimes committed by him. The starting point here is the principle of justice, one of the most significant manifestations of which in the field of criminal law is a ban on re-bringing a person to criminal liability for a crime and guaranteeing his right to be tried for one crime only once. This right has an international legal basis. Thus, article 14, paragraph 7, of the International Covenant on Civil and Political Rights of December 16, 1966, declares: "No one shall be tried again or punished for a crime for which he has already been finally convicted or acquitted in accordance with the law and criminal procedure law of each country". Article 4 of Protocol No. 7 to the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms of 22 November 1984 also guarantees the right of everyone not to be tried or punished twice. According to the Protocol, no one should be tried again or punished in a criminal procedure within the jurisdiction of the same state for a crime for which he was already acquitted or convicted in accordance with the law and the criminal procedure rules of that state. These provisions do not preclude the re-examination of the case in accordance with the law and criminal procedure if there is information about new or newly discovered circumstances or if significant violations were committed that affected the outcome of the case in the previous proceedings. In the interpretation and understanding of this right, the decisions of the European Court of Human Rights play an important role, which fill the "real content" of key terms in the text of Article 4 of Protocol No. 7: "the same crime" and "twice". Significant in this case is the ECtHR Judgment of 10.02.2009 in the case "Sergey Zolotukhin (against Russia)" (complaint No. 14939/03), which presents their detailed content.

Based on the analysis of the text of this Resolution, it can be concluded that:

- The court admits the principal possibility that one behavioural act of a person may amount to several offenses.
- The guarantees of protection against re-conviction extend not only to cases of accusation of two or more crimes; they are of equal importance, regardless of the legal qualification of the offense committed by the person as a crime or other offense.

- In order to exclude conviction twice for the same act, it is necessary to compare the essential elements of the two offenses; if they coincide in person, time, place, law-enforcing benefit, consequences, fault and other significant elements, the existence of two separate offenses cannot be established.
- The commission of one offense does not prevent the simultaneous application of various legal measures for it, differing in nature and purpose.
- Guarantees of the prohibition on re-conviction are extended not only to the criminal procedural sphere proper, but also to other types of proceedings gravitating towards criminal procedure.
- "Condemnation" for the purposes of human rights protection should be interpreted broadly as a term encompassing prosecution, conviction and punishment, both as a matter of fact criminal (in the strict sense of the word) and otherwise, gravitating towards it in its legal nature.
- International law establishes a strict prohibition on re-conviction after the final decision has already been taken against the person for those very facts; if the authorities allow a repeated or parallel development of the proceedings, they can recognize the violation, stop the proceedings and offer adequate compensation to the victim.

CONCLUSION

Obviously, the formula of the aggregate set forth in the Criminal Code of the Russian Federation "for none of which the person was convicted" does not fully correspond to the volume of deeds that are actually recognized by law as a set of crimes and is inaccurate. Part 5 of Article 69 of the Criminal Code provides for a rule according to which the situation in which, after the court passes a verdict, one more crime committed before the verdict in the first case is pronounced (that is, in fact two crimes were committed, for one of which the person was convicted) is also recognized as a set of crimes. Already by virtue of this, it is more correct to talk about the aggregate as situations where two or more crimes were committed before conviction on one of them or as cases when "the subject committed several crimes...for none of which the punishment was served".

While these formulas are more accurate than the legislative one, one cannot help noticing the significant difference between them. They identify two important and at the same time fundamentally different moments (characteristics) of the totality of crimes: the moment of conviction and the moment of serving the sentence.

In the first case, the natural continuation of the theoretical and normative construction of the multiplicity is the isolation along with the totality of crimes of this form of combining several crimes, as a set of sentences.

In the second case, the set of sentences loses the status and importance of an independent form of plurality and is actually considered as a special kind of a set of crimes.

It seems to us that, given the features of the multiplicity of crimes previously established in the present study and the characteristics of the social grounds for its allocation in the law, it is the second of the above positions, which focuses attention on the moment of serving punishment, that seems more convincing, theoretically and practically justified.

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